

APPENDIX C

COMPREHENSIVE ZONING REGULATIONS*

* **Editors Note:** Printed herein is the city's comprehensive zoning regulations, as adopted by Ord. No. 16425 on February 25, 1992, and as supplemented by the Topeka-Shawnee County Metropolitan Planning Agency through August 22, 1994. The ordinance has also been adopted by the Board of Commissioners of Shawnee County and applies to unincorporated areas of Shawnee County. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance as supplemented. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets. The ordinance was originally adopted as chapter 48 of the former Code of Ordinances. It is included as an appendix so as to avoid the necessity of changing the ordinance. It is not a chapter of the current Code.

Cross References: Forbes Field and Philip Billard Airport hazard zoning, § 22-26 et seq.; buildings and building regulations, ch. 26; community development, ch. 42; flood damage prevention, § 74-26 et seq.; construction adjacent to flood control levees, § 74-91 et seq.; planning, ch. 110; subdivisions, ch. 134.

Article I. In General

- Sec. 48-1.00. Purpose.
- Sec. 48-1.01. District classification.
- Sec. 48-1.02. Conversion of existing districts.
- Sec. 48-1.03. Application of regulations to existing legal conforming uses.
- Sec. 48-1.04. District map.
- Sec. 48-1.05. Rules where uncertainty may arise.
- Sec. 48-1.06. Annexed territory.
- Sec. 48-1.07. Vacated streets, alleys, etc.
- Sec. 48-1.08. Vesting of development rights.
- Sec. 48-1.09. Use and building restrictions.
- Sec. 48-1.10. Interpretation.
- Sec. 48-1.11. Enforcement.
- Sec. 48-1.12. Validity.

Article II. RA-1 Rural Agriculture District

- Sec. 48-2.00. Purpose; intent.
- Sec. 48-2.01. Regulations generally.
- Sec. 48-2.02. Use regulations.
- Sec. 48-2.03. Dimensional requirements.
- Sec. 48-2.04. General provisions.
- Sec. 48-2.05. Development alternatives.

Article III. RR-1 Residential Reserve District

- Sec. 48-3.00. Purpose; intent.
- Sec. 48-3.01. Regulations generally.
- Sec. 48-3.02. Use regulations.
- Sec. 48-3.03. Dimensional requirements.
- Sec. 48-3.04. General provisions.
- Sec. 48-3.05. Development alternatives.

Article IV. R-1 Single-Family Dwelling District

- Sec. 48-4.00. Purpose; intent.
- Sec. 48-4.01. Regulations generally.
- Sec. 48-4.02. Use regulations.
- Sec. 48-4.03. Dimensional requirements.
- Sec. 48-4.04. General provisions.

Sec. 48-4.05. Development alternatives.

Article V. R-2 Single-Family Dwelling District

Sec. 48-5.00. Purpose; intent.

Sec. 48-5.01. Regulations generally.

Sec. 48-5.02. Use regulations.

Sec. 48-5.03. Dimensional requirements.

Sec. 48-5.04. General provisions.

Sec. 48-5.05. Development alternatives.

Article VI. R-3 Single-Family Dwelling District

Sec. 48-6.00. Purpose; intent.

Sec. 48-6.01. Regulations generally.

Sec. 48-6.02. Use regulations.

Sec. 48-6.03. Dimensional requirements.

Sec. 48-6.04. General provisions.

Sec. 48-6.05. Development alternatives.

Article VII. R-4 Single-Family Dwelling District

Sec. 48-7.00. Purpose; intent.

Sec. 48-7.01. Regulations generally.

Sec. 48-7.02. Use regulations.

Sec. 48-7.03. Dimensional requirements.

Sec. 48-7.04. General provisions.

Sec. 48-7.05. Development alternatives.

Article VIII. M-1 Two-Family Dwelling District

Sec. 48-8.00. Purpose; intent.

Sec. 48-8.01. Regulations generally.

Sec. 48-8.02. Use regulations.

Sec. 48-8.03. Dimensional requirements.

Sec. 48-8.04. General provisions.

Sec. 48-8.05. Development alternatives.

Article VIII-a. M-1a Limited Multiple Family Dwelling District

Sec. 48-8a.00. Purpose; intent.

Sec. 48-8a.01. Regulations generally.

Sec. 48-8a.02. Use regulations.

Sec. 48-8a.03. Dimensional requirements.

Sec. 48-8a.04. General provisions.

Sec. 48-8a.05. Development alternatives.

Article IX. M-2 Multiple-Family Dwelling District

Sec. 48-9.00. Purpose; intent.

Sec. 48-9.01. Regulations generally.

Sec. 48-9.02. Use regulations.

Sec. 48-9.03. Dimensional requirements.

Sec. 48-9.04. General provisions.

Sec. 48-9.05. Development alternatives.

Article X. M-3 Multiple-Family Dwelling District

Sec. 48-10.00. Purpose; intent.

Sec. 48-10.01. Regulations generally.

Sec. 48-10.02. Use regulations.

Sec. 48-10.03. Dimensional requirements.

Sec. 48-10.04. General provisions.

Sec. 48-10.05. Development alternatives.

Article XI. M-4 Multiple-Family Dwelling District

Sec. 48-11.00. Purpose; intent.
Sec. 48-11.01. Regulations generally.
Sec. 48-11.02. Use regulations.
Sec. 48-11.03. Dimensional requirements.
Sec. 48-11.04. General provisions.
Sec. 48-11.05. Development alternatives.

Article XII. O&I-1 Office and Institutional District

Sec. 48-12.00. Purpose; intent.
Sec. 48-12.01. Regulations generally.
Sec. 48-12.02. Use regulations.
Sec. 48-12.03. Dimensional requirements.
Sec. 48-12.04. General provisions.
Sec. 48-12.05. Development alternatives.

Article XIII. O&I-2 Office and Institutional District

Sec. 48-13.00. Purpose; intent.
Sec. 48-13.01. Regulations generally.
Sec. 48-13.02. Use regulations.
Sec. 48-13.03. Dimensional requirements.
Sec. 48-13.04. General provisions.
Sec. 48-13.05. Development alternatives.

Article XIV. O&I-3 Office and Institutional District

Sec. 48-14.00. Purpose; intent.
Sec. 48-14.01. Regulations generally.
Sec. 48-14.02. Use regulations.
Sec. 48-14.03. Dimensional requirements.
Sec. 48-14.04. General provisions.
Sec. 48-14.05. Development alternatives.

Article XV. C-1 Commercial District

Sec. 48-15.00. Purpose; intent.
Sec. 48-15.01. Regulations generally.
Sec. 48-15.02. Use regulations.
Sec. 48-15.03. Use limitations and conditions of the district.
Sec. 48-15.04. Dimensional requirements.
Sec. 48-15.05. General provisions.
Sec. 48-15.06. Development alternatives.

Article XVI. C-2 Commercial District

Sec. 48-16.00. Purpose; intent.
Sec. 48-16.01. Regulations generally.
Sec. 48-16.02. Use regulations.
Sec. 48-16.03. Dimensional requirements.
Sec. 48-16.04. General provisions.
Sec. 48-16.05. Special provisions.
Sec. 48-16.06. Development alternatives.

Article XVII. C-3 Commercial District

Sec. 48-17.00. Purpose; intent.
Sec. 48-17.01. Regulations generally.
Sec. 48-17.02. Use regulations.
Sec. 48-17.03. Dimensional requirements.
Sec. 48-17.04. General provisions.
Sec. 48-17.05. Special provisions.
Sec. 48-17.06. Development alternatives.

Article XVIII. C-4 Commercial District

Sec. 48-18.00. Purpose; intent.

Sec. 48-18.01. Regulations generally.
Sec. 48-18.02. Use regulations.
Sec. 48-18.03. Dimensional requirements.
Sec. 48-18.04. General provisions.
Sec. 48-18.05. Development alternatives.

Article XIX. C-5 Commercial District

Sec. 48-19.00. Purpose; intent.
Sec. 48-19.01. Regulations generally.
Sec. 48-19.02. Use regulations.
Sec. 48-19.03. Dimensional requirements.
Sec. 48-19.04. General provisions.
Sec. 48-19.05. Development alternatives.

Article XX. I-1 Light Industrial District

Sec. 48-20.00. Purpose; intent.
Sec. 48-20.01. Regulations generally.
Sec. 48-20.02. Use regulations.
Sec. 48-20.03. Dimensional requirements.
Sec. 48-20.04. General provisions.
Sec. 48-20.05. Development alternatives.

Article XXI. I-2 Heavy Industrial District

Sec. 48-21.00. Purpose; intent.
Sec. 48-21.01. Regulations generally.
Sec. 48-21.02. Use regulations.
Sec. 48-21.03. Dimensional requirements.
Sec. 48-21.04. General provisions.
Sec. 48-21.05. Development alternatives.

Article XXII. U-1 University District

Sec. 48-22.00. Purpose; intent.
Sec. 48-22.01. Regulations generally.
Sec. 48-22.02. Use regulations.
Sec. 48-22.03. Dimensional requirements.
Sec. 48-22.04. General provisions.
Sec. 48-22.05. Development alternatives.

Article XXIII. MS-1 Medical Service District

Sec. 48-23.00. Purpose; intent.
Sec. 48-23.01. Regulations generally.
Sec. 48-23.02. Use regulations.
Sec. 48-23.03. Dimensional requirements.
Sec. 48-23.04. General provisions.
Sec. 48-23.05. Development alternatives.

Article XXIIIa. X-Mixed Use Districts

Sec. 48-23a.00. [Purpose and regulations.]
Sec. 48-23a.01. Mixed use district classifications.
Sec. 48-23a.02. Applicability of Mixed Use Districts.
Sec. 48-23a.03. Use regulations for X-1 mixed use district.
Sec. 48-23a.04. Same--X-2 mixed use district.
Sec. 48-23a.05. Same--X-3 mixed use district.
Sec. 48-23a.06. Dimensional and performance standards.
Sec. 48-23a.07. Parking.
Sec. 48-23a.08. Additional requirements for mixed use district.
Sec. 48-23a.09. Legal non-conforming uses for the X-mixed use districts.

Article XXIV. PUD Planned Unit Development District

Sec. 48-24.00. Purpose; intent.

- Sec. 48-24.01. Regulations generally.
- Sec. 48-24.02. Use regulations.
- Sec. 48-24.03. Requirements and development standards for the planned unit development district.
- Sec. 48-24.04. Procedure for securing approval of a planned development and the establishment of a planned development district.
- Sec. 48-24.05. Status of the planned unit development upon approval by the governing body.
- Sec. 48-24.06. Amendments to planned unit development plans.
- Sec. 48-24.07. Planned unit development plan variance procedures.

Article XXIVa. OS-1 Open Space District.

- Sec. 48-24a.00. [Purpose and regulations.]
- Sec. 48-24a.01. Use regulations for OS-1 open space district.

Article XXIVb. D-Downtown Districts

- Sec. 48-24b.00. Downtown district classifications.
- Sec. 48-24b.01. Use regulations for D-1 district.
- Sec. 48-24b.02. Use regulations for D-2 district.
- Sec. 48-24b.03. Use regulations for D-3 district.
- Sec. 48-24b.04. Dimensional and performance standards.
- Sec. 48-24b.05. Parking.
- Sec. 48-24b.06. Legal nonconforming uses.
- Sec. 48-24b.07. Design and appearance guidelines.

Article XXV. Conditional Use Permits

- Sec. 48-25.00. Purpose; intent.
- Sec. 48-25.01. Application.
- Sec. 48-25.02. Guidelines for evaluation.
- Sec. 48-25.03. Restriction; authority.
- Sec. 48-25.04. Revocation.

Article XXVI. Additional Regulations

Division 1. Generally

- Sec. 48-26.00. Use and requirements.
- Secs. 48-26.01--48-26.15. Reserved.

Division 2. Communication Towers

- Sec. 48-26.16. Statement of purpose.
- Sec. 48-26.17. Regulations.

Article XXVII. Dimensional Requirements

- Sec. 48-27.00. General.
- Sec. 48-27.01. General lot requirements.
- Sec. 48-27.02. General yard requirements.
- Sec. 48-27.03. Permitted encroachments in required yards.
- Sec. 48-27.04. Exceptions to height limitations.
- Sec. 48-27.05. Restrictions on access.

Article XXVIII. Legal Nonconforming Uses

- Sec. 48-28.00. Purpose; intent.
- Sec. 48-28.01. Continuance of nonconforming uses.
- Sec. 48-28.02. Destruction of structures.
- Sec. 48-28.03. Use discontinued.
- Sec. 48-28.04. Reconstruction; alteration; enlargement.

Article XXIX. Accessory Uses and Requirements

- Sec. 48-29.00. Authority.
- Sec. 48-29.01. Permitted accessory uses and buildings.
- Sec. 48-29.02. Accessory use and building regulations.
- Sec. 48-29.03. Fences.

Article XXX. Off-Street Parking Requirements

- Sec. 48-30.00. Scope and application.
- Sec. 48-30.01. Off-street parking requirements.
- Sec. 48-30.02. Required number of off-street parking spaces.
- Sec. 48-30.03. Reserved.
- Sec. 48-30.04. Approval of off-street parking facilities.

Article XXXI. Sign Regulations

- Sec. 48-31.00. Scope; intent.
- Sec. 48-31.01. District regulations.

Article XXXII. Reserved

Article XXXIII. Amendments

- Sec. 48-33.00. Amendments initiated.
- Sec. 48-33.01. Procedure.
- Sec. 48-33.02. Restriction on filing.
- Sec. 48-33.03. Certificate of ownership.
- Sec. 48-33.04. Legal protest.
- Sec. 48-33.05. Building and development permit issuance.
- Sec. 48-33.06. Filing fees.
- Sec. 48-33.07. Status of filed petitions.

Article XXXIV. Appeals

- Sec. 48-34.00. Board of zoning appeals.
- Sec. 48-34.01. Composition; appointment.
- Sec. 48-34.02. Terms of members.
- Sec. 48-34.03. Meetings.
- Sec. 48-34.04. Powers and duties, generally.
- Sec. 48-34.05. Records.
- Sec. 48-34.06. Notice of appeal.
- Sec. 48-34.07. Appeal stays proceedings.
- Sec. 48-34.08. Notice and hearing.
- Sec. 48-34.09. Variances/authority.
- Sec. 48-34.10. Conditions/findings.
- Sec. 48-34.11. Exceptions.
- Sec. 48-34.12. Exceptions.
- Sec. 48-34.13. Variances not allowed.
- Sec. 48-34.14. Recording with register of deeds.

Article XXXV. Definitions

Article XXXVI. E Multiple-Family Dwelling District

- Sec. 48-36.00. Purpose; intent.
- Sec. 48-36.01. Regulations generally.
- Sec. 48-36.02. Use regulations.
- Sec. 48-36.03. Height regulations.
- Sec. 48-36.04. Area regulations.
- Sec. 48-36.05. Parking regulations.
- Sec. 48-36.06. Restrictions/amendments to district map.

Article XXXVII. "D&O" Multiple-Family Dwelling and Office District

- Sec. 48-37.00. Purpose; intent.
- Sec. 48-37.01. Regulations generally.
- Sec. 48-37.02. Use regulations.
- Sec. 48-37.03. Height regulations.
- Sec. 48-37.04. Area regulations.
- Sec. 48-37.05. Parking regulations.

Sec. 48-37.06. Restrictions/amendments to district map.

Article XXXVIII. Landscape Requirements

- Sec. 48-38.00. Purpose.
- Sec. 48-38.01. Definitions.
- Sec. 48-38.02. Applicability.
- Sec. 48-38.03. Exceptions.
- Sec. 48-38.04. Landscape plans.
- Sec. 48-38.05. Landscape requirements.
- Sec. 48-38.06. Existing tree credits.
- Sec. 48-38.07. Irrigation system credits.
- Sec. 48-38.08. Stormwater best management practice credits.
- Sec. 48-38.09. Enforcement.
- Sec. 48-38.10. General information.
- Sec. 48-38.11. Size and quality requirements.
- Sec. 48-38.12. Recommended species.

Article XXXIX. Site Plans Regulations

- Sec. 48-39.01. General provisions.
- Sec. 48-39.02. Intent; purpose.
- Sec. 48-39.03. Applicability.
- Sec. 48-39.04. Procedures for site plan review; applications.
- Sec. 48-39.05. Contents of site plan.
- Sec. 48-39.06. General performance guidelines.

ARTICLE I.

IN GENERAL

Sec. 48-1.00. Purpose.

For the purpose of establishing and carrying out the several powers, duties, and privileges conferred upon the City of Topeka and Shawnee County, Kansas, in, under and by the laws of the state and to encourage the most appropriate use and development of land throughout the metropolitan area; to stabilize and conserve the value of property; to provide adequate air, light, and reasonable access; to secure safety from fire and other dangers; to prevent overcrowding of land; to avoid undue concentration of population; to improve the appearance of the metropolitan area; to facilitate the provisions of transportation, water, sewers, schools, parks and open space, and other community and public improvements; and in general, to promote the public health, safety and welfare; and to regulate and restrict the locations and use of buildings, structures and land for business, industry, dwelling, public and quasipublic and other specified uses, consistently and uniformly throughout; to regulate the area of yards and open space, the height, density, intensity and bulk of buildings and structures; and for said purposes, to divide the jurisdiction into districts of such number, shape and area as may be deemed necessary to carry out these regulations hereby established. In the development, execution, implementation and enforcement of the zoning regulations, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics and effects, thereby requiring special regulation of these uses to ensure that these characteristics and effects will not contribute to the blighting or downgrading of the surrounding neighborhood.

Sec. 48-1.01. District classification.

For the purpose of regulating and restricting the location and use of buildings and the use of land including the height, density, intensity, bulk and area of yards and open space for dwellings, business, industry, conservation,

floodplain or other purposes deemed necessary, the jurisdiction is hereby divided into the following districts:

RA-1	Rural agriculture district
RR-1	Residential reserve district
R-1	Single-family dwelling district
R-2	Single-family dwelling district
R-3	Single-family dwelling district
R-4	Single-family dwelling district
M-1	Two-family dwelling district
M-1a	Limited multiple-family dwelling district
M-2	Multiple-family dwelling district
M-3	Multiple-family dwelling district
M-4	Multiple-family dwelling district
O&I-1	Office and institutional district
O&I-2	Office and institutional district
O&I-3	Office and institutional district
C-1	Commercial district
C-2	Commercial district
C-3	Commercial district
C-4	Commercial district
C-5	Commercial district
I-1	Light industrial district
I-2	Heavy industrial district
PUD	Planned unit development district
U-1	University district
MS-1	Medical service district
E	Multiple-family dwelling district
D&O	Multiple-family and office district

The Historic Landmark Overlay District (HL) as provided in Chapter 80, Topeka City Code is hereby incorporated by reference as if fully set forth herein. Any property so designated will be reflected on the official zoning map.

(Ord. No. 16720, § 1, 6-14-94; Ord. No. 17740, § 1, 10-16-01)

Sec. 48-1.02. Conversion of existing districts.

The existing districts and boundaries thereof shall be reclassified in accordance with the following:

1. "RA-1" rural agriculture district (Shawnee County) shall convert to "RA-1" rural agricultural district.

2. "R-1" residential dwelling district (Shawnee County) shall convert to "RR-1" residential reserve district.
3. "A" single-family dwelling district (City of Topeka) shall convert to "R-1" single-family dwelling district.
4. "B" single-family dwelling district (City of Topeka) shall convert to "R-2" single-family dwelling district.
5. "C" two-family dwelling district (City of Topeka); and "M-1" two-family dwelling district (Shawnee County) shall convert to "M-1" two-family dwelling district.
6. "D" multiple-family dwelling district (City of Topeka); and "M-2" multiple-family dwelling district (Shawnee County) shall convert to "M-2" multiple-family dwelling district.
7. "E" multiple-family dwelling district shall convert to either "M-3" multiple-family dwelling district or "O&I-2" office and institutional district as follows:
 - (a) Developed property shall be determined from county records and assigned the appropriate classification based on existing land use, accordingly.
 - (b) Undeveloped property shall be converted to the appropriate classification based on land usage of a requested building permit at the time of issuance of a permit to build within a period of ten years following the date of adoption of this ordinance. During the interim period all undeveloped property shall be contained in the "E" multiple-family dwelling district.
 - (c) Property which has been approved by resolution of intent to the "E" multiple-family dwelling district shall convert to the appropriate classification based on proposed land usage pursuant to the provisions established in section 48-1.02(20).
8. "E-1" high-rise multiple-family dwelling district (City of Topeka) shall convert to "M-4" multiple-family dwelling district.
9. "D&O" multiple-family dwelling and office district (City of Topeka) shall convert to either "M-2" multiple-family dwelling district or "O&I-1" office and institutional district as follows:
 - (a) Developed property shall be determined from county records and assigned the appropriate classification based on existing land use, accordingly.
 - (b) Undeveloped property shall be converted to the appropriate classification based on land usage of a requested building permit at the time of issuance of a permit to build with a period of ten years following the date of adoption of this ordinance. During the interim period all undeveloped property shall be contained in "D&O" multiple-family dwelling and office district.

- (c) Property which has been approved by resolution of intent to the "D&O" multiple-family dwelling and office district shall convert to the appropriate classification based on proposed land usage pursuant to the provisions established in section 48-1.02(20).
10. "O&I" office and institutional district (Shawnee County) shall convert to "O&I-2" office and institutional district.
 11. "F" neighborhood shopping district (City of Topeka); and "C-1" local shopping district (Shawnee County) shall convert to "C-2" commercial district.
 12. "G" commercial district (City of Topeka); and "C-2" commercial district (Shawnee County) shall convert to "C-4" commercial district.
 13. "H" business district (City of Topeka) shall convert to "C-5" commercial district.
 14. "I" light industrial district (City of Topeka); and "I-1" light industrial district (Shawnee County) shall convert to "I-1" light industrial district.
 15. "J" heavy industrial district (City of Topeka); and "I-2" heavy industrial district (Shawnee County) shall convert to "I-2" heavy industrial district.
 16. "U-1" university district (City of Topeka) shall convert to "U-1" university district.
 17. "U-2" university community district (City of Topeka) shall convert to "M-3" multiple-family dwelling district.
 18. "A," "B," "C," "D," and "E" single-, two-family and multiple-family dwelling districts and community unit plan district, "D&OP" multiple-family dwelling and office park district, "G" commercial and shopping center unit district; "G" commercial and planned business center district, "I-P" industrial park district (all City of Topeka); and planned unit development as provided hereunder by the Shawnee County zoning regulations, general regulations, shall convert to the "PUD" planned unit development district.

Those developments heretofore assigned a planned unit district in conjunction with another district as set forth above, and assigned the "PUD" district upon the adoption of these regulations, shall be restricted to the use, dimensional, and general provisions of the conversion district of the classification in which said property was heretofore assigned.

19. "U-3" university service district, and conditional use permits (all City of Topeka); and special use permits (as issued by either the City of Topeka or Shawnee County) shall cease as classifications and as permit eligible uses effective with the conversion date of these regulations; and all existing uses as heretofore provided for by the district and/or by the aforementioned permits of record, may continue pursuant to the provisions of section 48-1.03 of this article; and further, any conditions, limitations, stipulations and/or other provisions set forth within the

resolution granting a site specific conditional or special use permit, shall continue to apply and remain in effect with the adoption of these regulations.

20. Resolution of intent. Except as otherwise set forth in this article, the proposed zoning district as established by a resolution of intent shall be assigned to a property in accordance with an ordinance as adopted by the governing body pursuant to the provisions of 48-1.02 of this article upon application of applicable development permits. Further, all conditions as set forth by a resolution of intent shall be complied with prior to the adoption of an ordinance.

Where newly created district classifications are provided herein, the boundary of such districts shall be established by ordinance within the City of Topeka, Kansas, or resolution within unincorporated Shawnee County, Kansas, all in accordance with article XXXIII.
(Ord. No. 16754, §§ 1, 31, 9-13-94)

Sec. 48-1.03. Application of regulations to existing legal conforming uses.

The regulations shall not apply in respect to the continued use of any building or land which use was in conformity with the use regulations then existing, and shall not prevent the restoration of such building damaged by fire, explosion, act of God, or public enemy; nor prevent the continuance of the use of such building or part thereof as such use existed at the time of damage; nor prevent the expansion, enlargement or structural alteration thereto, provided however, that the integrity of the original structure is not substantially reduced or eliminated. Whenever there is to be a change in general use classification of any building or land subsequent to the effective date of these regulations the same shall only be accomplished in accordance with the provisions of these regulations and in a district in which it is permitted. All existing structures or buildings, the use of which is in accordance with the use regulations of the district in which it is located, are hereby declared to be in conformity with the dimensional requirements of the assigned district herein upon the date of adoption of these regulations. Provided further, all single-family dwelling buildings, existing as legal conforming uses, upon the adoption of these regulations and the use of which is not in accordance with the use regulations of the assigned district in which it is located, may be enlarged, structurally altered, and accessory structures erected, and are hereby declared to be in conformity with the dimensional requirements herein upon the date of adoption of these regulations. Mobile home parks may continue for such purposes, including the replacement of individual mobile home units. In no event shall the number of mobile home units exceed the total number of placement sites within the boundary of a mobile home park provided that required and applicable approved development plans are of record with the appropriate governmental jurisdiction in respect to the location and number of planned placement sites.

Sec. 48-1.04. District map.

The boundaries of the districts established herein or as they may be amended from time to time shall be recorded on the district map on file in the office of the metropolitan planning agency.

Sec. 48-1.05. Rules where uncertainty may arise.

Where uncertainty exists with respect to the boundaries of the various districts as shown on the "district map," the following rules apply:

- (a) The district boundaries are either streets or alleys unless otherwise shown, and where the districts designated on the map are bounded approximately by street or alley lines, the street or alley shall be construed to be the boundary of the district.
- (b) Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines, and where the districts are bounded approximately by lot lines, the lot lines shall be construed to be the boundary of the districts unless the boundaries are otherwise indicated on the map.
- (c) In unsubdivided property, the district boundary lines on the map shall be determined by use of the scale appearing on the map.

Sec. 48-1.06. Annexed territory.

All territory hereinafter annexed by the City of Topeka shall retain its zoning classification of record as established by county resolution, provided that the city shall have the right to rezone the annexed territory subsequent to annexation or at the time of annexation.

Sec. 48-1.07. Vacated streets, alleys, etc.

Whenever any street, alley, or other public way is vacated by official action of the governing body, the zoning districts adjoining each side of such street, alley or public way, shall be automatically extended to the center of such vacation and all area included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts.

Sec. 48-1.08. Vesting of development rights.

For the purpose of single-family residential developments, development rights in such land use shall vest upon recording a plat of such land. If construction is not commenced on such land within five years of recording a plat, the development rights in such expire. For all purposes other than single-family developments, the right to use land for a particular purpose shall vest upon the issuance of all permits required for such use by a city or county and construction has begun and substantial amounts of work have been completed under a validly issued permit. The governing body may provide in zoning regulations for earlier vesting of development rights, however, vesting shall occur in the same manner for all uses of land within a land-use classification under the adopted zoning regulations.

Sec. 48-1.09. Use and building restrictions.

- (a) Except as hereinafter provided:
 - (1) No person shall use any premises for a use other than those permitted in the district in which such premises are located.
 - (2) No building shall be erected, enlarged or structurally altered unless it shall be designed to make

the premises conform to the regulations for the district in which the premises are located.

- (b) The use of buildings and land, and the regulations herein shall be uniform for each district but may differ from those regulations in other districts.
- (c) The use regulations shall not apply to:
 - (1) Public utilities such as poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves, hydrants, or other similar facilities located on public rights-of-way or public easements and operated by a public utility as a franchise holder from the City of Topeka or Shawnee County, Kansas; and including water lines, sewer lines and similar facilities owned and operated by the City of Topeka or Shawnee County, Kansas, except the following which shall be subject to the use regulations:
 - a. Substations; booster stations; pump stations; distribution stations;
 - b. Treatment plants; transmission equipment buildings; and
 - c. Towers or reservoirs and similar uses facilitating utility transmission, distribution, and collection systems.
 - (2) Railroad right-of-way and all uses in conjunction with such railroad operations. Nonrailroad use upon any railroad right-of-way or other property shall conform to these regulations.
 - (3) The temporary use of land in conjunction with, and exclusively for, a specific construction project; and conditional to the following restrictions and requirements:
 - a. Public works construction projects. The temporary use of any land located either on the site of construction or off-site, is permitted which is in conjunction with a project by a governmental entity. Such uses shall include topsoil or fill-dirt extraction; and the location of an asphaltic concrete and/or portland cement concrete plant. However, said plants shall be located a minimum distance of 400 feet from the nearest residential dwelling unit. Distances less than 400 feet may only be permitted by action of the metro board of appeals.
 - b. Other construction projects. The temporary use of land in conjunction with a construction project is permitted wherein the temporary use is located upon the site of the project; however, the temporary use of an asphaltic concrete and/or portland cement concrete plant shall be located a minimum distance of 400 feet from the nearest residential dwelling. Distances less than 400 feet may only be permitted by action of the metro board of appeals.
 - c. The temporary use of land for any construction project as set forth above is subject to the approval by the applicable public works director of the political subdivision in which the temporary use is located. Further, said temporary use of land shall not commence until such time that a permit has been granted by the above referenced public works director

after first consulting with the planning director; and said permit may include conditions, limitations, and requirements as may be required by other applicable laws, statutes and codes, or as may be determined by the public works director in order to provide for the public health, safety, comfort, and welfare of the community. The public works director may at his or her discretion, deny such temporary use.

- (4) Exceptions. The appropriate city or county building official or governing body shall have the authority to permit certain exceptions to the district regulations set forth as follows, by the issuance of a permit maintaining conditions governing design, construction, operation and/or expiration of the exception, so as to adequately safeguard the health, safety, and welfare of citizens of Topeka and unincorporated Shawnee County.
 - a. Exception for manufactured homes.
 - i. Replacement of an existing single-wide mobile home or manufactured home with another manufactured home on the same lot or parcel; provided the existing unit was allowed by permit and as otherwise be in conformance with all other applicable zoning regulations, including the wastewater management plan.
 - ii. Within the unincorporated areas of Shawnee County, the temporary placement of a manufactured home as a second dwelling on an existing lot or parcel, in instances of extreme hardship or necessity, not based on financial considerations, as determined by the board of commissioners, provided:
 - (a) The applicant shall justify and attest to the hardship or reason for requesting said exception in a notarized affidavit; and
 - (b) The applicant shall agree that the exception may be granted for a one time period not to exceed 18 months; provided, however, that at such time the hardship or reason of necessity shall cease and become null and void and the temporary manufactured home shall be removed; and
 - (c) The placement of the temporary manufactured home shall otherwise comply with the comprehensive zoning regulations, wastewater management plan, and all other applicable restrictions and regulations.
- (5) The use regulations and dimension requirements of each zoning district shall not apply to agricultural buildings.
- (d) Other general requirements:
 - (1) Prior to the construction of any development or excavation within 1,000 feet of any flood protection facility, a certificate of approval shall be obtained from the city or county engineer, as applicable.
 - (2) Any or all development authorized by these regulations shall be subject to other applicable

codes, regulations, or policies as adopted by the City of Topeka, Shawnee County, Kansas, and the State of Kansas, as appropriate.

- (3) Burial of human remains on residentially zoned property is prohibited except as may specifically be provided for herein.
- (4) Frontage as required herein shall be continuous in both dimension and extension, and further provided, the subject street frontage is improved to applicable standards or is guaranteed to be improved through appropriate surety. When applicable, the entire frontage shall include all right-of-way abutting, adjacent or coincident with such development site, including corner lots. For purposes of unplatted property, "frontage" shall not include or recognize those segments, sides or portion of the tract or parcel perimeter which restricts and prohibits vehicular ingress/egress; and further, "frontage" shall not include the cross-section width of a stub street as defined by this chapter.

(Ord. No. 16754, §§ 2--4, 31, 9-13-94; Ord. No. 16957, § 1, 6-4-96)

Sec. 48-1.10. Interpretation.

These regulations shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity and general welfare. These regulations are not intended to interfere with or abrogate or annul any ordinance, resolution, rules, regulations or permits previously adopted or issued, and not in conflict with any of the provisions of this chapter, or which shall be adopted, or issued pursuant to law relating to the use of buildings or premises, and likewise, not in conflict with this chapter; nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties, except that if this chapter imposes a greater restriction, this chapter shall control. Whenever there is a conflict with respect to the interpretation of these regulations, the legal department of the appropriate jurisdiction shall issue a declaration of findings which shall be observed until such time as the ordinance is amended. For a determination as to the use regulations, the legal department shall base its determination on the Standard Industrial Code, and other recognized sources or materials.

Sec. 48-1.11. Enforcement.

It shall be the duty of the code enforcement director of the City of Topeka or the Shawnee County zoning administrator to enforce these regulations within their respective jurisdictions through proper legal channels. Appeal from the decision of the code enforcement director or zoning administrator may be made to the board of zoning appeals as provided herein. Other officials of the various departments and divisions of the City of Topeka and Shawnee County shall have the duty and responsibility to report any apparent or alleged violations to the enforcement officer of the appropriate jurisdiction.

Sec. 48-1.12. Validity.

Should any section or provision of these zoning regulations be determined to be unconstitutional or invalid, the same shall not affect the validity of the regulations as a whole or any part thereof other than the part so determined to be unconstitutional.

ARTICLE II.

RA-1 RURAL AGRICULTURE DISTRICT

Sec. 48-2.00. Purpose; intent.

This district is established to provide for the conservation, preservation and protection of farmland and to encourage the development and improvement of such land for the production of food and other agricultural products consistent with the policy of the state. It is intended that all agricultural activities will be protected from the encroachment of nonagricultural activities, or other incompatible uses particularly those which are urban in character and are lacking the essential utility and community services. Among others, the purpose of the district is: to protect open space and agricultural uses from the adverse consequences of urban development; to avoid premature development of land where the complete range of urban services at full municipal service levels is not expected to be provided for an indefinite future time for new urban uses; to avoid uneconomic and inefficient provision of public facilities and service that serve one or few scattered urban projects located a substantial distance from the other municipal systems, including such instances when the extension of such facilities is financially supported by other than public entities; to concentrate urban growth into a more compact and desirable pattern throughout the planning area; and to provide for the orderly expansion of urban land usage consistent with the policies, goals, and objectives of the community.

Sec. 48-2.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "RA-1" rural agriculture district.

Sec. 48-2.02. Use regulations.

- (a) *Permitted uses:*
- (1) Agricultural use of land for production, storage, processing, and associated activities for environmental and commercial purposes, all as defined by this chapter.
 - (2) Nurseries, greenhouses, orchards, tree farming, sawmills, and truck farms with road stands; however, any sales of products not raised or produced on the premises shall be clearly subordinate to sales of products raised or produced thereon.
 - (3) Detached single-family dwelling building for the purpose, use and occupancy of a family as defined herein.
 - (4) Group home.
 - (5) Public parks, playgrounds, trails, paths, recreational areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
 - (6) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited

to, clubhouses, shelters, pools, court games, parking and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.

(7) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.

(8) Public or private elementary and secondary school.

(9) Residential care facility, type I.

(10) Medical care facility, type I.

(b) *Provisional uses:*

(1) Day care facility, type I subject to the requirements of article XXVI.

(2) Religious assembly subject to the requirements of article XXVI.

(3) Golf course; country club subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Cemetery subject to the requirements of article XXVI.

(2) Public use facility.

(3) Vehicle surface parking lot in association with a principal use.

(4) Television, radio and microwave transmission towers; telecommunication equipment; and accessory facilities other than those provided for elsewhere in this chapter as accessory to a permitted use or exempt as set forth by definition; and subject to the requirements of article XXVI.

(5) Extraction, processing, storage, and sale of raw materials, including ore, minerals, sand, rock, stone, gravel, topsoil, fill dirt, and other materials delivered by quarry, mining, dredging, or stripping operations, subject to the requirements of article XXVI.

(6) Cultural facility.

(7) Airport, heliport and landing strip.

- (8) Recreation field, court, track, or range in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities:
 - a. Swimming.
 - b. Tennis.
 - c. Baseball and softball.
 - d. Batting cages.
 - e. Golf driving range.
 - f. Riding academy.
 - g. Survival games.
 - h. Court and field games.
 - i. Horse, dog, and vehicle racing.
 - j. Archery ranges.
 - k. Gun target and practice shooting ranges.
- (9) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.
- (10) Food service facility, in which food and beverage is offered or prepared for sale with or without charge on the premises and clearly incidental and subordinate to a principal use.
- (11) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses. Also a corporate office, or branch office together with an operation and maintenance equipment storage facility and other related equipment that is used exclusively by a private or public utility entity.
- (12) Community center.
- (13) Common open space.
- (14) Bed and breakfast home subject to the requirements of article XXVI.
- (15) Bed and breakfast inn subject to the requirements of article XXVI.

- (16) Reception, conference and assembly facility subject to the requirements of article XXVI.
 - (17) Demolition landfill subject to the requirements of article XXVI.
 - (18) Sanitary landfill; or commercial incinerator.
 - (19) Grain or agricultural storage facility (non-farm site).
 - (20) Storage and retail safes of fertilizers, chemicals, insecticides, pesticides, and similar products used for the agricultural production of crops and/or livestock.
 - (21) Game hunting and/or fishing preserve for commercial recreation purposes.
 - (22) Commercial equine riding academies; training and boarding stable facilities.
 - (23) Kennel and/or animal hospital (either large or small animal hospital as defined); provided however, that all unenclosed structures containing animals, including exercise pens and buildings which do not prevent the extension of audible noise or odor, shall not be located closer than 750 feet to the boundary of a designated dwelling district nor within 200 feet of a subject conditional use boundary line.
 - (24) Recreational vehicle short term campgrounds.
 - (25) Youth campgrounds and facilities to accommodate retreats for scouting, 4-H, and similar types of organizations.
 - (26) Oil or gas well drilling.
 - (27) Billboard and panel poster sign.
 - (28) Manufactured home with conventional siding and roofing materials.
 - (29) Group residence general, subject to article XXVI.
 - (30) Group residence limited, subject to article XXVI.
- (Ord. No. 16957, § 2, 6-4-96; Ord. No. 17410, § 2, 9-28-99; Ord. No. 17871, § 2, 8-6-02)

Sec. 48-2.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Permitted agricultural uses as defined by this chapter are exempt from the provisions of this subsection.
 - (2) Detached single-family dwelling building:

- a. Where the proposed structure is contained upon a tract or parcel of land of three acres or more with a minimum frontage dimension of 200 feet upon a public right-of-way which has been improved for public travel and furthermore, has been accepted for maintenance by the appropriate governmental jurisdictional unit; provided such tract or parcel of land is held by single ownership, the deed to said tract or parcel is duly recorded in the office of the register of deeds, Shawnee County, Kansas. There shall be a deed of record for each tract or parcel for each dwelling structure. Further, the tract or parcel shall not be reduced below the minimum acreage or frontage requirements. In the event a tract or parcel is reduced below a required minimum, the tract or parcel shall be deemed to be noncompliant with the zoning regulations. The area and dimensional requirements applicable to the said unplatted parcel are not appealable to the metro board of appeals. The minimum acreage as required may however include road easements for existing public right-of-way.
- b. Where the proposed structure is to be located upon a platted or subdivided lot of record. Provided further, that the proposed development is in accordance with any restrictions of the plat of record and that applicable improvement provisions required of the plat have been complied with.

(3) All other permitted, provisional, and conditional uses shall be located on a platted lot of record containing a minimum of three acres and in accordance with all requirements of the plat of subdivision of record and applicable improvement provisions as required by the plat.

(b) *Minimum yard requirements and maximum structure height:*

(1) Front yard: 30 feet.

(2) Side yard: seven feet.

(3) Rear yard: 30 feet.

(4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.

(5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.

(6) Height: 42 feet.

(Ord. No. 16754, § 5, 9-13-94)

Sec. 48-2.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

(a) *Accessory uses and requirements:*

- (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
- (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-2.05. Development alternatives.

- (a) The development of "RA-1" rural agriculture district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, planned unit development district.
- (b) Unless specifically exempted by this article as set forth above, development in the "RA-1" rural agriculture district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision and land regulations, and the applicable plat of subdivision stipulations.

ARTICLE III.

RR-1 RESIDENTIAL RESERVE DISTRICT

Sec. 48-3.00. Purpose; intent.

This district is established to provide for a transitional area between urbanized development with intensive activity areas, and the rural-agricultural areas; and which is expected to become urbanized in subsequent planning periods. The limitations of this district are intended to allow for the gradual development of urban uses and activities therefore providing for the coexistence with agricultural farmland activities based upon the availability and extension of municipal facilities and services. Such urban development will be permitted at appropriate intensity-density levels to assure that public improvement expenditures are appropriately planned for in advance of the conversion to urban uses.

Sec. 48-3.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "RR-1" residential reserve district.

Sec. 48-3.02. Use regulations.

- (a) *Permitted uses:*
- (1) Agricultural use of land for production, storage, processing, and associated activities for environmental and commercial purposes, all as defined by this chapter.

- (2) Nurseries, greenhouses, orchards, tree farming, sawmills, and truck farms with road stands; however, any sales of products not raised or produced on the premises shall be clearly subordinate to sales of products raised or produced thereon.
- (3) Detached single-family dwelling building, for the purpose, use and occupancy of a family as defined herein. The dimensional requirement applicable to a residential-design manufactured home may be appealable to the metro board of zoning appeals.
- (4) Group home.
- (5) Public parks, playgrounds, trails, paths, recreational areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
- (6) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to, clubhouses, shelters, pools, court games, parking and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (7) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (8) Public or private elementary and secondary school.
- (9) Residential care facility, type I.
- (10) Medical care facility, type I.
- (b) *Provisional uses:*
 - (1) Day care facility, type I subject to the requirements of article XXVI.
 - (2) Religious assembly subject to the requirements of article XXVI.
 - (3) Golf course; country club subject to the requirements of article XXVI.
- (c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:
 - (1) Cemetery subject to the requirements of article XXVI.

- (2) Public use facility.
- (3) Vehicle surface parking lot in association with a principal use.
- (4) Television, radio and microwave transmission towers; telecommunication equipment; and accessory facilities other than those provided for elsewhere in this chapter as accessory to a permitted use or exempt as set forth by definition; and subject to the requirements of article XXVI.
- (5) Extraction, processing, storage, and sale of raw materials, including ore, minerals, sand, rock, stone, gravel, topsoil, fill dirt, and other materials delivered by quarry, mining, dredging, or stripping operations, subject to the requirements of article XXVI.
- (6) Cultural facility.
- (7) Private airport, heliport, and landing strip.
- (8) Recreation field, court, tract, or range in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities:
 - a. Swimming.
 - b. Tennis.
 - c. Baseball and softball.
 - d. Batting cages.
 - e. Golf driving range.
 - f. Riding academy.
 - g. Survival games.
 - h. Court and field games.
 - i. Horse, dog, and vehicle racing.

Specifically not permitted under the provisions of this article are:

- j. Archery ranges.
- k. Gun target and practice shooting ranges.
- l. Hunting preserves.

- (9) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.
- (10) Food service facility, in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.
- (11) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses. Also a corporate office, or branch office together with an operation and maintenance equipment storage facility and other related equipment that is used exclusively by a private or public utility entity.
- (12) Community center.
- (13) Common open space.
- (14) Bed and breakfast home subject to the requirements of article XXVI.
- (15) Bed and breakfast inn subject to the requirements of article XXVI.
- (16) Reception, conference and assembly facility subject to the requirements of article XXVI.
- (17) Demolition landfill subject to the requirements of article XXVI.
- (18) Sanitary landfill; or commercial incinerator.
- (19) Grain or agricultural storage facility (non-farm site).
- (20) Storage and retail sales of fertilizers, chemicals, insecticides, pesticides, and similar products used for the agricultural production of crops and/or livestock.
- (21) Game hunting and/or fishing preserve for commercial recreation purposes.
- (22) Commercial equine riding academies; training and boarding stable facilities.
- (23) Kennel and/or animal hospital (either large or small animal hospital as defined); provided however, that all unenclosed structures containing animals, including exercise pens and buildings which do not prevent the extension of audible noise or odor, shall not be located closer than 750 feet to the boundary of a designated dwelling district nor within 200 feet of a subject conditional use boundary line.
- (24) Recreational vehicle short term campgrounds.
- (25) Youth campgrounds and facilities to accommodate retreats for scouting, 4-H, and similar types of organizations.

- (26) Oil or gas well drilling.
- (27) Billboard and panel poster sign.
- (28) Group residence general, subject to article XXVI.
- (29) Group residence limited, subject to article XXVI.
(Ord. No. 16957, § 3, 6-4-96; Ord. No. 17410, § 3, 9-28-99; Ord. No. 17871, § 3, 8-6-02)

Sec. 48-3.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Permitted agricultural uses as defined by this chapter are exempt from the provisions of this subsection.
 - (2) Detached single-family dwelling building:
 - a. Where the proposed structure is contained upon a tract or parcel of land of three acres or more with a minimum frontage dimension of 200 feet upon a public right-of-way which has been improved for public travel and furthermore, has been accepted for maintenance by the appropriate governmental jurisdictional unit; provided such tract of [or] parcel of land is held by single ownership, the deed to said tract of [or] parcel is duly recorded in the office of the register of deeds, Shawnee County, Kansas. There shall be a deed of record for each tract or parcel for each dwelling structure. Further, the tract or parcel shall not be reduced below the minimum acreage or frontage requirements. In the event a tract or parcel is reduced below a required minimum, the tract or parcel shall be deemed to be noncompliant with the zoning regulations. The area and dimensional requirements applicable to the said unplatted parcel are not appealable to the metro board of appeals. The minimum acreage as required may however include road easements for existing public right-of-way.
 - b. Where the proposed structure is to be located upon a platted or subdivided lot of record. Provided further, that the proposed development is in accordance with any restrictions of the plat of record and that applicable improvement provisions required of the plat have been complied with.
 - (3) All other permitted, provisional, and conditional uses shall be located on a platted lot of record containing a minimum of three acres and in accordance with all requirements of the plat of subdivision of record and applicable improvement provisions as required by the plat.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 30 feet.

- (2) Side yard: seven feet.
- (3) Rear yard: 30 feet.
- (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
- (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
- (6) Height: 42 feet.

(Ord. No. 16754, § 6, 9-13-94)

Sec. 48-3.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-3.05. Development alternatives.

- (a) The development of "RR-1" residential reserve district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.
- (b) Unless specifically exempted by this article as set forth above, development of "RR-1" residential reserve district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE IV.

R-1 SINGLE-FAMILY DWELLING DISTRICT

Sec. 48.4.00. Purpose; intent.

This district is established to provide for the use of detached single-family dwellings together with specified accessory uses and other uses as may be approved. It is intended that the character and use of this district be for housing and living purposes free from the encroachment of incompatible uses.

Sec. 48-4.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "R-1" single-family dwelling district.

Sec. 48-4.02. Use regulations.

- (a) *Permitted uses:*
 - (1) Detached single-family dwelling buildings, for the purpose, use and occupancy of a family as defined herein. The dimensional requirement applicable to a residential design manufactured home may be appealable to the metro board of zoning appeals.
 - (2) Group home.
 - (3) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, parking, and maintenance structures.
 - (4) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to, clubhouses, shelters, pools, court games, maintenance structures and associated parking to the above uses for members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.
 - (5) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.
 - (6) Public or private elementary and secondary school.
 - (7) Residential care facility, type I.
 - (8) Medical care facility, type I.
- (b) *Provisional uses:*
 - (1) Day care facility, type I subject to the requirements of article XXVI.
 - (2) Religious assembly subject to the requirements of article XXVI.

(3) Golf course; country club subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Cemetery subject to the requirements of article XXVI.

(2) Public use facility.

(3) Vehicle surface parking lot in association with a principal use.

(4) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(5) Extraction, processing, storage, and sale of raw materials, including ore, minerals, sand, rock, stone, gravel, topsoil, fill dirt, and other materials delivered by quarry, mining, dredging, or stripping operations, subject to the requirements of article XXVI.

(6) Cultural facility.

(7) Private airport, heliport, and landing strip.

(8) Recreation field, court, track, or range in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities:

a. Swimming.

b. Tennis.

c. Baseball and softball.

d. Batting cages.

e. Golf driving range.

f. Riding academy.

g. Survival games.

h. Court and field games.

i. Horse, dog, and vehicle racing.

Specifically not permitted under the provisions of this article are:

- j. Archery ranges.
 - k. Gun target and practice shooting ranges.
 - l. Hunting preserves.
- (9) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.
 - (10) Food service facility, in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.
 - (11) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.
 - (12) Community center.
 - (13) Common open space.
 - (14) Bed and breakfast home subject to the requirements of article XXVI.
 - (15) Bed and breakfast inn subject to the requirements of article XXVI.
 - (16) Reception, conference and assembly facility subject to requirements of article XXVI.
 - (17) Demolition landfill subject to the requirements of article XXVI.
 - (18) Group residence limited, subject to article XXVI.

(Ord. No. 17138, § 5, 7-1-97; Ord. No. 17410, § 4, 9-28-99; Ord. No. 17871, § 4, 8-6-02)

Sec. 48-4.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Single-family dwelling: 6,500 square feet.
 - (2) All other uses: 7,500 square feet.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 30 feet.
 - (2) Side yard: seven feet.

- (3) Rear yard: 30 feet.
- (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
- (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
- (6) Height: 42 feet.

Sec. 48-4.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-4.05. Development alternatives.

- (a) The development of "R-1" single-family dwelling district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.
- (b) The development of "R-1" single-family dwelling district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE V.

R-2 SINGLE-FAMILY DWELLING DISTRICT

Sec. 48-5.00. Purpose; intent.

This district is established to provide for the use of detached single-family dwellings together with specified accessory uses and other uses as may be approved. It is intended that the character and use of this

district be for housing and living purposes free from the encroachment of incompatible uses.

Sec. 48-5.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "R-2" single-family dwelling district.

Sec. 48-5.02. Use regulations.

(a) *Permitted uses:*

- (1) Detached single-family dwelling building, for the purpose, use and occupancy of a family as defined herein. The dimensional requirement applicable to a residential-design manufactured home may be appealable to the metro board of zoning appeals.
- (2) Group home.
- (3) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
- (4) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to, clubhouses, shelters, pools, court games, parking, and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (5) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (6) Public or private elementary and secondary school.
- (7) Residential care facility, type I.
- (8) Medical care facility, type I.

(b) *Provisional uses:*

- (1) Day care facility, type I, subject to the requirements of article XXVI.
- (2) Religious assembly subject to the requirements of article XXVI.
- (3) Golf course subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

- (1) Public use facility.
- (2) Vehicle surface parking lot in association with a principal use.
- (3) Cultural facility.
- (4) Community center.
- (5) Common open space.
- (6) Recreation field, court, tract, or range in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities:
 - a. Swimming.
 - b. Tennis.
- (7) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.
- (8) Food service facility in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.
- (9) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment, buildings and similar such uses.
- (10) Bed and breakfast home subject to the requirements of article XXVI.
- (11) Bed and breakfast inn subject to the requirements of article XXVI.
- (12) Reception, conference and assembly facility subject to requirements of article XXVI.
- (13) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(14) Group residence limited, subject to article XXVI.

(Ord. No. 17138, § 6, 7-1-97; Ord. No. 17410, § 5, 9-28-99; Ord. No. 17871, § 5, 8-6-02)

Sec. 48-5.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Single-family dwelling: 5,000 square feet.
 - (2) All other uses: 7,500 square feet.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 30 feet.
 - (2) Side yard: five feet.
 - (3) Rear yard: 30 feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height: 42 feet.

Sec. 48-5.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-5.05. Development alternatives.

- (a) The development of "R-2" single-family dwelling district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "R-2" single-family dwelling district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE VI.

R-3 SINGLE-FAMILY DWELLING DISTRICT

Sec. 48-6.00. Purpose; intent.

This district is established to provide for the use of detached single-family dwellings together with specified accessory uses and to provide for an increased density that will promote compact housing development at affordable levels through reduced site area requirements, lot size and optional public improvement design standards. This district shall be established in conjunction with an approved subdivision which provides for the minimum standards set forth in these regulations.

Sec. 48-6.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "R-3" single-family dwelling district.

Sec. 48-6.02. Use regulations.

- (a) *Permitted uses:*
- (1) Detached single-family dwelling building, for the purpose, use and occupancy of a family as defined herein. The dimensional requirement applicable to a residential-design manufactured home may be appealable to the metro board of zoning appeals.
 - (2) Group home.
 - (3) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
 - (4) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to clubhouses, shelters, pools, court games, parking, and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.
 - (5) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.

(6) Public or private elementary and secondary school.

(7) Residential care facility, type I.

(8) Medical care facility, type I.

(b) *Provisional uses:*

(1) Day care facility, type I subject to the requirements of article XXVI.

(2) Religious assembly subject to the requirements of article XXVI.

(3) Golf course subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Public use facility.

(2) Vehicle surface parking lot in association with a principal use.

(3) Cultural facility.

(4) Recreation facility in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities:

a. Swimming.

b. Tennis.

(5) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.

(6) Food service facility in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.

(7) Private or public utility structure facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(8) Community center.

(9) Common open space.

- (10) Bed and breakfast home subject to the requirements of article XXVI.
- (11) Bed and breakfast inn subject to the requirements of article XXVI.
- (12) Reception, conference and assembly facility subject to requirements of article XXVI.
- (13) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.
- (14) Group residence limited, subject to article XXVI.

(Ord. No. 17138, § 7, 7-1-97; Ord. No. 17410, § 6, 9-28-99; Ord. No. 17871, § 6, 8-6-02)

Sec. 48-6.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Single-family dwelling: 4,000 square feet.
 - (2) All other uses: 7,500 square feet.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard:
 - a. Four feet when an automobile garage is part of the principal building and is designed for a side entry.
 - b. Fifteen feet when an automobile garage is part of the principal building and is designed for a front entry.
 - (2) Side yard:
 - a. For zero lot line dwellings, one side at zero feet and the other side at least ten feet.
 - b. When the side yard is adjacent to another district, the side yard requirements of the adjacent district shall be required.
 - c. There shall be a minimum distance of ten feet between two principal buildings.
 - (3) Rear yard: Ten feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform

to the minimum front yard requirements of this district.

- (6) Height: 42 feet.

Sec. 48-6.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*

- (1) Permitted accessory uses and requirements. See article XXIX.
- (2) Off-street parking requirements. See article XXX.
- (3) Sign regulations. See article XXXI.

- (b) *Other provisions:*

- (1) Dimensional requirements. See article XXVII.
- (2) Nonconforming uses. See article XXVIII.

Sec. 48-6.05. Development alternatives.

- (a) The development of "R-3" single-family dwelling district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

- (b) The development of "R-3" single-family dwelling district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE VII.

R-4 SINGLE-FAMILY DWELLING DISTRICT

Sec. 48-7.00. Purpose; intent.

The primary purpose for the establishment of this district is to provide for the location and use of detached single-family dwellings and manufactured homes as defined, together with specified accessory and supportive uses; and to provide for housing development at affordable levels through minimum site area requirements, lot size and design standards. This district may be established in conjunction with an approved plat of subdivision for development in accordance with the provisions of the dimensional requirements and general lot requirements established in section 48-27.01. Further, development for the above-stated purpose may be established in conjunction with the planned unit development district and subject only to the dimensional requirements and standards set forth in said district.

Sec. 48-7.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for "R-4" single-family dwelling district.

Sec. 48-7.02. Use regulations.

(a) *Permitted uses:*

(1) Detached single-family dwelling district building, residential-design manufactured home, manufactured home, and/or ANSI certified mobile home, for the purpose, use and occupancy of a family as defined herein. The manufactured home shall meet the below-listed development requirement which may be appealable to the metro board of zoning appeals:

a. Have minimum dimensions of 14 body feet in width for the principal structure.

(2) Group home.

(3) Public parks, playgrounds, trails, paths, recreational areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.

(4) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to clubhouses, shelters, pools, court games, parking and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.

(5) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.

(6) Public or private elementary and secondary school.

(7) Residential care facility, type I.

(8) Medical care facility, type I.

(b) *Provisional uses:*

(1) Day care facility, type I subject to the requirements of article XXVI.

(2) Religious assembly subject to the requirements of article XXVI.

(3) Golf course subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Public use facility.

(2) Vehicle surface parking lot in association with a principal use.

(3) Cultural facility.

(4) Recreation field, court, track, or range in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities:

a. Swimming.

b. Tennis.

(5) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.

(6) Food service facility, in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.

(7) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(8) Community center.

(9) Common open space.

(10) Bed and breakfast home subject to the requirements of article XXVI.

(11) Bed and breakfast inn subject to the requirements of article XXVI.

(12) Reception, conference and assembly facility subject to requirements of article XXVI.

(13) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(14) Group residence limited, subject to article XXVI.

(Ord. No. 17138, § 8, 7-1-97; Ord. No. 17410, § 7, 9-28-99; Ord. No. 17871, § 7, 8-6-02)

Sec. 48-7.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Single-family dwelling: 4,000 square feet.
 - (2) All other uses: 7,500 square feet.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 25 feet.
 - (2) Side yard: five feet.
 - (3) Rear yard: 25 feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height: 42 feet.
- (c) *Minimum district size and number of dwellings:*
 - (1) The "R-4" single-family dwelling district minimum size is 8,000 square feet.

Sec. 48-7.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and restrictions. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-7.05. Development alternatives.

(a) The development of "R-4" single-family dwelling district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "R-4" single-family dwelling district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE VIII.

M-1 TWO-FAMILY DWELLING DISTRICT

Sec. 48-8.00. Purpose; intent.

This district is established to provide for the use of two-family dwellings together with specified accessory uses. The purpose of this district is intended to provide for a housing type and arrangement that is distinguished from the single-family dwellings provided for elsewhere in these regulations. The location of this district is further intended to provide a transitional use between the single-family dwelling districts and other districts which are more intensive.

Sec. 48-8.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "M-1" two-family dwelling district.

Sec. 48-8.02. Use regulations.

- (a) *Permitted uses:*
- (1) Detached single-family dwelling building, for the purpose, use and occupancy of a family as defined herein. The dimensional requirement applicable to a residential-design manufactured home may be appealable to the metro board of zoning appeals.
 - (2) Two-family dwelling building.
 - (3) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
 - (4) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to, clubhouses, shelters, pools, court games, parking, and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.

- (5) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (6) Public or private elementary and secondary schools.
- (7) Residential care facility, type I.
- (8) Medical care facility, type I.
- (9) Group home.

(b) *Provisional uses:*

- (1) Day care facility, type I, subject to the requirements of article XXVI.
- (2) Religious assembly subject to the requirements of article XXVI.
- (3) Golf course subject to the requirements of article XXVI.
- (4) Management and leasing offices and maintenance facility subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

- (1) Bed and breakfast home subject to the requirements of article XXVI.
- (2) Bed and breakfast inn subject to the requirements of article XXVI.
- (3) Common open space.
- (4) Community center.
- (5) Cultural facility.
- (6) Food service facility including vending machines, in which food and drink is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.
- (7) Vehicle surface parking lot in association with a principal use.
- (8) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers,

transmission equipment buildings and similar such uses.

- (9) Public use facility.
- (10) Reception, conference and assembly facility subject to the requirements of article XXVI.
- (11) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.
- (12) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.
- (13) Recreational field, court, track, or range in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities:
 - a. Swimming.
 - b. Tennis.

- (14) Group residence limited, subject to article XXVI.

(Ord. No. 17138, § 9, 7-1-97; Ord. No. 17410, § 8, 9-28-99; Ord. No. 17465, § 1, 2-8-00; Ord. No. 17871, § 8, 8-6-02)

Sec. 48-8.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*

- (1) Single-family dwelling: 4,000 square feet.
- (2) Two-family dwelling: 4,500 square feet.
- (3) All other uses: 7,500 square feet.

- (b) *Minimum yard requirements and maximum structure height:*

- (1) Front yard: 25 feet.
- (2) Side yard: five feet.
- (3) Rear yard: 25 feet.
- (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.

- (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
- (6) Height: 45 feet.

Sec. 48-8.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-8.05. Development alternatives.

- (a) The development of "M-1" two-family dwelling district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.
- (b) The development of "M-1" two-family dwelling district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE VIII-a.

M-1a LIMITED MULTIPLE FAMILY DWELLING DISTRICT

Sec. 48-8a.00. Purpose; intent.

This district is established to provide for the use of two-family dwellings and multiple-family dwellings, containing not more than four dwelling units, together with specified accessory uses. This district is intended to provide a transitional use buffer in locations between the single- and two-family dwelling districts and other districts which are more intensive.

(Ord. No. 16720, § 2, 6-14-94)

Sec. 48-8a.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "M-1a" limited multiple-family dwelling district.
(Ord. No. 16720, § 2, 6-14-94)

Sec. 48-8a.02. Use regulations.

(a) *Permitted uses:*

- (1) Detached single-family dwelling building, for the purpose, use and occupancy of a family as defined herein. The dimensional requirement applicable to a residential-design manufactured home may be appealable to the metro board of zoning appeals.
- (2) Two-family dwelling building.
- (3) Three-family dwelling building.
- (4) Four-family dwelling building.
- (5) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
- (6) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to, clubhouses, shelters, pools, court games, parking, and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (7) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (8) Public or private elementary and secondary schools.
- (9) Residential care facility, type I.
- (10) Medical care facility, type I.
- (11) Group home.

(b) *Provisional uses:*

- (1) Day care facility, type I, subject to the requirements of article XXVI.

(2) Religious assembly subject to the requirements of article XXVI.

(3) Golf course subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Bed and breakfast home subject to the requirements of article XXVI.

(2) Bed and breakfast inn subject to the requirements of article XXVI.

(3) Common open space.

(4) Community center.

(5) Cultural facility.

(6) Food service facility including vending machines, in which food and drink is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.

(7) Vehicle surface parking lot in association with a principal use.

(8) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(9) Public use facility.

(10) Reception, conference and assembly facility subject to the requirements of article XXVI.

(11) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.

(12) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(13) Recreational field, court, track, or range in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities:

a. Swimming.

b. Tennis.

(14) Group residence limited, subject to article XXVI.
(Ord. No. 16720, § 2, 6-14-94; Ord. No. 17138, § 10, 7-1-97; Ord. No. 17410, § 9, 9-28-99; Ord. No. 17871, § 9, 8-6-02)

Sec. 48-8a.03. Dimensional requirements.

(a) *Minimum lot area and maximum intensity of use:*

- (1) Single-family dwelling: 4,000 square feet.
- (2) Two-family dwelling: 4,500 square feet.
- (3) Three- and four-family dwellings: 4,356 square feet per dwelling unit.
- (4) All other uses: 7,500 square feet.

(b) *Minimum yard requirements and maximum structure height:*

- (1) Front yard: 25 feet.
- (2) Side yard: five feet.
- (3) Rear yard: 25 feet.
- (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
- (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.

(6) Height: 45 feet.

(Ord. No. 16720, § 2, 6-14-94)

Sec. 48-8a.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

(a) *Accessory uses and requirements:*

- (1) Permitted accessory uses and requirements. See article XXIX.
- (2) Off-street parking requirements. See article XXX.
- (3) Sign regulations. See article XXXI.

(b) *Other provisions:*

(1) Dimensional requirements. See article XXVII.

(2) Nonconforming uses. See article XXVIII.

(Ord. No. 16720, § 2, 6-14-94)

Sec. 48-8a.05. Development alternatives.

(a) The development of "M-1a" limited multiple-family dwelling district uses with multiple principal structures and/or uses may following the provisions of article XXIV, planned unit development district.

(b) The development of "M-1a" limited multiple-family dwelling district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

(Ord. No. 16720, § 2, 6-14-94)

ARTICLE IX.

M-2 MULTIPLE-FAMILY DWELLING DISTRICT

Sec. 48-9.00. Purpose; intent.

This district is established to provide for the use of attached dwelling units containing three or more dwelling units, designed and intended for individual dwellings, group or community living facilities, congregate living facilities, and including townhouse, condominium or cooperative division of ownership. The location of this district is further intended to provide a transitional use between the districts of lesser and greater intensity.

Sec. 48-9.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "M-2" multiple-family dwelling district.

Sec. 48-9.02. Use regulations.

(a) *Permitted uses:*

(1) Detached single-family dwelling building, for the purpose, use and occupancy of a family as defined herein. The dimensional requirement applicable to a residential-design manufactured home may be appealable to the metro board of zoning appeals.

(2) Two-family dwelling building.

(3) Multiple-family dwelling building.

(4) Boarding and lodging house.

- (5) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
- (6) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to, clubhouses, shelters, pools, court games, parking, and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a recreational community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (7) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (8) Public or private elementary and secondary schools.
- (9) Residential care facility, type II.
- (10) Medical care facility, type I.
- (11) Group home.
- (12) Sorority or fraternity house.
- (13) Group residence limited, subject to article XXVI.
- (b) *Provisional uses:*
 - (1) Bed and breakfast home subject to the requirements of article XXVI.
 - (2) Bed and breakfast inn subject to the requirements of article XXVI.
 - (3) Day care facility, type I subject to the requirements of article XXVI.
 - (4) Day care facility, type II subject to the requirements of article XXVI.
 - (5) Religious assembly subject to the requirements of article XXVI.
 - (6) Golf course subject to the requirements of article XXVI.
 - (7) Vehicle surface parking lot in association with a principal use subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

- (1) Community center.
- (2) Cultural facility.
- (3) Food service facility in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.
- (4) Vehicle surface parking lot in association with a principal use.
- (5) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmissions equipment buildings and similar such uses.
- (6) Public use facility.
- (7) Reception, conference and assembly facility subject to the requirements of article XXVI.
- (8) Recreation facility in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities and similar activities of like intensity:
 - a. Swimming.
 - b. Tennis.
- (9) Residential care facility, type III.
- (10) Medical care facility, type II.
- (11) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.
- (12) Bed and breakfast inn.
- (13) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.
- (14) Common open space.
- (15) Correctional placement residence or facility limited, subject to the requirements of article XXVI.
- (16) Group residence general, subject to the requirements of article XXVI.

(Ord. No. 17138, § 11, 7-1-97; Ord. No. 17410, § 11, 9-28-99; Ord. No. 17871, §§ 10, 11, 8-6-02; Ord. No. 18237, § 11, 6-15-04)

Sec. 48-9.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Single-family dwelling: 3,500 square feet.
 - (2) Two-family dwelling: 4,000 square feet.
 - (3) Multiple-family dwelling: 1,500 square feet per dwelling unit.
 - (4) Housing facility designed for congregate living or a dormitory type dwelling, the occupancy shall not exceed the following:
 - a. For the first occupant, 150 square feet of floor space and at least 100 square feet of floor space for every additional occupant thereof.
 - b. A total number of occupants equal to two times the number of habitable rooms.
 - (5) All other uses: 7,500 square feet.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 25 feet.
 - (2) Side yard: five feet.
 - (3) Rear yard: 25 feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height: 50 feet.

Sec. 48-9.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.

- (2) Off-street parking requirements. See article XXX.
- (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-9.05. Development alternatives.

(a) The development of "M-2" multiple-family dwelling district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "M-2" multiple-family dwelling district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE X.

M-3 MULTIPLE-FAMILY DWELLING DISTRICT

Sec. 48-10.00. Purpose; intent.

This district is established to provide for the use of attached dwelling units containing three or more dwelling units, designed and intended for individual dwellings, group or community living facilities, congregate living facilities, and including townhouse, condominium or cooperative division of ownership. The location of this district is further intended to provide a transitional use between the districts of lesser and greater intensity, and where there is adequate public facilities to accommodate higher intensity of use.

Sec. 48-10.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "M-3" multiple-family dwelling district.

Sec. 48-10.02. Use regulations.

- (a) *Permitted uses:*
 - (1) Detached single-family dwelling building, for the purpose, use and occupancy of a family as defined herein. The dimensional requirement applicable to a residential-design manufactured home may be appealable to the metro board of zoning appeals.
 - (2) Two-family dwelling building.

- (3) Multiple-family dwelling building.
- (4) Boarding and lodging house.
- (5) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, parking, and maintenance structures.
- (6) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to, clubhouses, shelters, pools, court games, parking, and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (7) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.
- (8) Public or private elementary and secondary schools.
- (9) Residential care facility, type III.
- (10) Medical care facility, type I.
- (11) Group home.
- (12) Sorority or fraternity house.
- (13) Group residence limited, subject to article XXVI.
- (b) *Provisional uses:*
 - (1) Bed and breakfast home subject to the requirements of article XXVI.
 - (2) Bed and breakfast inn subject to the requirements of article XXVI.
 - (3) Day care facility, type I, subject to the requirements of article XXVI.
 - (4) Day care facility, type II, subject to the requirements of article XXVI.
 - (5) Religious assembly subject to the requirements of article XXVI.
 - (6) Golf course subject to the requirements of article XXVI.

(7) Vehicle surface parking lot in association with a principal use subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Apartment hotel.

(2) Bed and breakfast inn.

(3) Community center.

(4) Cultural facility.

(5) Medical care facility, type II.

(6) Food service facility in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.

(7) Vehicle surface parking lot and/or multilevel parking structure as specified by the application in association with a principal use.

(8) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(9) Public use facility.

(10) Reception, conference and assembly facility subject to the requirements of article XXVI.

(11) Recreation facility in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities and similar activities of like intensity:

a. Swimming.

b. Tennis.

(12) Community living facility, type I.

(13) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.

(14) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the

requirements of article XXVI.

- (15) Common open space.
- (16) Correctional placement residence or facility general, subject to the requirements of article XXVI.
- (17) Correctional placement residence or facility limited, subject to the requirements of article XXVI.
- (18) Group residence general.

(Ord. No. 17138, § 12, 7-1-97; Ord. No. 17410, § 12, 9-28-99; Ord. No. 17871, §§ 12, 13, 8-6-02; Ord. No. 18237, § 12, 6-15-04)

Sec. 48-10.03. Dimensional requirements.

(a) *Minimum lot area and maximum intensity of use:*

- (1) Single-family dwelling: 3,500 square feet.
- (2) Two-family dwelling: 4,000 square feet.
- (3) Multiple-family dwelling: 600 square feet per dwelling unit.
- (4) Housing facility designed for congregate living or a dormitory type dwelling, the occupancy shall not exceed the following:
 - a. For the first occupant, 150 square feet of floor space and at least 100 square feet of floor space for every additional occupant thereof.
 - b. A total number of occupants equal to two times the number of habitable rooms.
- (5) All other uses: 7,500 square feet.

(b) *Minimum yard requirements and maximum structure height:*

- (1) Front yard: 25 feet.
- (2) Side yard: five feet.
- (3) Rear yard: 25 feet.
- (4) If the recorded plat of subdivision provides for a greater minimum yard requirements than provided by this district, the provisions of the plat shall prevail.
- (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.

- (6) Height: 100 feet.

Sec. 48-10.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

(a) *Accessory uses and requirements:*

- (1) Permitted accessory uses and requirements. See article XXIX.
- (2) Off-street parking requirements. See article XXX.
- (3) Sign regulations. See article XXXI.

(b) *Other provisions:*

- (1) Dimensional requirements. See article XXVII.
- (2) Nonconforming uses. See article XXVIII.

Sec. 48-10.05. Development alternatives.

(a) The development of "M-3" multiple-family dwelling district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "M-3" multiple-family dwelling district shall apply to the subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XI.

M-4 MULTIPLE-FAMILY DWELLING DISTRICT

Sec. 48-11.00. Purpose; intent.

It is the purpose of this district to provide for multiple-family dwelling structures which are in the moderate to high density range and at heights which allow for a high intensity of use and development. The location of this district is intended to compliment high activity centers such as the central business district, employment centers or other similar locations. Since this district will have high levels of pedestrian activity, special attention must be directed to providing a pleasant, safe and efficient pedestrian environment.

Sec. 48-11.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "M-4" multiple-family dwelling district.

Sec. 48-11.02. Use regulations.

- (a) *Permitted uses:*
 - (1) Apartment hotel.
 - (2) Multiple-family dwelling building.
 - (3) Boarding and lodging house.
 - (4) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
 - (5) Private parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, common open space, and associated recreational and leisure facilities, including but not limited to clubhouses, shelters, pools, court games, parking, and maintenance structures, for use by members and guests only, provided such facilities are developed in conjunction with, and intended to serve, a residential community and are located and designated on either the recorded plat of subdivision or on an approved planned unit development.
 - (6) Subdivision maintenance facilities and/or U.S. Postal Service receptacle pods and shelter, developed in conjunction with, and intended to serve, a residential community and which is located and designated on either the recorded plat of subdivision or on an approved planned unit development.
 - (7) Public or private elementary and secondary schools.
 - (8) Residential care facility, type III.
 - (9) Medical care facility, type I.
 - (10) Accessory uses in conjunction with a multiple-family building containing a minimum of fifty (50) dwelling units or a minimum of fifty (50) permanent residential occupants:
 - a. Barbershop.
 - b. Beauty shop.
 - c. Laundry--dry cleaning pick-up station.
 - d. Travel-tour agency.
 - e. Restaurant.
 - f. Gift shop.

g. Such accessory uses shall comply with the following:

1. Limited to the ground floor.
2. No separate outside entrances.
3. No external advertising of any type.
4. Established for the primary convenience of the occupants therein.

(11) Sorority or fraternity house.

(12) Group residence general, subject to the requirements of article XXVI.

(13) Group residence limited, subject to the requirements of article XXVI.

(b) *Provisional uses:*

(1) Bed and breakfast home subject to the requirements of article XXVI.

(2) Bed and breakfast inn subject to the requirements of article XXVI.

(3) Day care facility, type I, subject to the requirements of article XXVI.

(4) Day care facility, type II, subject to the requirements of article XXVI.

(5) Religious assembly subject to the requirements of article XXVI.

(6) Golf course subject to the requirements of article XXVI.

(7) Vehicle surface parking lot in association with a principal use subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Bed and breakfast inn.

(2) Community center.

(3) Cultural facility.

(4) Medical care facility, type II.

(5) Food service facility in which food and beverage is offered or prepared for sale or for service

with or without charge on the premises and clearly incidental and subordinate to a principal use.

- (6) Vehicle surface parking lot and/or multilevel parking structure as specified in the application in association with a principal use.
- (7) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.
- (8) Public use facility.
- (9) Reception, conference and assembly facility subject to the requirements of article XXVI.
- (10) Recreation field, court, track, or range in which the principal use is of an outdoor and unenclosed nature and which may include accessory and support facilities as an incidental and ancillary use. Permitted uses shall include the following activities and similar activities of like intensity:
 - a. Swimming.
 - b. Tennis.
- (11) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.
- (12) Community living facility, type I.
- (13) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.
- (14) Common open space.
- (15) Correctional placement residence or facility general, subject to the requirements of article XXVI.
- (16) Correctional placement residence or facility limited, subject to the requirements of article XXVI. (Ord. No. 17138, § 13, 7-1-97; Ord. No. 17410, § 13, 9-28-99; Ord. No. 17871, §§ 14, 15, 8-6-02; Ord. No. 18237, §§ 13, 14, 6-15-04)

Sec. 48-11.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Multiple-family dwelling: 400 square feet per dwelling unit.
 - (2) Housing facility designed for congregate living or a dormitory type dwelling, the occupancy shall not exceed the following:

- a. For the first occupant, 150 square feet of floor space and at least 100 square feet of floor space for every additional occupant thereof.
 - b. A total number of occupants equal to two times the number of habitable rooms.
- (3) All other uses: 7,500 square feet.
- (b) *Minimum yard requirements and maximum structure height:*
- (1) Front yard: 25 feet.
 - (2) Side yard:
 - a. Single-family dwellings: seven feet.
 - b. Multiple-family dwellings not exceeding 50 feet in height: five feet.
 - c. Any structure exceeding 50 feet in height: Ten feet.
 - (3) Rear yard: 25 feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height: 160 feet.

Sec. 48-11.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.

- (2) Nonconforming uses. See article XXVIII.

Sec. 48-11.05. Development alternatives.

(a) The development of "M-4" multiple-family dwelling district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "M-4" multiple-family dwelling district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XII.

O&I-1 OFFICE AND INSTITUTIONAL DISTRICT

Sec. 48-12.00. Purpose; intent.

This district is established to provide for a limited range of nonresidential and noncommercial uses such as general purpose office, professional, or administrative operations. The district shall not permit those uses and activities pertaining to retail product display, installation, service, repair, or maintenance unless specifically provided for within the chapter. Among others, an objective of this district is to provide for a transitional buffer between the districts of lesser and greater intensity; and to restrict the intensity of use to a low to moderate range and to encourage a compatible design with the adjacent use and development.

Sec. 48-12.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "O&I-1" office and institutional district.

Sec. 48-12.02. Use regulations.

- (a) *Permitted uses:*
- (1) Offices for conducting affairs of business, profession, service, industry or government, including financial institutions and human health care clinics which may contain a pharmacy.
 - (2) Cultural facility.
 - (3) Radio and television broadcasting studio; recording studio.
 - (4) Public or private elementary and secondary school.
 - (5) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.

(6) Funeral home or mortuary including the indoor display and sale of products associated with the ceremonies, burial or cremation of the deceased.

(b) *Provisional uses:*

(1) Religious assembly subject to the requirements of article XXVI.

(2) Dwelling units located above the ground floor.

(3) Day care facility, type II subject to the requirements of article XXVI.

(4) Vehicle surface parking lot in association with a principal use subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Bed and breakfast inn.

(2) Portrait or artist studio subject to the requirements of article XXVI.

(3) Public use facility.

(4) Small animal hospital or veterinary clinic for small domestic animals subject to the requirements of article XXVI.

(5) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.

(6) Food service facility in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.

(7) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(8) Community center.

(9) Reception, conference and assembly facility subject to requirements of article XXVI.

(10) Vehicle surface parking lot in association with a principal use.

(11) Medical care facility, type II.

(12) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the

requirements of article XXVI.

(13) Group residence limited, subject to the requirements of article XXVI.

(14) Correctional placement residence or facility limited, subject to the requirements of article XXVI. (Ord. No. 16957, § 4, 6-4-96; Ord. No. 17138, § 14, 7-1-97; Ord. No. 17871, § 16, 8-6-02; Ord. No. 18237, § 15, 6-15-04)

Sec. 48-12.03. Dimensional requirements.

(a) *Minimum lot area and maximum intensity of use:*

(1) Residential dwelling: 1,500 square feet/unit of lot area with a minimum lot area of 7,500 square feet.

(2) All other uses: 7,500 square feet minimum lot area.

(b) *Maximum gross floor area limitations:*

(1) Ground floor area: 7,500 square feet.

(2) Total building floor area: 15,000 square feet.

(c) *Minimum yard requirements and maximum structure height:*

(1) Front yard: 25 feet.

(2) Side yard: seven feet.

(3) Rear yard: 25 feet.

(4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.

(5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.

(6) Height: 42 feet.

Sec. 48-12.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

(a) *Accessory uses and requirements:*

(1) Permitted accessory uses and requirements. See article XXIX.

- (2) Off-street parking requirements. See article XXX.
- (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-12.05. Development alternatives.

(a) The development of "O&I-1" office and institutional district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "O&I-1" office and institutional district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XIII.

O&I-2 OFFICE AND INSTITUTIONAL DISTRICT

Sec. 48-13.00. Purpose; intent.

This district is established to provide for a limited range of nonresidential and noncommercial uses such as general purpose office, professional, or administrative operations. The district shall not permit those uses and activities pertaining to retail product display, installation, service, repair, or maintenance unless specifically provided for within the chapter. Among others, an objective of this district is to provide for a transitional buffer between the districts of lesser and greater intensity; and to restrict the intensity of use to a low to moderate range and to encourage a compatible design with the adjacent use and development.

Sec. 48-13.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "O&I-2" office and institutional district.

Sec. 48-13.02. Use regulations.

- (a) *Permitted uses:*
 - (1) Offices for conducting affairs of business, profession, service, industry or government, including financial institutions and human health care clinics which may contain a pharmacy.
 - (2) Cultural facility.

- (3) Funeral home or mortuary including the display and sale of products associated with the ceremonies, burial or cremation of the deceased.
- (4) Radio and television broadcasting studio; recording studio.
- (5) Public and private elementary and secondary school.
- (6) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
- (7) Community living facility, type I.
- (8) Business or vocational school; technical college; training academy; dance studio.
- (9) Private membership association, club, lodge or fraternal organization and eligible as a class B private club subject to applicable licensing requirements.
- (10) Medical care facility, type II.
- (11) Crisis center, type I.

(b) *Provisional uses:*

- (1) Religious assembly subject to the requirements of article XXVI.
- (2) Dwelling unit other than medical care and community living facilities located above the ground floor.
- (3) Portrait or artist studio subject to the requirements of article XXVI.
- (4) Small animal hospital or veterinary clinic for small domestic animals subject to the requirements of article XXVI.
- (5) Day care facility, type II subject to the requirements of article XXVI.
- (6) Vehicle surface parking lot in association with a principal use subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

- (1) Bed and breakfast inn.
- (2) Hospital.

- (3) Public use facility.
 - (4) Crematorium.
 - (5) Heliport.
 - (6) Commercial radio, television, broadcasting and/or receiving towers.
 - (7) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.
 - (8) Food service facility in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.
 - (9) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.
 - (10) Community center.
 - (11) Reception, conference and assembly facility subject to requirements of article XXVI.
 - (12) Vehicle surface parking lot and/or multilevel parking structure as specified in the application in association with a principal use.
 - (13) Community living facility, type II.
 - (14) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.
 - (15) Correctional placement residence or facility limited, subject to the requirements of article XXVI.
 - (16) Correctional placement residence or facility general.
 - (17) Group residence general, subject to the requirements of article XXVI.
 - (18) Group residence limited, subject to the requirements of article XXVI.
- (Ord. No. 16754, §§ 7, 8, 9-13-94; Ord. No. 17138, § 15, 7-1-97; Ord. No. 17871, § 17, 8-6-02; Ord. No. 18237, § 16, 6-15-04)

Sec. 48-13.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*

- (1) Residential dwelling: 600 square feet/unit of lot area with a minimum lot area of 7,500 square feet.
- (2) All other uses: 7,500 square feet minimum lot area.
- (b) *Maximum gross floor area limitations:*
 - (1) Ground floor area: 20,000 square feet.
- (c) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 25 feet.
 - (2) Side yard:
 - a. Structures not exceeding 50 feet in height: five feet.
 - b. Structures exceeding 50 feet in height: Ten feet.
 - (3) Rear yard: 25 feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height: 75 feet.

Sec. 48-13.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-13.05. Development alternatives.

(a) The development of "O&I-2" office and institutional district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "O&I-2" office and institutional district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XIV.

O&I-3 OFFICE AND INSTITUTIONAL DISTRICT

Sec. 48-14.00. Purpose; intent.

This district is established to provide for a wide range of nonresidential and noncommercial uses such as general purpose office, professional and service, or administrative operations, research, testing and development. Among others, an objective of this district is to provide for a high intensity of use of considerable magnitude and located on a sufficient land area to accommodate the factors of employment, transportation and other land use considerations. The district shall permit uses and activities pertaining to product showrooms for the display, demonstration, training, selection and sale of goods not for delivery on the premises. Product installation, service, repair and maintenance is not permitted in the district.

Sec. 48-14.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "O&I-3" office and institutional district.

Sec. 48-14.02. Use regulations.

- (a) *Permitted uses:*
- (1) Business or vocational school; technical college; training academy, dance studio.
 - (2) Community center.
 - (3) Cultural facility.
 - (4) Community living facility, type I.
 - (5) Community living facility, type II.
 - (6) Funeral home or mortuary including the display and sale of products associated with the ceremonies, burial or cremation of the deceased; and crematorium.

- (7) Hospital which may contain a food service facility in which food and beverage is offered or prepared for sale or for service with or without charge on the premises, and retail sales, all of which are clearly incidental and subordinate to and customary in connection with the principal use.
- (8) Medical care facility, type II.
- (9) Offices for conducting affairs of business, profession, service, industry or government, including financial institutions and human health care clinics which may contain a pharmacy.
- (10) Portrait or artist studio.
- (11) Printing plant.
- (12) Private membership association, club, lodge or fraternal organization and eligible as a class B private club subject to applicable licensing requirement.
- (13) Public or private elementary and secondary school.
- (14) Public parks, playgrounds, trails, paths, recreation areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
- (15) Radio and television broadcasting studio; recording studio.
- (16) Reception, conference and assembly facility.
- (17) Research laboratory.
- (18) Crisis center, type I.
- (b) *Provisional uses:*
 - (1) Day care facility, type II subject to the requirements of article XXVI.
 - (2) Small animal hospital or veterinary clinic for small domestic animals subject to requirements of article XXVI.
 - (3) Religious assembly subject to the requirements of article XXVI.
 - (4) Dwelling units other than medical care and community living facilities, located above the ground floor.
 - (5) Vehicle surface parking lot in association with a principal use subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

- (1) Bed and breakfast inn.
- (2) Commercial radio, television, broadcasting and/or receiving towers.
- (3) Food service facility in which food and beverage is offered or prepared for sale or for service with or without charge on the premises and clearly incidental and subordinate to a principal use.
- (4) Heliport.
- (5) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.
- (6) Public use facility.
- (7) Restaurant.
- (8) Retail sales of a nature clearly incidental and subordinate to and customary in connection with, a principal use.
- (9) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.
- (10) Vehicle surface parking lot and/or multilevel parking structure as specified by the application.
- (11) Correctional placement residence or facility limited, subject to the requirements of article XXVI.
- (12) Correctional placement residence or facility general, subject to the requirements of article XXVI. (Ord. No. 16754, § 9, 9-13-94; Ord. No. 16957, § 5, 6-4-96; Ord. No. 17138, § 16, 7-1-97; Ord. No. 18237, § 17, 6-15-04)

Sec. 48-14.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Residential dwelling: 400 square feet/unit of lot area with a minimum lot area of 7,500 square feet.
 - (2) All other uses: 7,500 square feet minimum lot area.
- (b) *Minimum yard requirements and maximum structure height:*

- (1) Front yard: Front and all street side yards shall be one-third of the height of the structure with a minimum yard depth of 25 feet and a maximum required depth of 75 feet.
- (2) Side yard:
 - a. Structures not exceeding 75 feet in height: Ten feet.
 - b. Structures exceeding 75 feet in height: 20 feet.
- (3) Rear yard: 25 feet.
- (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
- (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
- (6) Height: No height regulations shall apply except when in conflict with the provisions of the airport hazard ordinance.

Sec. 48-14.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-14.05. Development alternatives.

- (a) The development of "O&I-3" office and institutional district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.
- (b) The development of "O&I-3" office and institutional district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XV.

C-1 COMMERCIAL DISTRICT

Sec. 48-15.00. Purpose; intent.

This district is established to provide for limited commercial facilities which are to serve as convenient services to a residential neighborhood or limited geographic area of the community. Shops in this district should be useful to the majority of the neighborhood residents, should be economically supportable by nearby population, and should not draw community-wide patronage. The location of this district will be determined based upon the compatibility and design considerations of the limited geographic area affected.

Sec. 48-15.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "C-1" commercial district.

Sec. 48-15.02. Use regulations.

(a) *Permitted uses when conforming to the provisions of section 48-15.03 relating to limitations and conditions:*

- (1) Antique shop.
- (2) Bed and breakfast inn.
- (3) Book, magazine, tobacco, card and stationery shop.
- (4) Candy shop.
- (5) Camera and film shop; photography and artist studio; frame shop.
- (6) Delicatessen.
- (7) Floral shop.
- (8) Gift shop.
- (9) Grocery, meat, dairy product and bakery sales.
- (10) Hardware shop.
- (11) Hobby, toy and game shop.
- (12) Home decorating shop.

- (13) Liquor sales, packaged goods.
- (14) Lock and key shop.
- (15) Offices for business, professional, and government services.
- (16) Patio/garden shop.
- (17) Personal and health care services including: beauty, cosmetic and barber shops; self-service laundromats; dry cleaning and laundry receiving stations with processing done elsewhere; tailor and shoe repair shops.
- (18) Pharmacy and drugstore.
- (19) Pet grooming studios, including accessory product sales only when clearly incidental and subordinate to the care and grooming of pets and further when no more than 20 percent of the total floor area of any establishment shall be used for any product sales and no boarding or kennel facilities may be provided.
- (20) Public and private elementary and secondary school.
- (21) Religious assembly.
- (22) Restaurant with maximum seating capacity of 50 persons.
- (23) Sewing, needlework and piece good shop.
- (24) Sporting goods shop.
- (25) Travel agency.
- (26) Variety shop.
- (27) Video/audio sales and/or rental.
- (28) Wearing apparel and accessory shops, including jewelry and shoe sales.

(b) *Provisional uses:*

- (1) Dwellings units other than medical care and community living facilities, located above the ground floor.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

- (1) Automotive service station, type I, subject to the requirements of article XXVI.
- (2) Day care facility, type II subject to the requirements of article XXVI.
- (3) Vehicle surface parking lot and/or multilevel parking structure as specified by the application in association with a principal use.
- (4) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.
- (5) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(Ord. No. 17138, § 17, 7-1-97; Ord. No. 17503, § 2, 5-22-00)

Sec. 48-15.03. Use limitations and conditions of the district.

(a) *Conditions for uses permitted:* All uses permitted in the "C-1" commercial district are subject to the following conditions and limitations:

- (1) All business establishments shall be retail or service establishments dealing directly with consumers.
- (2) All business, service, storage and display of goods shall be conducted within a completely enclosed building.
- (3) Restaurants and establishments of the "drive-in" and/or "carry-out" type offering goods or services directly to customers in motor vehicles shall not be permitted.
- (4) Unless separated by a street no building or structure in the "C-1" commercial district shall be located within 100 feet of an adjacent "R" district boundary line, unless such building or structure is effectively screened from such "R" district property by a wall, fence, or densely planted compact hedge, not less than five feet nor more than eight feet in height; in the event of such screening, the transitional yard requirements shall be equal in dimension to the minimum yard which would be required by this ordinance for residential use on the adjacent "R" lot.
- (5) Individual self-contained business establishments within a multitenant structure are restricted to a maximum gross floor area of 2,000 square feet each, exclusive of any floor area devoted to off-street parking or loading facilities. Single-tenant business establishments are restricted to a maximum gross floor area of 4,000 square feet each, exclusive of any floor area devoted to off-street parking or loading facilities.

Sec. 48-15.04. Dimensional requirements.

(a) *Minimum lot area and maximum intensity of use:*

- (1) Minimum lot area: 7,500 square feet.
- (2) Maximum total gross ground floor area per multitenant structure: 15,000 square feet.
- (3) Residential dwellings shall not exceed a density of one dwelling unit per 1,500 square feet of lot area.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 25 feet.
 - (2) Side yard: Ten feet.
 - (3) Rear yard: 25 feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height: 35 feet.

Sec. 48-15.05. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-15.06. Development alternatives.

(a) The development of "C-1" commercial district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "C-1" commercial district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XVI.

C-2 COMMERCIAL DISTRICT

Sec. 48-16.00. Purpose; intent.

This district is established to provide for those commercial activities which serve a major segment of the total community population. In addition to a variety of retail goods and services, these centers may typically feature a number of large traffic generators that require access from major thoroughfares. The extent and range of activities permitted are in the moderate to medium intensity range with a ground floor area limitation.

Sec. 48-16.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "C-2" commercial district.

Sec. 48-16.02. Use regulations.

- (a) *Permitted uses:*
- (1) Permitted uses in the "O&I-3" and "C-1" districts; and store, shop, or facility for the conduct of a retail business or service similar in use and nature to the types of activities provided for in less restricted districts.
 - (2) Art and school supply stores.
 - (3) Automobile accessory stores.
 - (4) Bicycle sales and service.
 - (5) Blueprinting and photocopying services.
 - (6) Business machine sales and service.
 - (7) Catering establishments.
 - (8) China, ceramic, and glassware stores.
 - (9) Commercial, indoor recreational facilities which are used primarily for physical exercise, recreation and/or health maintenance including fitness centers, spas, suntanning salons, swimming pools, gymnasiums, game courts, locker and training rooms.

- (10) Community centers.
- (11) Crisis center.
- (12) Department stores.
- (13) Electronic and telecommunications equipment, sales and service.
- (14) Furniture, household appliance, and home entertainment stores.
- (15) Furrier shops, including the incidental storage and conditioning of finished furs.
- (16) Hobby and craft shops.
- (17) Hotel, motel and apartment hotel.
- (18) Home decorating and interior improvement stores, including paint, wallpaper, carpet, window dressing, fabrics and glass, sales; and further, including upholstering and making of draperies, slipcovers, and other similar articles, when conducted as part of the retail operations and secondary to the principal use.
- (19) Leather goods and luggage stores.
- (20) Mail order, catalog facility.
- (21) Motor bicycle or motor scooter sales and service.
- (22) Musical instruments, supplies and equipment store.
- (23) Office supply and equipment store.
- (24) Orthopedic, medical appliance, and prosthesis stores, optician and the sale of eyeglasses; hearing aid evaluations, fitting and sales.
- (25) Pet grooming studios.
- (26) Pet shops.
- (27) Photo finishing lab.
- (28) Post office and postal substations.
- (29) Private class "A" and "B" clubs as licensed by the state alcohol beverage control board.
- (30) Repair and servicing of any article the sale of which is a permitted use in the district.

- (31) Restaurants.
 - (32) Theater; nonadult.
 - (33) Grave monument and marker sales/display; provided that there is no engraving, stone cutting, or assembly in conjunction therewith.
- (b) *Provisional uses:*
- (1) Automobile rental establishments subject to the requirements of article XXVI.
 - (2) Automobile service stations, type[s] I and II subject to the requirements of article XXVI.
 - (3) Automotive or vehicle carwash facility subject to the requirements of article XXVI.
 - (4) Day care facility, type II.
 - (5) Small animal hospital or veterinary clinic for small domestic animals subject to the requirements of article XXVI.
 - (6) Dwelling units other than medical care and community living facilities located above the ground floor.
 - (7) Vehicle surface parking lot in association with a principal use subject to the requirements of article XXVI.
- (c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:
- (1) Amusement indoor establishments, including dance, pool, and billiard halls; archery ranges, shooting galleries, pinball, electronic and video games arcade; taverns and similar establishments licensed by the city to sell and dispense cereal malt beverages for drink on premises.
 - (2) Automotive service station, type III, subject to the requirements of article XXVI.
 - (3) Commercial recreational facilities which are used primarily for physical exercise, recreation, and/or health maintenance including fitness centers, spas, suntanning salons, skating rinks, swimming pools, gymnasiums, game courts, golf courses, golf driving ranges, pitch and putt, miniature golf courses and similar activities, including locker and training areas.
 - (4) Public use facility.
 - (5) Private or public utility structures facilitating the transmission, distribution and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(6) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(7) Vehicle surface parking lot and/or multilevel parking structure as specified by the application, in association with a principal use.

(Ord. No. 16754, § 31, 9-13-94; Ord. No. 17138, § 18, 7-1-97; Ord. No. 17652, § 1, 10-26-00; Ord. No. 18666, § 2, 6-20-06)

Sec. 48-16.03. Dimensional requirements.

(a) *Minimum lot area and maximum intensity of use:*

(1) Minimum lot area: 10,000 square feet.

(2) Maximum ground floor area: 50,000 square feet.

(3) Residential dwellings shall not exceed a density of one dwelling unit per 400 square feet of lot area.

(b) *Minimum yard requirements and maximum structure height:*

(1) Front yard: 25 feet.

(2) Side yard: Ten feet.

(3) Rear yard: 25 feet.

(4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.

(5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.

(6) Height: 60 feet.

Sec. 48-16.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

(a) *Accessory uses and requirements:*

(1) Permitted accessory uses and requirements. See article XXIX.

(2) Off-street parking requirements. See article XXX.

- (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-16.05. Special provisions.

Outside sales and storage of supplies, materials, products and equipment is prohibited.

Sec. 48-16.06. Development alternatives.

- (a) The development of "C-2" commercial district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.
- (b) The development of "C-2" commercial district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XVII.

C-3 COMMERCIAL DISTRICT

Sec. 48-17.00. Purpose; intent.

This district is established to provide for those commercial activities which serve a major segment of the total community population. In addition to a variety of retail goods and services, these centers may typically feature a number of large traffic generators that require access from major thoroughfares. The extent and range of activities permitted are in the moderate to medium intensity range.

Sec. 48-17.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "C-3" commercial district.

Sec. 48-17.02. Use regulations.

- (a) *Permitted uses:*
 - (1) Permitted uses in the "C-2" commercial district; and store, shop, or facility for the conduct of a retail business or service similar in use and nature to the types of uses listed herein and specifically excepting those types of activities provided for in less restricted districts.

- (2) Commercial recreational facilities which are used primarily for physical exercise, recreation, and/or health maintenance including fitness centers, spas, suntanning salons, skating rinks, swimming pools, gymnasiums, game courts, golf courses, golf driving ranges, pitch and putt, miniature golf courses and similar activities, including locker and training areas.
- (3) Home improvement and building supply centers except as provided elsewhere within this district, all product display, inventory, processing, and servicing shall be within completely enclosed buildings.
- (4) Motor vehicle sales area and service facility in conjunction thereto, including the sale or lease of new or used automobiles and light trucks with a gross vehicle weight of twelve thousand (12,000) pounds or less. Not permitted within this district are sale areas and service facilities relating to recreational vehicles, trucks with a gross vehicle weight greater than twelve thousand (12,000) pounds, agricultural and heavy equipment vehicles, and watercraft.
- (5) Billboards and panel posters not exceeding three hundred (300) square feet per single face area and which do not exceed a height of fifty-five (55) feet above grade.
- (6) Recreational vehicle short-term campgrounds.
- (7) Vehicle surface parking lot and/or multilevel parking structure.

(b) *Provisional uses:*

- (1) Automotive service stations, type[s] I and II subject to the requirements of article XXVI.
- (2) Automotive or vehicle carwash facility subject to the requirements of article XXVI.
- (3) Small animal hospital or veterinary clinic for small domestic animals subject to the requirements of article XXVI.
- (4) Dwelling unit other than medical care and community living facilities, located above the ground floor.
- (5) Day care facility, type II, subject to the provisions of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

- (1) Amusement indoor establishments, including dance, pool, and billiard halls; archery ranges, shooting galleries, pinball, electronic and video games arcade; taverns and similar establishments licensed by the city to sell and dispense cereal malt beverages for drink on premises.
- (2) Automotive service station, type III, subject to the requirements of article XXVI.
- (3) Public use facility.

- (4) Private or public utility structures facilitating the transmission, distribution and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.
- (5) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(6) Correctional placement residence or facility general, subject to the requirements of article XXVI. (Ord. No. 16754, § 31, 9-13-94; Ord. No. 17138, § 19, 7-1-97; Ord. No. 7503, § 3, 5-22-00; Ord. No. 17871, §§ 18, 19, 8-6-02; Ord. No. 18237, §§ 18, 19, 6-15-04)

Sec. 48-17.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Minimum lot area: 10,000 square feet.
 - (2) Maximum ground floor area: No limitation.
 - (3) Residential dwellings shall not exceed a density of one dwelling unit per 400 square feet of lot area.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 25 feet.
 - (2) Side yard: Ten feet.
 - (3) Rear yard: 25 feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height: 70 feet.

Sec. 48-17.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*

- (1) Permitted accessory uses and requirements. See article XXIX.
- (2) Off-street parking requirements. See article XXX.
- (3) Sign regulations. See article XXXI.

(b) *Other provisions:*

- (1) Dimensional requirements. See article XXVII.
- (2) Nonconforming uses: See article XXVIII.

Sec. 48-17.05. Special provisions.

Outside display and storage of supplies, materials, products and equipment is prohibited except for display of gardening and yard supplies; permitted vehicle sales and display; or as specifically provided for or complied by the nature of the listed use.

Sec. 48-17.06. Development alternatives.

(a) The development of "C-3" commercial district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of a "C-3" commercial district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XVIII.

C-4 COMMERCIAL DISTRICT

Sec. 48-18.00. Purpose; intent.

This district is established to provide for commercial uses and activities which are intended to serve as community or regional service areas. Uses and activities permitted are typically characterized by outdoor display, storage and/or sale of merchandise, by repair of motor vehicles, by outdoor commercial amusement and recreational activities, or by activities or operations conducted in buildings and structures not completely enclosed. The extent and range of activities permitted are highly intensive and therefore special attention must be directed toward buffering the negative aspects of these uses upon any residential use.

Sec. 48-18.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "C-4" commercial district.

Sec. 48-18.02. Use regulations.

- (a) *Permitted uses:*
- (1) Permitted uses in the "C-3" commercial district; and store, shop or facility for the conduct of a retail business or service similar in use and nature to the types of uses listed herein and specifically excepting those types of activities provided for in less restricted districts.
 - (2) Agricultural machinery and equipment sales area and service facility.
 - (3) Amusement indoor establishments, including dance, pool, and billiard halls; archery ranges, shooting galleries, pinball, electronic and video games arcade; taverns and similar establishments licensed by the city to sell and dispense cereal malt beverages for drink on premises.
 - (4) Animal hospitals, either large or small, veterinary clinics and enclosed kennels.
 - (5) Auction house.
 - (6) Automotive service station type[s] I, II and III.
 - (7) Bakery, commercial which may include wholesale distribution facilities.
 - (8) Boat and boating equipment sales area and service; bait shop.
 - (9) Building, construction, and mechanical contractor office, showroom, shop and sales area, including plumbing, heating and air conditioning, electrical, mechanical and sheet metal work, provided that on the premises there is no unenclosed storage of material, machinery, vehicles, or equipment; and no storage of any vehicle, machinery, or equipment with a net weight exceeding three (3) tons.
 - (10) Commercial and industrial products, photography studios, portrait photographing being clearly accessory to the photographing of products.
 - (11) Commercial laundry, dry cleaning and dyeing facility.
 - (12) Flea market and swap meet.
 - (13) Grave monuments and marker sales area, display and engraving.
 - (14) Home improvement and building supply/material establishments, including sales and display areas, storage and yards. Outdoor display and storage yards shall be paved, hard surface and dust-free.
 - (15) Lawn/garden centers including the display and sales of landscape materials, lawn and garden equipment, and supplies; and holiday/seasonal ornamentations and decorating sales and service. Outdoor storage and supply yards shall be paved, hard surface and dust-free.

- (16) Manufactured housing and accessory structure sales and display area.
- (17) Motor vehicle sales area and service facility, including the sale or lease of new or used automobiles, trucks, recreational vehicles, agricultural and heavy equipment.
- (18) Newspaper and magazine distribution agencies.
- (19) Publishing establishments.
- (20) Rental establishments for domestic and general equipment, lease area and display. Outdoor display, storage, loading and parking areas shall be paved; hard surface, and dust free.
- (21) Repair, restoration of vehicles, machinery and equipment.
- (22) Taxidermists.
- (23) Theater; non-adult drive-in.
- (24) Vehicle repair, restoration and towing service, not including automotive wrecking or long-term disabled vehicle outdoor storage.

(b) *Provisional uses:*

- (1) Dwelling unit other than medical care and community living facilities located above the ground floor.
- (2) Theater; adult motion picture, subject to the requirements of article XXVI.
- (3) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.
- (4) Automotive or vehicle car wash facility subject to the requirements of article XXVI.
- (5) Day care facility, type II, subject to the provisions of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit provided by article XXV:

- (1) Amusement parks, including: permanent carnival, kiddie parks and similar outdoor amusement facilities.
- (2) Commercial radio, TV, broadcasting or receiving towers.
- (3) Fairgrounds.

- (4) Public use facility.
- (5) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.
- (6) Race track.
- (7) Sports stadiums and arenas.
- (8) Relocation, remodeling or rebuilding of legal non-conforming billboards presently located within the "C-4" Commercial District subject to the requirements of article XXVI.
- (9) Correctional placement residence or facility general, subject to the requirements of article XXVI. (Ord. No. 16754, § 10, 9-13-94; Ord. No. 16957, § 6, 6-4-96; Ord. No. 17138, § 20, 7-1-97; Ord. No. 17412, § 1, 9-28-99; Ord. No. 17503, § 4, 5-22-00; Ord. No. 17871, §§ 20, 21, 8-6-02; Ord. No. 18237, §§ 20, 21, 6-15-04)

Sec. 48-18.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Minimum lot area: 10,000 square feet.
 - (2) Residential dwellings shall not exceed a density of one dwelling unit per 400 square feet of lot area.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 25 feet.
 - (2) Side yard: Ten feet.
 - (3) Rear yard: 25 feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height: 70 feet.

Sec. 48-18.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-18.05. Development alternatives.

(a) The development of "C-4" commercial district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "C-4" commercial district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XIX.

C-5 COMMERCIAL DISTRICT

Sec. 48-19.00. Purpose; intent.

This district is established to provide for a wide range of commercial activities which are contained in the central business or core area of the community. The extent and range of uses permitted are to provide for high efficiency of land use and to encourage a broad mix of commercial, office and residential uses.

Sec. 48-19.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "C-5" commercial district.

Sec. 48-19.02. Use regulations.

- (a) *Permitted uses:*
 - (1) Permitted uses in the "C-3" commercial district.
 - (2) Parking lot and/or multistory garage.

- (3) Television, radio and microwave transmission towers; telecommunication equipment; and accessory facilities other than those provided for elsewhere in this chapter as accessory to a permitted use or exempt as set forth by definition.
 - (4) Auction house.
 - (5) Commercial and industrial products, photography studios, portrait photography being clearly accessory to the photography of products.
 - (6) Newspaper and magazine distribution agencies.
 - (7) Publishing establishments.
 - (8) Billboards and panel posters not exceeding 300 square feet per single face area and which do not exceed a height of 55 feet above grade.
 - (9) Commercial laundry, dry cleaning and dyeing facility.
 - (10) Building, construction, and mechanical contractor office, showroom, shop and sales area, including plumbing, heating and air conditioning, electrical, mechanical and sheet metal work, provided that on the premises there is no unenclosed storage of material, machinery, vehicles, or equipment; and no storage of any vehicle, machinery, or equipment with a net weight exceeding three tons.
 - (11) Bus terminal or station.
- (b) *Provisional uses:*
- (1) Automotive service stations, type[s] I and II subject to the requirements of article XXVI.
 - (2) Automotive or vehicle carwash facility subject to the requirements of article XXVI.
 - (3) Small animal hospital and veterinary clinic for small domestic animals subject to the requirements of article XXVI.
 - (4) Dwelling unit other than medical care and community living facilities, located above or below the ground floor.
 - (5) Restaurants and establishments of the "drive-in" and/or "carry-out" type, except theaters, offering goods or services directly to customers in motor vehicles shall be permitted subject to the requirements of article XXVI.
 - (6) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

- (7) Day care facility, type II, subject to the provisions of article XXVI.
- (8) Dwelling units on any floor where the structure was originally built for use as dwelling units and dwelling units in hospitals and hotels converted for residential occupancy.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

- (1) Amusement indoor establishments, including dance, pool, and billiard halls; archery ranges, shooting galleries, pinball, electronic and video games arcade; taverns and similar establishments licensed by the city to sell and dispense cereal malt beverages for drink on premises.
- (2) Automotive service station, type III, subject to the requirements of article XXVI.
- (3) Public use facility.
- (4) Private or public utility structures facilitating the transmission, distribution and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(Ord. No. 16754, § 11, 9-13-94; Ord. No. 17138, § 21, 7-1-97; Ord. No. 17503, § 5, 5-22-00; Ord. No. 17838, § 1, 5-21-02)

Sec. 48-19.03. Dimensional requirements.

(a) *Minimum lot area and maximum intensity of use:*

- (1) Minimum lot area: none required.
- (2) Maximum ground floor area: no limitation.

(b) *Minimum yard requirements and maximum structure height:*

- (1) Front yard: none required.
- (2) Side yard: none required.
- (3) Rear yard: none required.
- (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
- (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
- (6) Height:

- a. No building hereafter erected or structurally altered shall exceed a height at the street line which is greater than the width of the street times a factor of three. An additional height of six feet may be added for each one foot the building or structure is set back from the front property line or street line. The street line shall mean the right-of-way line or property line at the front of the lot, lots or building site. On corner lots, and where the width of the two intersecting streets are varied, the street width of the larger shall be used to determine the height of any building or structure.
- b. Exception: Within the state zoning area, as defined by K.S.A. 75-3630, the height of structures and buildings shall be regulated in accordance with the following provisions: No building shall exceed a height at the street line of six stories or 75 feet, but above the height permitted at the street line three feet may be added to the height of the building for each one foot that the building or portion thereof is set back from all sides of the lot, except that the cubical contents of such building shall not exceed the cubical contents of a prism having a base equal to the area of the lot and a height equal to two times the width of the street; provided, however, that a tower with a base not to exceed 20 percent of lot area not to have any side greater than 60 feet nor to have any wall closer than 20 feet to any lot line, may be constructed without reference to the above limitations. Any applicable provisions of article XXVI of this chapter shall apply to buildings erected in this district.

Sec. 48-19.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-19.05. Development alternatives.

(a) The development of "C-5" commercial district uses with multiple subdivided structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "C-5" commercial district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

(c) The City of Topeka Code Enforcement Director and Shawnee County Zoning Administrator, with the concurrence of the respective city and county engineer and planning director, is authorized to waive the strict application and conformity of structures or buildings to be located upon existing platted or subdivided lots after a determination that all other building, housing or safety codes have been observed.

ARTICLE XX.

I-1 LIGHT INDUSTRIAL DISTRICT

Sec. 48-20.00. Purpose; intent.

This district is established to provide for a wide range of uses except specified uses which are obnoxious or offensive by reason of odor, dust, smoke, gas or noise. The extent and range of uses are highly intensive. Residential dwellings are not permitted in this district except for onsite caretakers or watchmen or correctional placement residence or facility limited or general.
(Ord. No. 18237, § 22, 6-15-04)

Sec. 48-20.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "I-1" light industrial district.

Sec. 48-20.02. Use regulations.

- (a) *Permitted uses:*
- (1) Permitted uses in the "C-4" commercial district, except residential dwellings. The only residential dwellings permitted in this district are for onsite caretakers or watchmen or correctional placement residence or facility limited or general only shall be permitted.
 - (2) Bottling works.
 - (3) Building materials sales and storage.
 - (4) Construction equipment storage.
 - (5) Dairy products processing.
 - (6) Demolition landfill.
 - (7) Express and shipment facilities.

- (8) Laboratories--research and testing.
- (9) Manufacturers' supply and wholesale trade establishments.
- (10) Manufacture, processing storage and/or warehousing of any product, equipment, or material; except any activities involving the following:
 - a. Acetylene, gas manufacture or storage.
 - b. Acid; alcohol; ammonia, bleaching powder, chlorine, cement, lime, gypsum, plaster of Paris, disinfectant, dyestuff, glue, fertilizer, size, gelatin, oilcloth, linoleum, oiled rubber goods, paint, oil, shellac, turpentine, varnish, paper, pulp, shoe polish, soap (other than liquid), tallow grease, lard, refining of animal fat, tar distillation, tar roofing, waterproofing products, vinegar and yeast manufacture.
 - c. Arsenal; high explosives (other than armory).
 - d. Asphalt; cement or other paving materials manufacture or central mixing plant.
 - e. Vehicular wrecking or dismantling for salvage purposes.
 - f. Blast furnace, coke oven, boiler works, forge plant, ore reduction, smelting of tin, copper, zinc or iron ores, iron, steel, brass or copper foundry or fabrication plant.
 - g. Brick, tile, pottery or terracotta manufacture (other than the manufacture of handcraft products only).
 - h. Creosote manufacture or treatment.
 - i. Distillation of bones, coal or wood.
 - j. Explosives or fireworks manufacture or storage.
 - k. Fat rendering.
 - l. Garbage, offal or dead animals reduction or disposal.
 - m. Junk, iron or rags or paper storage or bailing except as provided elsewhere in these regulations.
 - n. Petroleum or its products, refining or wholesale storage.
 - o. Planing mills; rock crusher; rolling mill.
 - p. Rubber or gutta-percha manufacture or treatment.

- q. Stockyard or slaughter of animals or fowls.
- r. Stone mill.
- s. Tanning, curing or storage of raw hides or skins.
- t. Wool pulling or scouring.
- u. And in general, those uses which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas or noise.

(11) Railroad facilities.

(12) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(13) Warehousing, storage, and distribution facilities, including wholesaling.

(14) Welding, tinsmithing and machine shop.

(15) Television, radio, and microwave transmission towers; telecommunication equipment; and accessory facilities other than those provided for elsewhere in this chapter as accessory to a permitted use or exempt as set forth by definition.

(16) Billboards and panel posters not exceeding six hundred seventy-two (672) square feet per single face area. Billboards and panel posters which exceed three hundred (300) square feet shall not exceed a height of thirty-five (35) feet above grade.

(b) *Provisional uses:*

(1) Theater; adult motion picture subject to the requirements of article XXVI.

(2) Recycling depot subject to the requirements of article XXVI.

(3) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body as provided by article XXV:

(1) Airport and landing field.

(2) Amusement parks, including: permanent carnivals, kiddie parks and similar outdoor amusement facilities.

- (3) Commercial radio, TV, broadcasting or receiving towers.
- (4) Fairgrounds.
- (5) Public use facility.
- (6) Racetrack.
- (7) Sports stadiums and arenas.
- (8) Day care facility, type II, subject to the provisions of article XXVI.
- (9) Correctional placement residence or facility general, subject to the requirements of article XXVI. (Ord. No. 16754, § 12, 9-13-94; Ord. No. 17138, § 22, 7-1-97; Ord. No. 17503, § 6, 5-22-00; Ord. No. 18237, §§ 23--25, 6-15-04)

Sec. 48-20.03. Dimensional requirements.

- (a) *Minimum lot area and maximum intensity of use:*
 - (1) Minimum lot area: 10,000 square feet.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: Where all the frontage on one side of the street between two intersecting streets is located in the "I-1" light industrial district, commercial districts or office and institutional districts, no front yard shall be required. Where the frontage on one side of the street between two intersecting streets is located in the "I-1" light industrial district and a dwelling district, the front yard requirements of the dwelling district shall apply to the "I-1" light industrial district. Provided, that where a front yard or building setback line has been established on any plat or subdivision such setback line shall be observed.
 - (2) Side yard: A side yard is not required except where this district abuts a dwelling district, in which case there shall be a side yard of not less than five feet.
 - (3) Rear yard: A rear yard is not required except where this district abuts a dwelling district, in which case there shall be a rear yard of not less than ten feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height: No limitation except when subject to the airport hazard zoning regulations.

(Ord. No. 16754, § 13, 9-13-94)

Sec. 48-20.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

(a) *Accessory uses and requirements:*

- (1) Permitted accessory uses and requirements. See article XXIX.
- (2) Off-street parking requirements. See article XXX.
- (3) Sign regulations. See article XXXI.

(b) *Other provisions:*

- (1) Dimensional requirements. See article XXVII.
- (2) Nonconforming uses. See article XXVIII.

Sec. 48-20.05. Development alternatives.

(a) The development of "I-1" light industrial district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of "I-1" light industrial district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

(c) The City of Topeka Code Enforcement Director and Shawnee County Zoning Administrator, with the concurrence of the respective city or county engineer and planning director, are authorized to waive the strict application and conformity of structures or buildings to be located upon existing platted or subdivided lots after a determination that all other building, housing or safety codes have been observed.

ARTICLE XXI.

I-2 HEAVY INDUSTRIAL DISTRICT

Sec. 48-21.00. Purpose; intent.

This district is established to provide for the use and location of all other uses excluded in other districts except for residential dwellings. The intensity and use of land as permitted by this district is intended to facilitate the total range of industrial uses.

Sec. 48-21.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article are the district regulations for the "I-2" heavy industrial district.

Sec. 48-21.02. Use regulations.

(a) *Permitted uses:*

- (1) Permitted uses in the "I-1" light industrial district and any other lawful use not in conflict with any other applicable resolution or ordinance, except those provisional or conditional uses set forth by this article. Residential dwellings are not permitted in this district except for onsite caretakers or watchman or correctional placement residence or facility limited or general.

(b) *Provisional uses:*

- (1) Theater; adult motion picture subject to the requirements of article XXVI.
- (2) The following uses are subject to the approval by the governing body with respect to the location and applicable safety provisions and compatibility with adjacent properties, following a report by the applicable fire department and health agency. The governing body may establish reasonable restrictions or conditions upon such use or facility as may be deemed appropriate:
 - a. Acid manufacture.
 - b. Cement, lime, gypsum or plaster of Paris manufacture.
 - c. Distillation of bones.
 - d. Explosives manufacture or storage.
 - e. Fat rendering.
 - f. Fertilizer manufacture.
 - g. Gas manufacture.
 - h. Petroleum or its products, refining of.
 - i. Smelting of tin, copper, zinc or iron ores.
 - j. Stockyards or slaughter of animals.
 - k. Wholesale storage of gasoline.
 - l. Ammonia, bleaching powder or chlorine manufacture.
 - m. Arsenal; storage of explosives.

- n. Central mixing plant for asphalt, cement, mortar, plaster or paving material.
- o. Pyroxylin manufacture, use or storage.
- p. Pickling works.
- q. Dehydrating plants.
- r. Soybean processing plants.
- s. Junk, iron or rags or paper storage or bailing and including the wrecking or dismantling of vehicles.

(3) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

- (1) Extraction, processing, storage, and sale of raw materials, including sand, rock, stone, gravel and other materials derived by quarry operations.
- (2) Sanitary landfill and/or refuse processing and disposal.

(3) Correctional placement residence or facility general, subject to the requirements of article XXVI. (Ord. No. 17138, § 23, 7-1-97; Ord. No. 18237, §§ 26, 27, 6-15-04)

Sec. 48-21.03. Dimensional requirements.

(a) *Minimum lot area and maximum intensity of use:*

- (1) Minimum lot area: 10,000 square feet.

(b) *Minimum yard requirements and maximum structure height:*

- (1) Front yard: Where all the frontage on one side of the street between two intersecting streets is located in the "I-2" heavy industrial district, no front yard shall be required. Where the frontage on one side of the street between two intersecting streets is located in the "I-2" heavy industrial district and a dwelling district, the front yard requirements of the dwelling district shall apply to the "I-2" heavy industrial district. Provided, that where a front yard or building setback line has been established on any plat or subdivision such setback line shall be observed.
- (2) Side yard: A side yard is not required except where this district abuts a dwelling district, in which case there shall be a side yard of not less than five feet.

- (3) Rear yard: A rear yard is not required except where this district abuts a dwelling district, in which case there shall be a rear yard of not less than ten feet.
- (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
- (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
- (6) Height: No limitation except when subject to the airport hazard zoning regulations.

Sec. 48-21.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*
 - (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-21.05. Development alternatives.

- (a) The development of "I-2" heavy industrial district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.
- (b) The development of "I-2" heavy industrial district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.
- (c) The City of Topeka Code Enforcement Director and Shawnee County Zoning Administrator, with the concurrence of the respective city or county engineer and planning director, are authorized to waive the strict application and conformity of structures or buildings to be located upon existing platted or subdivided lots after a determination that all other building, housing or safety codes have been observed.

ARTICLE XXII.

U-1 UNIVERSITY DISTRICT

Sec. 48-22.00. Purpose; intent.

This district is established to provide for the use of a college or university as a special zoning district. All development, redevelopment or enlargements shall be in accordance with an approved master development plan.

(Ord. No. 16754, § 14, 9-13-94)

Sec. 48-22.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article, are the district regulations in the "U-1" university district. Development or redevelopment of a building or premises for any permitted use set forth in this district, shall conform to a master development plan as approved by the planning commission and governing body.

(Ord. No. 16754, § 15, 9-13-94)

Sec. 48-22.02. Use regulations.

(a) *Permitted uses:* A building or premises shall be used only for the purposes of a college or university, offering higher education to the public, including the following uses:

- (1) Alumni center.
- (2) Buildings or land used for athletic or recreational purposes and concessions connected therewith.
- (3) Buildings used for educational and administrative purposes.
- (4) Buildings used for student or faculty housing.
- (5) Religious assembly.
- (6) Data processing center.
- (7) Day care facility, type II.
- (8) Hospital or medical center.
- (9) Monument or memorial.
- (10) Parking lot and/or parking garage in conjunction with a principal use within the confines of the immediate "U-1" university district boundary.
- (11) Physical plant.
- (12) Public transportation facility.

- (13) Sorority and fraternity housing.
- (14) Student union.
- (15) U.S. post office facility.
- (16) Any other use consistent with the uses specifically set forth in this section, reasonable and desirable to the usual operation of such educational institutions.

(b) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit provided by article XXV:

- (1) Television, radio and microwave transmission towers; telecommunication equipment; and accessory facilities other than those provided for elsewhere in this chapter as accessory to a permitted use or exempt as set forth by definition; and subject to the requirements of article XXVI.

Sec. 48-22.03. Dimensional requirements.

(a) *Minimum lot area and maximum intensity of use:*

- (1) Minimum lot area: none required.

(b) *Minimum yard requirements and maximum structure height:*

- (1) Area: None required; provided, however, the construction or enlargement of any new building or facility must be in accordance with a master development plan to insure the provision of light, air and open space as well as regulating the setback from the public streets and right-of-way. Such master development plan may be amended or revised pursuant to the procedures set forth in the planned unit development district.
- (2) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
- (3) Height: No limitation except as provided by article XXIV, Planned Unit Development District; and the airport hazard zoning regulations.

Sec. 48-22.04. General provisions.

All principal and accessory uses permitted within this district are subject to the following requirements:

(a) *Accessory uses and requirements:*

- (1) Permitted accessory uses and requirements. See article XXIX.

- (2) Off-street parking requirements. See article XXX.
- (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
 - (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-22.05. Development alternatives.

(a) The development of "U-1" university district shall conform to a master development plan as approved by the planning commission and governing body. Any amendments, revisions or modifications of said plan shall follow the provisions of article XXIV.

(b) The development of "U-1" university district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.
(Ord. No. 16754, § 16, 9-13-94)

ARTICLE XXIII.

MS-1 MEDICAL SERVICE DISTRICT*

* **Editors Note:** Ord. No. 17410, § 10, adopted Sept. 28, 1999, amended the title of art. XXIII to read as herein set out.

Sec. 48-23.00. Purpose; intent.

This district is established to provide for the location and use of a regional medical center together with related medical facilities and supporting ancillary-service uses, including residential dwellings. It is not the purpose nor the intention of this zoning district to preclude the similar use of land or buildings as provided herein from other districts as may be permitted by this ordinance.

Sec. 48-23.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article, are the district regulations for the "M-S" medical service district.

Sec. 48-23.02. Use regulations.

- (a) *Permitted principal uses:*
 - (1) Human health care related facilities including the following:

- a. Health care facility, health service establishment and hospital as defined by this ordinance.
- b. Health care education, training and administrative facility.
- c. Health care office, clinic, laboratory and treatment facility.
- d. Health care testing and research.
- e. Indoor facilities which are used primarily for physical exercise and therapy; health maintenance including fitness centers, spas, swimming pools, gymnasiums, game courts, lockers and training rooms.
- f. Public health agency.
- g. Pharmacy and drug sales.
- h. Orthopedic, medical appliance, equipment, prosthesis and supply sales and fitting.
- i. Optician and eyeglass sales.
- j. Hearing aid evaluation, fitting and sales.

(2) Associated uses to health care facilities as set forth below:

- a. Funeral home or mortuary including the display and sale of products associated with the ceremonies, burial or cremation of the deceased; and crematorium.
- b. Parking lot and/or parking garage.
- c. Public parks, playgrounds, trails, paths, recreational areas, golf courses, scenic and historic sites, and associated recreational and leisure facilities, including but not limited to shelters, pools, court games, maintenance structures and associated parking to the above uses.
- d. Public or private elementary and secondary schools.
- e. Reception, conference and assembly facility.
- f. Religious assembly.
- g. Crisis center, type I.

(3) Human habitation and dwelling facilities as set forth below:

- a. Detached single-family dwelling building, for the purpose, use and occupancy of a family

as defined herein. The dimensional requirement applicable to a residential-design manufactured home may be appealable to the metro board of zoning appeals.

- b. Two-family dwelling building.
 - c. Multiple-family dwelling building.
 - d. Boarding and/or lodging house.
 - e. Residential care facility, type III.
 - f. Building used for student or faculty housing.
 - g. Medical care facility, type I.
 - h. Medical care facility, type II.
 - i. Apartment hotel.
 - j. Community living facility, type I.
 - k. Group home.
 - l. Bed and breakfast inn.
- (4) Group residence general.
- (5) Group residence limited.
- (b) *Permitted incidental and subordinate uses:*
- (1) Heliports, ambulance station, emergency transportation facility and terminal provided such facilities are on-site with and ancillary in nature to a hospital.
 - (2) Retail sales and/or service of a nature clearly incidental and subordinate to and customary in association with a principal use as provided in the human health care related facilities of the permitted principal uses of this district. Such incidental and subordinate uses shall only be permitted and located within a structure containing a recognized principal use; and may include the following:
 - a. Food and beverage preparation and sale.
 - b. Floral and gift shop.
 - c. Magazine, card and stationary shop.

d. Beauty and barber shops.

(c) *Provisional uses:*

(1) Day care facility, type II subject to the requirements of article XXVI.

(2) Vehicle surface parking lot in association with a principal use subject to the requirements of article XXVI, Additional Regulations.

(d) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Bed and breakfast home subject to the requirements of article XXVI.

(2) Bed and breakfast inn subject to the requirements of article XXVI.

(3) Ambulance station, emergency transportation facility and terminal as a principal use.

(4) Commercial radio, television, broadcasting and/or receiving towers.

(5) Community living facility, type II.

(6) Private or public utility structures facilitating the transmission, distribution and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(7) Public use facility.

(8) Television, radio and microwave transmission towers; telecommunication equipment; and accessory facilities other than those provided for elsewhere in this chapter as accessory to a permitted use or exempt as set forth by definition; and subject to the requirements of article XXVI.

(9) Vehicle surface parking lot and/or multilevel parking structure as specified by the application.

(10) Correctional placement residence or facility general, subject to the requirements of article XXVI.

(11) Correctional placement residence or facility limited, subject to the requirements of article XXVI. (Ord. No. 17410, § 10, 9-28-99; Ord. No. 17871, §§ 22, 23, 8-6-02; Ord. No. 18237, §§ 29, 30, 6-15-04)

Sec. 48-23.03. Dimensional requirements.

(a) *Minimum lot area and maximum intensity of use:*

(1) Single-family dwelling: 3,000 square feet.

- (2) Two-family dwelling: 4,000 square feet.
- (3) Multiple-family dwelling: 400 square feet per dwelling unit.
- (4) Every building site and/or zoning lot on which there is erected or converted a housing facility which is designed for congregate living or a dormitory-type dwelling the occupancy shall not exceed the following:
 - a. For the first occupant, 150 square feet of floor space and at least 100 square feet of floor space for every additional occupant thereof.
 - b. A total number of occupants equal to two times the number of habitable rooms.
- (5) All other uses: 7,500 square feet.
- (b) *Minimum yard requirements and maximum structure height:*
 - (1) Front yard: 25 feet.
 - (2) Side yard:
 - a. Where building does not exceed 50 feet in height: five feet.
 - b. Where building exceeds 50 feet in height: Ten feet.
 - (3) Rear yard: 25 feet.
 - (4) If the recorded plat of subdivision provides for a greater minimum yard requirement than provided by this district, the provisions of the plat shall prevail.
 - (5) The applicable side yard of a corner lot and the rear yard of a double frontage lot shall conform to the minimum front yard requirements of this district.
 - (6) Height:
 - a. General or specialized hospital: 160 feet.
 - b. Any other building or structure shall not exceed a height of 100 feet, however if located within 150 feet of the boundary of the district, it shall not exceed a height of 50 feet.

Sec. 48-23.04. General provisions.

All principal and accessory uses permitted within this zone are subject to the following requirements:

- (a) *Accessory uses and requirements:*

- (1) Permitted accessory uses and requirements. See article XXIX.
 - (2) Off-street parking requirements. See article XXX.
 - (3) Sign regulations. See article XXXI.
- (b) *Other provisions:*
- (1) Dimensional requirements. See article XXVII.
 - (2) Nonconforming uses. See article XXVIII.

Sec. 48-23.05. Development alternatives.

(a) The development of a "M-S" medical service district uses with multiple principal structures and/or uses may follow the provisions of article XXIV, Planned Unit Development District.

(b) The development of a "M-S" medical service district shall apply to subdivided land of record which meets the objectives and requirements of this district, the subdivision of land regulations, and the applicable plat of subdivision stipulations.

ARTICLE XXIIIa.

X-MIXED USE DISTRICTS

Sec. 48-23a.00. Purpose and regulations.

Purpose: The mixed use districts are unique to traditional neighborhood settings and are provided to encourage a compatible mixed use environment, utilizing the historic character of the area. The X-mixed use districts serve to implement neighborhood land use plans of the Topeka--Shawnee County Comprehensive Metropolitan Plan that are within the City of Topeka.

Regulations: The regulations set forth in this article or set forth elsewhere in Chapter 48 are the district regulations for the X-mixed use districts.

(Ord. No. 17502, § 1, 5-22-00; Ord. No. 17746, § 1, 11-13-01)

Sec. 48-23a.01. Mixed use district classifications.

There are three classifications of mixed use districts as follows:

1. *X-1 mixed use district.* This district facilitates a compatible mixed use activity center within a traditional residential neighborhood. The district includes a balance of compatible residential, office, civic, and neighborhood commercial retail/service uses of low to moderate intensity that compliment and support dense neighborhood residential areas and pedestrian usage with quality urban design.

2. *X-2 mixed use district.* This district facilitates a mixed use area that transitions from a higher intensity industrial use area to lower intensity neighborhood-scale residential areas and includes a balance of compatible residential, office, commercial service, and light industrial uses.
3. *X-3 mixed use district.* This district facilitates a destination-oriented Mixed Use District in the area known as the North Crossings area of North Topeka that serves as the northern entertainment/cultural anchor of downtown. The objectives of the district include:
 - a. Improving the area as a 24-hour destination for urban, cultural, entertainment, community, and residential experiences; and
 - b. Retention and attraction of businesses, workplaces and residences through adaptive reuse and rehabilitation of existing buildings as a preference; and
 - c. Redeveloping vacant and under-utilized properties through appropriately scaled in-fill development; and
 - d. High quality development and urban design standards that maintain a sense of history, human scale, and pedestrian-orientation.

(Ord. No. 17502, § 2, 5-22-00; Ord. No. 17746, § 2, 11-13-01)

Sec. 48-23a.02. Applicability of mixed use districts.

1. The X districts shall only be permitted on an area-wide basis as designated by a specific land use policy set forth in the comprehensive metropolitan plan for that area. The X district shall be identified as an area that merits special design considerations, involving a variety of property owners and uses within a developed urban environment. The X district shall be sufficiently cohesive and substantial to achieve a common objective as identified in comprehensive metropolitan plan.

2. The procedure for amending the district map to include X-mixed use districts shall be in accordance with the procedures of City of Topeka Code section 48-33.01 of this Chapter.

3. Properties in the X districts may be allowed more than one principle structure per zoning lot and more than one use per building.

(Ord. No. 17502, § 3, 5-22-00; Ord. No. 18164, § 3, 1-27-04)

Sec. 48-23a.03. Use regulations for X-1 mixed use district.

1. Permitted principal uses.
 - a. Single and two-family dwellings.
 - b. Three and four-family dwellings.
 - c. Dwelling units as primary or accessory use.

- d. Residential design manufactured home. e. Group home.
- f. Churches, places of worship or assembly.
- g. Schools.
- h. Community facilities.
- i. Parks, recreation, and open space.
- j. Residential care facility, type I.
- k. Artisan and photography galleries, studios.
- l. Automobile service station, type I.
- m. Bed and breakfast establishments.
- n. Child care centers.
- o. Clubs and lodges.
- p. Funeral homes.
- q. Health clubs.
- r. Offices, financial services, medical clinics.
- s. Pet shops/small animal clinics.
- t. Indoor recreation facilities.
- u. Restaurants.
- v. Retail establishments.
- w. [Reserved.]
- x. Service shops--Personal/business.
- 2. Uses permitted by conditional use permit.
 - a. Multi-family dwellings, more than four units per building and/or more than 12 units per acre.
 - b. Boarding and lodging houses.

- c. Public use facilities.
- d. Residential care facility, type II.
- e. Indoor amusement.
- f. Automobile service station, type II.
- g. Automobile service station, type III.
- h. Bars and taverns.
- i. Entertainment facilities/theatres (non-adult).
- j. Farmer's markets.
- k. Parking lots/garages (principal use).
- l. Motor vehicle sales.
- m. Research and development.
- n. Group residence limited, subject to article XXVI.

(Ord. No. 17502, § 4, 5-22-00; Ord. No. 17746, § 3, 11-13-01; Ord. No. 17871, § 24, 8-6-02; Ord. No. 18164, § 4, 1-27-04)

Sec. 48-23a.04. Same--X-2 mixed use district.

- 1. Permitted principal uses.
 - a. Single and two-family dwellings.
 - b. Three and four-family dwellings.
 - c. Dwelling units as primary or accessory use.
 - d. Residential design manufactured home.
 - e. Mobile homes (single).
 - f. Schools.
 - g. Community facilities.
 - h. Parks, recreation, and open space.

- i. Artisan and photography galleries, studios.
- j. Automobile service station, type I.
- k. Automobile service station, type II.
- l. Child care centers.
- m. Clubs and lodges.
- n. Funeral homes.
- o. Health clubs.
- p. Motor vehicle sales (size restrictions).
- q. Offices, financial services, medical clinics.
- r. Indoor recreation facilities.
- s. Restaurants.
- t. Retail establishments.
- u. Service shops--Personal/business.
- v. Assembly without fabrication.
- w. Fabrication of products allowed under "I-1" light industrial district.
- x. Distribution and processing.
- y. Research and development.
- z. Warehousing.

2. Uses permitted by conditional use permit. The following uses may be granted a conditional use permit by the governing body as provided by article XXV.

- a. Multi-family dwellings, more than four units per building and/or more than 12 units per acre.
- b. Group homes.
- c. Boarding and lodging houses.
- d. Crisis centers.

- e. Churches, places of worship or assembly.
- f. Conference/convention center.
- g. Public use facilities.
- h. Residential care facility, type I.
- i. Residential care facility, type II.
- j. Amusement parks.
- k. Automobile service station, type III.
- l. Bars and taverns.
- m. Bed and breakfast establishments.
- n. Farmer's markets.
- o. Hotel, motel.
- p. Parking lots/garages (principal use).
- q. Pet shops/small animal clinics.
- r. Unenclosed, outdoor equipment/product storage.
- s. Correctional placement residence or facility limited, subject to article XXVI.

(Ord. No. 17502, § 5, 5-22-00; Ord. No. 17746, § 4, 11-13-01; Ord. No. 17871, § 25, 8-6-02; Ord. No. 18164, § 5, 1-27-04; Ord. No. 18237, § 28, 6-15-04)

Sec. 48-23a.05. Same--X-3 mixed use district.

- 1. *Permitted principal uses.*
 - a. Single and two-family dwellings.
 - b. Three and four-family dwellings.
 - c. Multi-family dwellings, more than four units.
 - d. Dwelling units as primary or accessory use.
 - e. Residential design manufactured home.

- f. Schools.
- g. Community facilities.
- h. Parks, recreation, and open space.
- i. Indoor amusement.
- j. Artisan and photography galleries, studios.
- k. Automobile service station, type I.
- l. Bars and taverns.
- m. Bed and breakfast establishments.
- n. Child care centers.
- o. Clubs and lodges.
- p. Entertainment facilities/theatres (non-adult).
- q. Farmer's markets.
- r. Health clubs.
- s. Night clubs.
- t. Offices, financial services, medical clinics.
- u. Indoor recreation facilities.
- v. Restaurants.
- w. Retail establishments.
- x. Service shops personal/business.
- 2. *Uses permitted by conditional use permit.*
 - a. Group homes.
 - b. Boarding and lodging houses.
 - c. Churches, places of worship or assembly.

- d. Conference/convention center.
 - e. Public use facilities.
 - f. Residential care facility, type I.
 - g. Residential care facility, type II.
 - h. Amusement parks.
 - i. Hotel/motel.
 - j. Parking lots/garages (principle use).
 - k. Pet shops/small animal clinics.
 - l. Unenclosed, outdoor equipment/product storage.
 - m. Research and development.
 - n. Warehousing.
- (Ord. No. 17502, § 6, 5-22-00)

Sec. 48-23a.06. Dimensional and performance standards.

- 1. Dimensional performance standards are set forth below and are not intended to supercede or undermine adopted design standards within this article:
 - a. Mixed use district X-1 performance standards.
 - 1. Maximum building coverage--75 percent.
 - 2. Front yard setback--Range zero feet--15 feet.
 - 3. Rear yard setback--Range zero feet--25 feet.
 - 4. Side yard setback--Range zero feet--eight feet.
 - 5. Maximum building height--40 feet.
 - 6. Maximum residential density (net)-- 12 units/acre.
 - b. Mixed use district X-2 performance standards.
 - 1. Maximum building coverage--75 percent.

2. Front yard setback range--Zero feet---25 feet minimum.
 3. Minimum rear yard setback--25 feet from residential.
 4. Minimum side yard setback--Ten feet from residential.
 5. Maximum building height--50 feet.
 6. Maximum residential density (net)-- 12 units/acre.
- c. Mixed use district X-3 performance standards.
1. Maximum building coverage--100 percent.
 2. Front yard setback range--Zero feet--ten feet.
 3. Minimum rear yard setback--Zero feet.
 4. Minimum side yard setback--Zero feet.
 5. Maximum building height--50 feet.
 6. Maximum residential density (net)--29 units/acre.

2. Within the North Crossings and traditional neighborhood areas as designated by the comprehensive metropolitan plan all new development, including permitted commercial, office, institutional, multi-family residential, industrial uses, or combination thereof, or change of uses with exterior modifications shall be consistent with the following applicable design standards:

- a. Comprehensive metropolitan plan--Building design guidelines as adopted within the applicable neighborhood plan of the comprehensive metropolitan plan.
- b. Setbacks, massing, and form--Minimize building setbacks within traditional neighborhood or downtown district settings so as to reflect and align with existing setbacks of buildings on the block or facing block. Massing and form of building shall also be compatible with buildings on block, facing block, or neighborhood.
- c. Building types--Permitted building types shall include a rear yard building that occupies the front of its lot at full width, a side yard building that occupies one side of the lot at full depth, or a courtyard building that occupies all or most of the edges of its lot while internally defining one or more private spaces.
- d. Parking lots--Parking lots shall not dominate the frontage of pedestrian-oriented and image streets or conflict with pedestrian crossings. No parking space shall be closer to the primary frontage street than the building.

- e. Facades--Blank walls in excess of 50 feet shall be avoided. Buildings with multiple storefronts should be unified in character, compatible with any upper floors, and pedestrian-oriented.
- f. Outdoor activity--Buildings should accommodate outdoor activity with balconies, arcades, terraces, decks and courtyards for patron's, resident's, or workers' interaction to the extent reasonably feasible.
- g. Outdoor cafes--Restaurants should be encouraged to operate outdoor cafes on sidewalks, within buildings setbacks or courtyards provided; that pedestrian circulation and access to store entrances is not impaired, the space is well-kept, and street furniture/coverings are compatible with architectural character of the building/block.
- h. Pedestrian circulation--Adequate pedestrian circulation must be maintained at all times. Pedestrian linkages between parking lots, alleys, parks, and the street or building fronts shall be provided for within the public right-of-way or by dedicated easement.
- i. Access--Vehicular access shall be consistent with adopted traffic access management standards and use rear lot access where applicable.
- j. Transition yards and landscaping--Where a commercial or industrial lot abuts a residential use(s), a landscaped yard consisting of, but not limited to, trees, vegetation, wood fencing, landscaped earthen berm, or other plantings shall be provided for as a visual buffer that creates spatial separation and meets Crime Prevention Through Environmental Design principles. Front yard setback areas shall be landscaped.
- k. Open storage--Any open storage visible from the street, adjacent to residential uses or within image areas designated by the comprehensive metropolitan plan shall be screened to substantially reduce visual impact by fencing, landscaping, or other appropriate means.
- l. Fences - For all office and commercial uses within the "X-1," "X-2," and "X-3" mixed use districts, no fence, hedge or freestanding wall greater than four feet in height may be constructed within a front yard setback beyond the front face of a structure on an adjoining lot. Where no structure exists on an adjoining lot, no fence, hedge or freestanding wall greater than four feet in height may be constructed within a front yard parallel to the front face of the principle structure or building. Decorative open fences, constructed of wrought or cast iron, wood, or masonry, or similar material, greater than four feet in height may be permitted by the planning director upon review of the site and fence plans. Fences, walls, or hedges may be erected up to a height of eight feet in any side or rear yard where not in conflict with these regulations. For a corner lot, the fence height shall not exceed four feet in height beyond the face of a principle structure on an adjoining lot. Fences in conjunction with all residential, institutional, and industrial uses shall be allowed consistent with section 48-29.03 of this Chapter.

3. Within the North Crossings and traditional neighborhood areas as designated by the comprehensive metropolitan plan, detached single-family, duplex, and tri-plex unit development shall be consistent with the residential design guidelines as adopted within the applicable neighborhood plan of the

comprehensive metropolitan plan and "M-1" two-family zoning district minimum yard requirements.

4. The planning director may waive any of the above-listed design standards if he determines it to be unnecessary to the scope and nature of the proposed development.

5. New development within non-traditional neighborhood areas shall be consistent with applicable site plan regulations of this Chapter.

6. Any property owner who is adversely impacted by a decision of the planning director regarding compliance or noncompliance with the dimensional and performance standards contained herein, may appeal the planning director's decision to the Topeka Planning Commission.

(Ord. No. 17502, § 7, 5-22-00; Ord. No. 17746, § 5, 11-13-01; Ord. No. 18164, § 6, 1-27-04)

Sec. 48-23a.07. Parking.

1. Off-street parking requirements for the X-2 mixed use district shall be consistent with article XXX.

2. Minimum off-street parking requirements for the X-1 and X-3 mixed use districts shall be consistent with the following:

- a. Residential dwellings: One space per dwelling unit.
- b. Private clubs, drinking establishments, and restaurants with 50 percent of gross income in food sales: One space per four occupants permitted.
- c. Private clubs, drinking establishments, and restaurants with 50 percent of gross income in alcoholic or cereal malt beverage sales: One space per three occupants permitted.
- d. Retail and office uses: One space per 300 square feet of floor area.
- e. All other uses not specified shall be consistent with article XXX.

3. Minimum off-street parking requirements for permitted uses within the X-1 and X-3 mixed use districts may be exempted by the planning director for any change of use or expansion of an existing building provided adequate off-street or on-street parking can be demonstrated, it does not impose an unreasonable hardship on a residential neighborhood, and is consistent with any adopted neighborhood or area plan.

4. A maximum number of off-street parking spaces for a particular use may be imposed by the planning director to conserve open space, prevent unnecessary demolition of buildings and damage to the historic integrity of a district, or to remain consistent with adopted development performance standards.

(Ord. No. 17502, § 8, 5-22-00)

Sec. 48-23a.08. Additional requirements for mixed use district.

1. The planning director shall give written approval for conformity to the performance standards

within the X districts prior to the issuance of a building permit pursuant to section 48-33.05 of this chapter.

2. The planning director shall give written approval for conformity to the performance standards within the X districts prior to the issuance of a building permit pursuant to section 48-33.05 of this chapter for any use allowed by conditional use permit.

3. Not more than two of the following uses may be established, operated, or maintained within 1,000 feet of each other: Billiard parlor, amusement center, or tattoo studio.

4. Any permitted commercial or industrial use operating between 10:00 p.m. and 5:00 a.m. may require a conditional use permit.

5. Any permitted uses with new buildings or additions to existing buildings greater than 30,000 square feet in floor area shall be subject to a conditional use permit.

6. Within residentially classified blocks of the North Crossings as identified in the Historic North Topeka Revitalization Plan, establishment of a permitted commercial use within the X-3 district that is more than 50 feet from another legally permitted commercial use shall require a conditional use permit. (Ord. No. 17502, § 9, 5-22-00)

Sec. 48-23a.09. Legal non-conforming uses for the X-mixed use districts.

1. Any use which is not listed as a permitted use in the mixed use districts but which was permitted for a specific parcel of property pursuant to district regulations in effect for such parcel and which physically existed upon such parcel prior to the enactment of the mixed use districts shall be permitted as a legal nonconforming use.

2. Legal nonconforming uses located within any of the X districts zoning classifications may expand up to ten percent of the use intensity of the site. If the expansion of legal nonconforming use exceeds ten percent, then the following standards must be met before the expansion can occur:

a. The expansion will not result in a reduction of acceptable levels of off-street parking, lot coverage ratio and landscaping; and

b. The expansion will not result in an increase of noise, odor, traffic, light or dust which is incompatible with the surrounding neighborhood or land uses; and

c. The expansion is consistent with the applicable redevelopment plan, if any; and

d. The expansion is consistent with the performance standards of the X districts.

(Ord. No. 17502, § 10, 5-22-00)

ARTICLE XXIV.

PUD PLANNED UNIT DEVELOPMENT DISTRICT

Sec. 48-24.00. Purpose; intent.

This district is established to permit greater flexibility and, more creative, innovative and imaginative design for the development of areas that are generally possible under the strict application of the regulations of the other districts. It is further intended to promote more economical and efficient use of the land while providing for a pleasing and harmonious development and environment, including opportunities to provide for a high level of urban amenities, and the preservation of open spaces. The regulations of this district are intended to encourage the use of this district in order to integrate multiple uses into the development; to adapt the proposed use(s) to meet the conditions of the site; and to affect certain economics in public facilities. The requirements contained herein are set forth to provide for such development on other than a lot by lot basis.

Due to the nature and implications of a district zone which provides for such a broad spectrum of land use and a more challenging responsibility of the delivery of public services, considerations and quasijudicial deliberations relating to the compatibility of the district to a particular site shall permit greater discretionary review and broad latitude in applying conditions and limitations for a permitted development. The compliance with all standards set forth in the article and the submittal of all specified data, documents and data shall not entitle an applicant this district classification.

Sec. 48-24.01. Regulations generally.

The regulations set forth in this article or set forth elsewhere in this chapter when referred to in this article, are the district regulations for the "PUD" planned unit development district. A development 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 as well as with the surrounding or adjacent properties.

Sec. 48-24.02. Use regulations.

(a) *Permitted uses:* A planned unit development district may provide for any use or combination of uses that are listed in the use regulations of the various districts contained in this chapter, subject to applicable limitations, provisions or conditions specified therein and in accordance with the following regulations:

- (1) All approved permitted uses of this district shall be geographically designated and grouped by category on all plans in like manner as other districts contained in this chapter, either by individual group or in combination therewith.
- (2) Permitted use categories and any approved conditional uses provided by the individual categories shall be specifically designated on all approved plans and shall be set forth in the adopting ordinance or resolution.
- (3) Provided that all applicable limitations, provisions and conditions specified by use and set forth in this district are complied with, there may be use changes or relocations within each group category provided that the approved plan is not modified except as otherwise provided for by the procedures of this district.

(b) *Dimensional requirements:*

(1) *Intensity of use:*

a. *Residential:* The average land area shall not be less than the following standards which shall be exclusive of public street right-of-way:

Single-family	6,000 sq. ft./unit
Two-family	2,500 sq. ft./unit
Multiple-family	1,000 sq. ft./unit

b. *Office and institutional:* The minimum land area for any individual principal use or structure shall be 7,500 square feet.

c. *Commercial/industrial:* The minimum land area for any individual principal use or structure shall be 10,000 square feet.

(2) *Area and height regulations:*

a. All structures shall set back from all street right-of-way and perimeter boundary lines a distance of not less than 30 feet.

b. The front, side and rear yard setbacks for individual structures within the planned unit development and which are not applicable to paragraph "a" above, shall be determined in conjunction with the final approval of the planned unit development plan.

c. The height of structures shall be determined in conjunction with the review and approval of the master plan of the planned unit development.

(3) *Off-street parking regulations.* The provisions of article XXX, Off-Street Parking Requirements shall apply to the planned unit development district in all respects except for the specified standards establishing the required number of spaces. The required on-site parking for each geographically designated use group within the district shall individually average and conform to the following minimum standards:

a. Residential use groups: two spaces/unit.

b. Office and institutional use groups: Four spaces/1,000 sq. ft. of floor area for professional offices; community facilities and institutional uses shall be subject to the provisions set forth in article XXX, Required Number of Off-Street Parking Spaces.

c. Commercial use groups: five spaces/1,000 sq. ft. of floor area.

d. Industrial use groups: one space/600 sq. ft. of floor area.

e. In those instances in which more than one use group category is proposed to be assigned the same geographic area, the parking standards of the use group providing for the more

liberal number of spaces shall prevail.

f. In those instances, when in the opinion of the planning director, a proposed use is not clearly and generally recognized and identified as being subject to one of the aforementioned provisions, then the provisions of article XXX, Required Number of Off-Street Parking Spaces shall prevail as the standard, all as determined by the planning director.

(4) *Signs*: The number, location, size, area, height and type of signs shall be determined in conjunction with the approval process.

Sec. 48-24.03. Requirements and development standards for the planned unit development district.

The following performance criteria shall be required of all planned unit developments and shall be addressed by the master plan:

(a) **Applicability:**

(1) In order to encourage the efficient use of land and resources; promote greater efficiency in public and utility services; and, encourage innovation in the planning, design and building of all types of development, the minimum site size requested for a planned unit development district shall be five (5) acres.

(2) Parcels containing less than five (5) acres, but more than one (1) acre may be sought for reclassification to the planned unit development district where because of environmentally sensitive areas, existing natural features, the land is completely surrounded by development, the age of existing development or scenic assets, it can be demonstrated that such development is more appropriate and efficient than could be achieved through conventional development.

(b) **Additional standards and requirements for projects on less than five (5) acres.**

(1) The use group category assignment of the planned unit development will be comparable to that of surrounding properties in the neighborhood.

(2) The density and design of the planned unit development shall be compatible in use, size and type of structure, relative amount of open space, traffic circulation and general layout with adjoining land use, and shall be integrated into the neighborhood.

(3) The development shall not have any greater impact on existing streets and utilities than that anticipated for a conventional development of the site.

(4) The development shall not adversely affect views, light and air, and use and enjoyment of neighboring properties any more than would a conventional development.

(5) In addition to the requirements of Section 48-24.04(a), the master planned unit

development plan shall also include building elevations for all structures and details of materials to be used for external construction.

- (c) Areas within the planned unit development which are designated as private streets, private utility services, common areas, recreation areas, or other open space set aside for the benefit of tenants and property owners, shall be maintained by the property owners association or, in the alternative, property owners within the planned unit development. In the event the property owners association or property owners within the planned unit development fail to maintain such areas, the governing body may proceed under applicable ordinances and/or resolutions to maintain such areas. All costs incurred by the governing body in maintaining such areas shall be assessed against the lots within the planned unit development as provided for by law. Nothing contained herein shall be construed as creating a duty on behalf of the governing body to enforce any of the duties, obligations, or responsibilities of the property owners' association or in the alternative, individual property owners.
- (d) Building or zoning permits shall not be issued nor any development initiated on any property designated as planned unit development until such time that the property has been platted as a subdivision; or replatted as a subdivision when determined by the planning director that conditions and circumstances relating to utility extension and service, street or alley right-of-way, topographic and drainage factors, easements, or vehicular access warrant said replat.
- (e) All drives, lanes, streets, culs-de-sac, and other accessways within the planned unit development shall be owned and maintained by the property owners' association or owners within the planned unit development unless it is determined by the planning commission that there is a public need for local streets and/or major trafficways to transverse the district. In such instances, the transversing streets and/or trafficway right-of-way shall be dedicated by the developer in accordance with the plat subdivision regulations.
- (f) All drives, lanes, streets, culs-de-sac and other privately owned accessways providing accessibility to individual structures, buildings, and uses within the planned unit development shall, by the nature and intent of the district, be considered and serve as mutual rights of access for owners, tenants, invited guests, clients, customers, support and utility service personnel and emergency service providers, including law enforcement, fire protection and ambulance services. No gates, structures or other barriers shall be constructed across said accessways which may impede, limit, or restrict the above rights of access.
- (g) The site will be accessible from public streets which are adequate to carry the traffic that will be imposed upon them by the proposed development, streets, and driveways on the site of the proposed development will be adequate to serve the residents, occupants, or users of the proposed development. Traffic control signals will be provided without expense to the city when the governing body determines that such signals are required to prevent traffic hazards or congestion in adjacent streets.
- (h) All drives, lanes, streets, culs-de-sac, accessways, and parking lots shall comply with all applicable provisions of article XXX in respect to surfacing, design, screening, lighting, and drainage.

- (i) Other developmental standards, requirements, and provisions of applicable jurisdictional units including but not limited to those of public works, fire and water district, law enforcement, utilities, and parks and recreation, and which may not be specifically set forth in this article, shall apply and the master and final planned unit development plans should account for such and reflect a development design accordingly provided that variances and waivers are not granted by the appropriate authority.

(Ord. No. 17409, § 1, 9-28-99)

Sec. 48-24.04. Procedure for securing approval of a planned development and the establishment of a planned development district.

Prior to any use or development within the planned unit development district, the district shall be established in accordance with the provisions of this article, including the approval of all plans set forth in the procedure.

- (a) Application to amend to the district. Except as set forth by this article, a petition to reclassify property to the planned unit development district shall be as established in article XXXIII, Amendments, and include like contents. Additionally, the application shall include twelve (12) copies of the planned unit development master plan which shall consist of the following documents, information and graphics:
 - (1) Legal description of the proposed district in its entirety, total acreage, and planned unit development name/designation.
 - (2) Legal description of each proposed use group category with corresponding acreage.
 - (3) The site plan shall identify the name of the planned unit development in large, bold letters centered across the top of all plan sheets; the general location and arrangement of all existing structures; the proposed traffic circulation pattern within the development; the approximate location of proposed and existing major streets and major pedestrian and bicycle routes, including major points of access; 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 types of signage; proposed lots and blocks, if any; proposed public or common open space, if any, including parks, playgrounds, school sites, and recreational facilities.
 - (4) The site plan of the development shall be at a minimum scale of one (1) inch equals fifty (50) feet, composed of one (1) or more sheets with an outer dimension of twenty-four (24) inches by thirty-six (36) inches. A single-line border shall be provided around all plan sheets measuring exactly one (1) inch from the edge of the sheet except along the left side of the sheet which line shall measure exactly two (2) inches from the edge. The scale, north point and most recent date of preparation shall be so indicated on the plan.
 - (5) Graphically reflect the geographic location and designation of each use group category proposed.

- (6) The anticipated density, number, maximum height and type of residential units; and floor area, maximum height and types of business, commercial and industrial use presented in tabular form in comparison to minimum applicable standards.
- (7) Existing topographical character of the land at a contour appropriate with the scale of the project; all watercourses, flood plains, unique natural features, including wildlife areas and vegetative cover, and recognized historical sites and structures. Further, all existing streets, alleys, easements, utility lines, and existing land use shall be included on the plan.
- (8) Total land area, approximate location, and amount of open space included in the residential, business, commercial, and industrial areas.
- (9) When a planned development includes provisions for common open space, streets, utilities, drainageways or recreational facilities, a statement describing the provision that is to be made for the care and maintenance of such open space, streets, utilities, drainageways, or recreational facilities.
- (10) A preliminary plat of subdivision pursuant to the applicable ordinances, rules and regulations relating to subdivision approval; or a copy of the existing recorded plat which is appropriate for the intended plan.
- (11) Area shown on the site plan shall extend beyond the property lines of the proposal to include a survey of the area within one hundred fifty (150) feet of the proposal, exclusive of public right-of-way, at the same scale as the proposal and include the following:
 - a. Land uses, location of principal structures, and major existing landscape features.
 - b. Traffic circulation system.
 - c. General topographical mapping at same scale as master plan.
- (12) Traffic impact analysis as defined by this chapter, provided however, if in the opinion of the planning director, upon determination at preapplication conference that the intensity and scope of the requested planned unit development is of such nature that said impact analysis is not warranted, the director may waive said requirement.
- (13) A development phasing schedule including the sequence for each phase, approximate size in areas of each phase, and proposed phasing of construction of public improvements, recreation, and common open space areas.
- (14) One (1) eight and one-half (8 1/2) by eleven (11) inch film positive reduction of master plan.
- (15) Indicate BOOK PAGE DATE TIME in upper right-hand corner of all plan sheets.

- (16) Immediately below the Book, Page, Date and Time entries, provide the following signature block:

Recorded With The Shawnee County Register of Deeds:

(Registrars Name) - Register of Deeds

- (17) Include the following statement on the plan sheet:

This Planned Unit Development (PUD) Master Plan has been reviewed and approved in accordance with the provisions of article 24 of the Comprehensive Zoning Regulations of the City of Topeka and Shawnee County, Kansas, and may be amended only as prescribed in Section 48-24.05 of said article and as set forth on this document or as may subsequently be approved and recorded.

- (18) Notarized owner's certification of acceptance of conditions and restrictions set forth on the master plan as follows:

OWNER'S CERTIFICATE: (Type Name) agrees to comply with the conditions and restrictions as set forth on the master PUD plan.

In Testimony Whereof:

The Owner(s) of the above described property, (Type Name), have signed these presents this _____ day of _____, (Year)_____.

(Type Name and Title) (Type name and Title)

Be it remembered that on this _____ date of _____, A.D. _____(Year) before me, a notary public in and for said County and State come _____, Owner(s) of the above described property.

I hereby set my hand and affix my notarial seal the day and year last written above.

Notary Public

My Commission Expires:_____

- (19) Notarized certification of master PUD plan approval by the secretary to the planning commission as follows:

Certification of Master PUD Plan Approval:

(Planning Director's Name) (Date)

Secretary to Planning Commission

Be it remembered that on this _____ date of _____, A.D. _____, (Year) before me, the undersigned, a notary public in and for said County and State came (Planning Director's Name) who is personally known to me to be the same person who executed the within instrument of writing, and such person duly acknowledged the execution of the same.

In Witness Whereof, I hereby set my hand and affix my notarial seal the day and year last written above.

Notary Public

My Commission Expires: _____

- (b) Action on the petition and master plan of the planned unit development plan by the planning commission and governing body. Upon filing of a petition to amend a district to the planned unit development district as set forth in article XXXIII, Amendments, and as further provided by this article, the planning commission shall review, consider, and act on the petition in a like manner and procedure as provided in said article XXXIII. The appropriate governing body shall consider such proposal upon report and recommendation by the planning commission also in a like procedure as provided in said article XXXIII.

(Ord. No. 16957, §§ 7--14, 6-4-96; Ord. No. 17409, § 2, 9-28-99)

Sec. 48-24.05. Status of the planned unit development upon approval by the governing body.

For those proposals which are approved to be reclassified to the planned unit development district, the master plan as approved by the governing body with all conditions, revisions, and restrictions as set forth or imposed by said action of the governing body shall be recorded within forty-five (45) days of the action date of the governing body by the metropolitan planning agency with the register of deeds. Upon recordation, any changes, revisions, or modifications to the plan shall be in accordance with this article and again recorded in a similar manner. Failure by the applicant to provide the planning agency the approved plan on a permanent-type drafting film material on sheets twenty-four (24) inches by thirty-six (36) inches suitable for recording within thirty (30) days of the action by the governing body shall deem the petition as null and void. Following the recordation of the master plan, an ordinance or resolution shall be adopted by the governing body to officially amend the district zone as set forth below:

- (a) Form of ordinance or resolution. An ordinance or resolution approving a planned unit development and establishing a planned unit development district shall specify the restrictions that will, pursuant to the development plan, apply in the planned development 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 document. Such document shall also specify the conditions and

restrictions that have been imposed by the governing body on the planned development and shall designate geographic areas by use group category.

- (b) A planned unit development plan which has been approved and recorded as provided above shall not be modified, revoked, or otherwise impaired by action of the governing body without the consent of the developer for a minimum period of three years.
- (c) Site development plan review: Following the recording of the master planned urban development plan and prior to application for any building development on the site, the applicant shall be required to submit a site development plan in accordance with the procedures set forth as follows:
 - (1) Submission of Site Development Plan. A site development plan shall be submitted for the entire area as per the approved master planned unit development plan or for a subarea (single use group area) within the planned development provided: 1) The plan of the subarea meets all the requirements of the master planned unit development plan; 2) The dwelling unit density for residential development or total floor area for non-residential development does not exceed the dimensional standards established by the master plan unit development plan; 3) The subarea can function as an independent development unit with adequate access, services, utilities, open space; etc.; and, 4) The subarea is more than two (2) acres in size. The applicant shall submit twelve (12) copies of the site development plan which shall contain the following information:
 - (a) The title of the project, centered across the top of the plan sheet, and the names of the engineer or surveyor and names of the developer; and, a signature panel for the Planning Director's approval.
 - (b) A north point, scale, date and vicinity map.
 - (c) Existing zoning and improvement of immediately adjacent properties.
 - (d) The boundaries of the entire planned unit development or the specific land use area for which development is sought; all existing property lines; setback lines; the right-of-way and pavement dimension of existing streets; the location, dimension, height and square feet of all existing buildings and identification of those to be retained or removed; location, alignment and area of water courses, waterways or lakes; and other physical features in or adjoining the proposed development.
 - (e) The right-of-way and pavement dimension of all proposed streets, loading and parking areas; location, height, type of fixture, and intensity of illumination of all exterior lighting; location and dimension of storm drainage facilities and all curb cuts and access points.
 - (f) The location, dimension, height, and square footage of all proposed buildings, main and accessory, including dwelling type and number of dwelling units per

building.

- (g) The location of trash receptacles including the type and height of trash enclosures.
 - (h) The location and dimension of proposed recreation areas, open spaces, and other amenities and improvements.
 - (i) The location, character, size, height, and orientation of existing and proposed signs.
 - (j) The location, type, height, and materials of all fences and walls.
 - (k) The location and type of all existing trees with a caliper of eight (8) inches or greater. The plan shall indicate which of the trees are to be retained and which are to be removed.
 - (l) A landscape plan showing the location, description, size, height, and spacing of all new plant material.
 - (m) A tabulation of the total number of acres in the project, total number of acres in the land use area for which site plan approval is sought, the percentage and acreage thereof proposed to be allocated to residential use, non-residential uses, off-street parking, common open space, parks, schools, and other reservations.
 - (n) A tabulation of the total number of dwelling units in a residential area and the overall project density in dwelling units per gross acre. Tabulation of floor area by use in a non-residential area.
 - (o) The type, location, and size of all existing and proposed utilities and utility easements extending through or adjacent to the site.
 - (p) A topographic survey showing the elevation of streets, buildings, structures, water courses, and their names. The topography shall be shown by adequate spot elevations. The finished grade for the entire site shall be shown and the proposed first floor elevation of all buildings (except for garages and storage areas which shall be located at or above the one-hundred (100) year flood elevation) shall be at or above the elevation of (1) the flood water of record; or (2) the intermediate flood level as determined by the U.S. Army Corps of Engineers; or (3) the flood level as determined by the Department of Public Works, whichever is greater. All horizontal dimensions shown on the site development plan shall be in feet and decimals of a foot, all bearings in degrees, minutes and seconds.
- (2) Review and approval of site development plan. Site plans shall be approved administratively by the Planning Director after first circulating the plan and all attachments to all applicable reviewing departments and agencies for written comment. This provision however shall not prohibit the Planning Director from requesting a

recommendation from the Zoning and Platting Committee. The site development plan shall be reviewed for conformity with the provisions of the master planning unit plan and other applicable codes and regulations of the appropriate jurisdiction. The Planning Director may approve the site development plan as submitted, approve with modifications, remand back to the applicant for modifications, or deny. If the plan is approved, the Director shall certify thereon his approval and state the conditions of approval, if any. If the plan is disapproved, he shall indicate his disapproval and the reasons therefore in writing to the applicant. Appeals of any decision of the Planning Director shall be submitted to the Zoning and Platting Committee for review and determination. Appeals of any decision of the Zoning and Platting Committee shall be submitted to the governing body for final action.

Amendments or modifications to approved site development plans must be submitted to the Planning Department for review and determination. Such modifications shall be submitted to all applicable reviewing agencies and departments for review and comment. The Planning Director shall approve, modify, or deny the proposed amendment in the same manner as the submission of the original site development plan. The Planning Director again may submit the proposed amendment to the Zoning and Platting Committee for recommendation.

A stop work order shall be put on a project if any improvements required on the approved site development plan are not adhered to during the development of the site.

(Ord. No. 16754, § 31, 9-13-94; Ord. No. 16957, § 15, 6-4-96; Ord. No. 17412, § 2, 9-28-99)

Sec. 48-24.06. Amendments to planned unit development plans.

Each applicant petitioning for a planned unit development district shall, as part of the application, designate a prescribed manner as to who may initiate amendment(s) to the approved planned unit development master plan and the final site plan. Said procedure shall also be made part of the site plan and shall be recorded of record with the register of deeds. Upon recordation, the amendment procedure as set forth in the recorded site plan shall govern the initiation of all amendments.

- (a) *Minor amendments to master plan:* Minor changes to a planned unit development master plan may be approved administratively, if at all, by the planning director. Such changes may be authorized without additional public hearings, at the discretion of the planning director. This provision shall not prohibit the planning director from requesting a recommendation from the planning commission.
- (1) *Minor amendment criteria:* Amendments shall not be deemed as minor if the cumulative revisions to the most recent approved master plan of record which was considered at a public hearing include:
 - a. A change to the use and character of the development.
 - b. The possible creation of obstacles, barriers and service problems to traffic circulation, fire protection, public safety, and public utility services due to the

revision(s).

- c. A reduction by greater than five percent of the designated open space.
- e. An increase by greater than five percent in the approved number of residential dwelling units.
- d. Increase the floor area proposed for nonresidential use by more than five percent.

(2) *Submittal of revised master plan with minor amendments.* The proposed revised master plan shall be submitted to the planning director for consideration of approval. Said plan shall be presented on reproducible tracing material in like manner, and substance as reflected on the most recent approved plan. All other data, conditions, and information other than that proposed for amendment shall be identical to the most recently approved plan. Space for acknowledgement of approval by the planning director with date space shall be reflected on said plan. A letter of transmittal from the designated applicant setting forth in detail all proposed amendments shall accompany the submittal. Upon approval of any revised plan, the applicant shall furnish 16 copies of such plan with the planning agency for distribution to public agencies and utilities. The original tracing will remain on file in the planning agency and the revised master plan shall be rerecorded with the register of deeds in like manner as established with the original filing.

- (b) *Major amendments to master plan:* Major changes shall include all modifications and quantities in conflict with the limitations and provisions as reflected in the minor amendment criteria set forth above. Upon initiation of the amendment as established by the original petition, all major amendments to the master plan shall be submitted to the planning commission for public hearing and recommendation to the governing body as required for the original application and approval. Provided further, that those proposed amendments reflecting the addition of a permitted use group and/or the change in location of a use group by legal description, all property owners within the prescribed notification area as set forth in section 48-33.04 shall have the same rights of protest as provided by said section 48-33.04 and further the proposed amended plan shall only be approved by the governing body in a like manner as prescribed by section 48-33.04.

Sec. 48-24.07. Planned unit development plan variance procedures.

The planning commission is solely empowered to grant variances to the provisions of this article and only under the following circumstances:

- (a) The applicant demonstrates that the plan as submitted is equal to or better than such plan incorporating the provision for which a variance is requested; or
- (b) The strict application of any provision would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, provided that the variance may be granted without substantial detriment to the public good and without substantially impairing the purpose of this article.

ARTICLE XXIVa.

OS-1 OPEN SPACE DISTRICT.

Sec. 48-24a. [Purpose and regulations.]

Purpose. The open space district is intended to preserve and protect existing and potential public park land, open land, greenways, recreational space, floodways, trails and lands that have other physical, aesthetic or cultural characteristics which preclude their inclusion in other less restrictive districts. It is intended that these areas provide opportunities for passive and active outdoor recreation, preserve scenic views, and protect sensitive or fragile environmental areas. It is further the intent of this district to protect these areas from urban, non-open space or incompatible development.

Regulations. The regulations set forth in this article or set forth elsewhere in Chapter 48 are the district regulations for the OS-1 open space district.

(Ord. No. 17502, § 11, 5-22-00)

Sec. 48-24a.01. Use Regulations for OS-1 open space district.

1. *Permitted uses.*
 - a. Agricultural uses.
 - b. Common open space.
 - c. Detached single-family dwellings.
 - d. Drainage or flood prevention facilities.
 - e. Golf course.
 - f. Private park.
 - g. Public park.
 - h. Trails.
2. *Uses permitted by conditional use permit.*
 - a. Campgrounds.
 - b. Cemetery.
 - c. Commercial equine riding academies.
 - d. Cultural facility.

- e. Fairgrounds.
 - f. Farmer's markets.
 - g. Hunting/fishing preserve (outside city limits).
 - h. Public use facility.
 - i. Recreational field, court, or track.
 - j. Utility structure (private or public).
- (Ord. No. 17502, § 12, 5-22-00)

ARTICLE XXIVb.

D-DOWNTOWN DISTRICTS*

* **Editors Note:** Ord. No. 17661, § 1, adopted Aug. 20, 2001, added provisions pertaining to the downtown zoning districts. Said provisions have been included as §§ 48-24b.00--48-24b.07 at the city's request to maintain the alphanumeric sequencing of this appendix to read as herein set out. See the Code Comparative Table.

Purpose. The downtown districts are unique to the downtown Topeka area and are provided to encourage a compatible mixed use activity. The D-Downtown Districts serve to implement the downtown Topeka Redevelopment Plan, which is part of the City of Topeka's comprehensive metropolitan plan.

Regulations. The regulations set forth in this article or set forth elsewhere in chapter 48 [App. C] are the district regulations for the D-Downtown districts.

Sec. 48-24b.00. Downtown district classifications.

There are three classifications of downtown districts as follows:

1. *D-1 district.* The purpose of this district is to facilitate a compatible mixed-use activity center within the core area of downtown Topeka. The district is predominately composed of state offices, as well as local and federal facilities, commercial and retail uses. The district includes compatible residential, office, civic, and commercial retail/service uses which compliment and support a high density of activity and facilitate pedestrian usage.
2. *D-2 district.* The purpose of this district is to integrate a compatible mixed-use activity with urban residential neighborhoods. The district includes a balance of compatible residential, office, cultural, and neighborhood commercial retail/service uses of low to moderate intensity that compliment and support neighborhood residential areas and pedestrian usage.
3. *D-3 district.* The purpose of this district is to reestablish the linkage between downtown and the Kansas River through intensive redevelopment of the area north of Crane Street to the Kansas

River. The district includes housing, commercial and office uses that emphasize the relationship between downtown and the river, as well as expand cultural opportunities in the general downtown area.

(Ord. No. 17661, § 2, 8-20-01)

Sec. 48-24b.01. Use regulations for D-1 district.

1. *Permitted principal uses.*
 - a. Permitted uses in the "C-3" commercial district
 - b. Single- and two-family dwellings
 - c. Three- and four-family dwellings
 - d. Multi-family dwellings
 - e. Group homes
 - f. Dwelling units as primary or accessory use
 - g. Residential design manufactured home
 - h. Amusement indoor establishments, including dance, pool, and billiard halls; archery ranges, shooting galleries, pinball, electronic and video games arcade; taverns and similar establishments licensed by the city to sell and dispense cereal malt beverages for drink on premises
 - i. Churches, places of worship or assembly
 - j. Schools
 - k. Community facilities
 - l. Conference/convention center
 - m. Cultural facility
 - n. Public use facilities
 - o. Parks, recreation, and open space
 - p. Amusement parks
 - q. Camera and film shop; photography and artist studio; frame shop
 - r. Automobile service station, type I and type II

- s. Bed and breakfast establishments
- t. Child care centers
- u. Clubs and lodges
- v. Farmer's markets
- w. Funeral homes
- x. Health clubs
- y. Hotel, motel
- z. Theatre, non-adult
- aa. Offices for conducting affairs of business, profession, service, industry or government, including financial institutions and human health care clinics which may contain a pharmacy
- bb. Orthopedic, medical appliance, and prosthesis stores, optician and the sale of eyeglasses; hearing aid evaluations, fitting and sales
- cc. Pet shops/small animal clinics
- dd. Commercial recreational facilities which are used primarily for physical exercise, recreation, and/or health maintenance including fitness centers, spas, suntanning salons, skating rinks, swimming pools, gymnasiums, game courts, golf courses, golf driving ranges, pitch and putt, miniature golf courses and similar activities, including locker and training areas
- ee. Personal service shops
- ff. Parking lot and/or multi-story parking garage
- gg. Communication towers or telecommunication equipment attached to a building and which must meet the criteria of article XXVI
- hh. Boarding and lodging houses
- ii. Crisis centers
- jj. Residential care facility, type I
- kk. Residential care facility, type II
- ll. Child care centers

mm. Parking lots/garages (principle use)

3. *Uses permitted by conditional use permit.*

a. Private or public utility structures facilitating the transmission, distribution and/or collection systems, including substations, distributions stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses

b. Freestanding communication towers or telecommunication equipment which must meet the criteria of article XXVI

c. Billboards and panel posters not exceeding 300 square foot per single face area and which do not exceed a height of 55 feet above grade

d. Automobile service station, type III

(Ord. No. 17661, § 3, 8-20-01)

Sec. 48-24b.02. Use regulations for D-2 district.

1. *Permitted principal uses.*

a. Single- and two-family dwellings

b. Multi-family dwellings

c. Group homes

d. Residential design manufactured home

e. Churches, places of worship or assembly

f. Schools

g. Personal service shop less than 10,000 square feet

h. Community facilities

i. Public use facilities

j. Parks, recreation, and open space

k. Amusement parks

l. Camera and film shop; photography and artist studio; frame shop

- m. Bed and breakfast establishments
- n. Retail uses less than ten thousand (10,000) gross square feet
- o. Dwelling units as accessory use
- 2. *Uses permitted by conditional use permit.*
 - a. Private or public utility structures facilitating the transmission, distribution and/or collection systems, including substations, distributions stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses
 - b. Communication towers or telecommunication equipment which must meet the criteria of article XXVI with the exception that all towers must be attached to an existing building or structure, and may exceed 20 feet in height
 - c. Boarding and lodging houses
 - d. Crisis centers
 - e. Conference/convention center
 - f. Cultural facility
 - g. Residential care facility, type I
 - h. Residential care facility, type II
 - i. Amusement indoor establishments, including dance, pool, and billiard halls; archery ranges, shooting galleries, pinball, electronic and video games arcade; taverns and similar establishments licensed by the city to sell and dispense cereal malt beverages for drink on premises
 - j. Child care centers
 - k. Farmer's markets
 - l. Funeral homes
 - m. Health clubs
 - n. Hotel, motel
 - o. Offices for conducting affairs of business, profession, service, industry or government, including financial institutions and human health care clinics which may contain a pharmacy
 - p. Parking lots/garages as a principle use

- q. Recreation--Indoor
 - r. Restaurants
 - s. Retail establishments greater than 10,000 gross square feet
 - t. Personal service shop greater than 10,000 gross square feet
 - u. Automobile service station, type I
 - v. Clubs and lodges
 - w. Entertainment facilities/theatres (non-adult)
 - x. Small animal clinics
- (Ord. No. 17661, § 4, 8-20-01)

Sec. 48-24b.03. Use regulations for D-3 district.

- 1. *Permitted principal uses.*
 - a. Single- and two-family dwellings
 - b. Three- and four-family dwellings
 - c. Multi-family dwellings
 - d. Reserved.
 - e. Group homes
 - f. Dwelling units as an accessory use
 - g. Parks, recreation, and open space
 - h. Amusement indoor establishments, including dance, pool, and billiard halls; archery ranges, shooting galleries, pinball, electronic and video games arcade; taverns and similar establishments licensed by the city to sell and dispense cereal malt beverages for drink on premises
 - i. Amusement parks
 - j. Camera and film shop; photography and artist studio; frame shop
 - k. Automobile service station, type II

- l. Cultural facility
- m. Entertainment facilities/theatres
- n. Offices for conducting affairs of business, profession, service, industry or government, including financial institutions and human health care clinics which may contain a pharmacy
- o. Manufacture, processing storage and/or warehousing of any product, equipment, or material; except any activities involving the following:
 1. Acetylene, gas manufacture or storage
 2. Acid; alcohol; ammonia, bleaching powder, chlorine, cement, lime, gypsum, plaster of paris, disinfectant, dyestuff, glue, fertilizer, size, gelatin, oilcloth, linoleum, oiled rubber goods, paint, oil, shellac, turpentine, varnish, paper, pulp, shoe polish, soap (other than liquid), tallow grease, lard, refining of animal fat, tar distillation, tar roofing, waterproofing products, vinegar and yeast manufacture
 3. Arsenal; high explosives (other than armory)
 4. Asphalt; cement or other paving materials manufacture or central mixing plant
 5. Vehicular wrecking or dismantling for salvage purposes
 6. Blast furnace, coke oven, boiler works, forge plant, ore reduction, smelting of tin, copper, zinc or iron ores, iron, steel, brass or copper foundry or fabrication plant
 7. Brick, tile, pottery or terracotta manufacture (other than the manufacture of handcraft products only)
 8. Creosote manufacture or treatment
 9. Distillation of bones, coal or wood
 10. Explosives or fireworks manufacture or storage
 11. Fat rendering
 12. Garbage, offal or dead animals reduction or disposal
 13. Junk, iron or rags or paper storage or bailing except as provided elsewhere in these regulations
 14. Petroleum or its products, refining or wholesale storage.
 15. Planing mills; rock crusher; rolling mill

16. Rubber or gutta-percha manufacture or treatment
 17. Stockyard or slaughter of animals or fowls
 18. Stone mill
 19. Tanning, curing or storage of raw hides or skins
 20. Wool pulling or scouring
 21. And in general, those uses which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas or noise
- o. Recreation--Indoor
 - p. Restaurants
 - q. Retail establishments less than 30,000 gross square feet
 - r. Theatre--Non-adult
 - s. Churches, places of worship or assembly
 - t. Schools
 - u. Automobile service station, type I
2. *Uses permitted by conditional use permit.*
 - a. Private or public utility structures facilitating the transmission, distribution and/or collection systems, including substations, distributions stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses
 - b. Communication towers or telecommunication equipment which must meet the criteria of article XXVI with the exception that all towers must be attached to an existing building or structure, and may exceed 20 feet in height
 - c. Billboards and panel posters not exceeding 300 square feet per single face area and which do not exceed a height of 55 feet above grade
 - d. Community facilities
 - e. Conference/convention center
 - f. Public use facilities

- g. Automobile service station, type III
 - h. Bed and breakfast establishments
 - i. Child care centers
 - j. Clubs and lodges
 - k. Farmer's markets
 - l. Health clubs
 - m. Hotel, motel
 - n. Parking lots/garages principle use
 - o. Pet shops/small animal clinics
 - p. Retail establishments less than 30,000 square feet
 - q. Personal service facility
- (Ord. No. 17661, § 5, 8-20-01)

Sec. 48-24b.04. Dimensional and performance standards.

1. Dimensional performance standards are set forth below and are not intended to supercede or undermine adopted design standards within this article:

- a. *D-1 performance standards.*
 - 1. Maximum building coverage--100 percent
 - 2. Minimum front yard setback--0 feet
 - 3. Minimum rear yard setback--0 feet
 - 4. Minimum side yard setback--0 feet
- b. *D-2 district performance standards.*
 - 1. Maximum building coverage--75 percent
 - 2. Minimum front yard setback--0 feet
 - 3. Minimum rear yard setback--0 feet

4. Minimum side yard setback--0 feet

5. Maximum building height--50 feet

c. *D-3 district performance standards.*

1. Maximum building coverage--100 percent

2. Front yard setback--0 feet

3. Minimum rear yard setback--0 feet

4. Minimum side yard setback--0 feet

5. Maximum building height--60 feet

(Ord. No. 17661, § 6, 8-20-01)

Sec. 48-24b.05. Parking.

1. No off-street parking requirements for the D-1, D-3 use districts.

2. Minimum off-street parking requirements for the D-2 use districts shall be consistent with the following:

a. Residential dwellings: One space per dwelling unit

b. Private clubs, drinking establishments, and restaurants: One space per four occupants permitted

c. Retail and office uses: One space per 500 square feet of useable retail or office floor area

d. All other uses not specified shall be consistent with article XXX

3. A maximum number of off-street parking spaces for a particular use may be required by the planning director to conserve open space, prevent unnecessary demolition of buildings and damage to the historic integrity of a district, or to remain consistent with adopted development performance standards.

(Ord. No. 17661, § 7, 8-20-01)

Sec. 48-24b.06. Legal nonconforming uses.

1. Any use which is not listed as a permitted use in these downtown zoning districts but which was permitted for a specific parcel of property pursuant to zoning district regulations in effect for such parcel and which physically existed upon such parcel prior to the enactment of the districts shall be permitted as a legal nonconforming use in accordance with section 48-28 of this chapter.

2. Expansion of legal nonconforming uses and/or structures is prohibited unless a determination of

"no adverse impact" by the planning director is obtained based on the following:

- a. The use intensity on the site of the proposed expansion will not increase by more than ten percent cumulatively, and
- b. The expansion will not result in a reduction of acceptable levels of off-street parking, lot coverage ratio, landscaping by more than five percent, and
- c. The expansion will not result in an increase of noise, odor, traffic, light, or dust incompatible with the surrounding neighborhood and/or uses, and
- d. The expansion is consistent with the any adopted neighborhood, area, or redevelopment plan, and the expansion is consistent with the development performance standards of these districts.

(Ord. No. 17661, § 8, 8-20-01)

Sec. 48-24b.07. Design and appearance guidelines.

1. Within the D-1, D-2 and D-3 districts, all new development, including permitted commercial, office, institutional, multi-family residential, industrial uses, or combination thereof, or change of uses with exterior modifications shall be consistent with the following design guidelines. No building permit shall be issued unless it is in compliance with the Downtown Topeka General Design and Appearance Guidelines which are set forth in exhibit A, attached hereto and incorporated by reference as if fully set forth herein.

2. Compliance shall be determined by the planning director by evaluating site plans and exterior elevations for conformity with the Downtown Topeka General Design and Appearance Guidelines.
3. Decisions on conformity with the guidelines shall be made within ten working days of submission.
4. An appeal from the planning director's decision as to compliance with the Downtown Topeka General Design and Appearance Guidelines may be made to the Topeka Shawnee County Metropolitan Planning Commission's Planning and Policy Committee. Such appeal shall be heard at the next scheduled meeting of the committee.

(Ord. No. 17661, § 9, 8-20-01)

ARTICLE XXV.

CONDITIONAL USE PERMITS

Sec. 48-25.00. Purpose; intent.

A conditional use permit, as may be provided in the district use regulations, is for the purpose of protecting the integrity and character of the district from the effects of certain uses. The design, location and character of a conditional use is subject to the review and discretion of the planning commission and governing body as herein set forth.

Sec. 48-25.01. Application.

An application for a conditional use permit shall be in accordance with the procedure for an amendment to the district map, as set forth in article XXXIII, amendments. In addition, the applicant shall submit a statement which demonstrates that:

- (a) The density, height, bulk and other characteristics of the proposed use conforms to the guidelines for evaluation.
- (b) The proposed site and building design conforms to the guidelines for evaluation.
- (c) The operating characteristics of the proposed use conform to the guidelines for evaluation.
- (d) A statement which describes any actions which are to be taken to lessen any adverse impacts upon the surrounding area.
- (e) Other supporting data such as a map, a plan or diagram or other descriptive data or materials that may depict the proposed use and/or surrounding area.

(f) The planning director may in his or her discretion also require the submittal of a site plan.
(Ord. No. 16754, § 17, 9-13-94)

Sec. 48-25.02. Guidelines for evaluation.

The objective is to encourage developments which minimize the adverse effects on surrounding properties and neighborhoods; and the community at large. The planning commission and the governing body shall evaluate all proposed conditional use permit applications with respect to the following:

			Guidelines
(a)	Land use compatibility		
	(1)	Development density	Site area per unit, or intensity of use should be similar to surrounding uses if not separated by major physical improvements or natural features.
(b)	Height and scale		
	(1)	Height and bulk	Development should minimize difference in height and building size from surrounding structures. Substantial differences shall be justified by urban design considerations.
	(2)	Setbacks	Development should respect preexisting setback lines in surrounding area. Variations shall be justified by significant site features or operating characteristics.
	(3)	Building coverage	When possible, building coverage should be similar to that displayed in surrounding areas. Higher coverage should be mitigated by landscaping, buffering or other site amenities.
(c)	Site development		

	(1)	Frontage	Generally, a project's frontage along a street or private way should be similar to its lot width.	
	(2)	Parking and internal circulation	1.	Parking and circulation should serve all structures with minimal vehicular and pedestrian conflicts.
			2.	All structures shall be readily accessible to public safety vehicles.
			3.	Development shall have access to adjacent public streets or private ways. Internal circulation should distribute traffic to minimize congestion at access points.
	(3)	Landscaped Areas	When possible, building coverage should be similar to that displayed in surrounding areas. Higher coverage should be mitigated by landscaping or other site amenities.	
(d)	Building design		1.	Architectural design and building materials should be compatible with surrounding properties if located adjacent to residential districts or in highly visible locations.
			2.	The adaptive reuse and restoration of historically significant structures shall be considered. Historically significant structures means structures listed on the National Register of Historic Places or the state register of historic places.
(e)	Operating characteristics			
	(1)	Traffic capacity	Projects should not materially reduce the existing level of service on adjacent streets. Projects will be required to make street improvements and/or dedicate right-of-way to mitigate negative effects.	
	(2)	External traffic	Project design should direct nonresidential traffic away from residential areas.	
	(3)	External effects	Projects with long operating hours shall minimize effects on surrounding residential areas. Buffering techniques which isolate the conditional use from adjacent lower intensity uses may be required.	
	(4)	Outside storage	If permitted, outside storage areas shall be screened from adjacent streets and less intensive zoning districts and uses.	
(f)	Public facilities			
	(1)	Sewage disposal	Developments involving sewage effluent shall connect to the public sewer system when available. If permitted, individual systems must not adversely affect public health, safety, or welfare.	
	(2)	Sanitary sewer	Sanitary sewer shall have adequate capacity to serve the development when connection to a sewer system is required.	

	(3)	Stormwater management	1.	Development design should handle stormwater runoff without overloading or substantially diminishing capacity of public storm sewer system.
			2.	Development should not inhibit development of other properties.
			3.	Development should not increase probability of erosion, flooding, landslides, or other endangerment to surrounding properties.
	(4)	Utilities	Projects requiring utility service shall provide evidence of such service to the site.	
(g)	Comprehensive plan		Projects should be consistent with the policies of the comprehensive metropolitan plan and should minimize adverse economic effects on surrounding properties.	
(h)	Additional regulations		In addition to the foregoing guidelines, conditional uses shall be required to conform to the additional regulations specifically listed for a use as set forth in article XXVI.	

Sec. 48-25.03. Restriction; authority.

Upon recommending approval of a conditional use permit, the planning commission may place reasonable restrictions and/or conditions upon the proposed use. The governing body may require any reasonable restrictions or conditions upon the granting of a conditional use permit. The granting of a conditional use permit shall be by resolution and shall be assignable to the subject property by legal description and not to a person, firm or corporation.

Sec. 48-25.04. Revocation.

The governing body may revoke any conditional use permit pursuant to this article. No conditional use permit issued pursuant to this article shall be subject to the revocation procedures herein until such time that a complaint has been filed in the office of the city or county clerk and a hearing held before the governing body. Within 30 days of the receipt of a complaint, the city or county clerk shall set the date for the public hearing giving notice of the time, place and subject of such hearing by publishing the same one in the official city newspaper at least 20 days prior to the date fixed for the hearing. A copy of the notice shall be mailed to the current holder of the conditional use permit in question. Upon hearing, the governing body may take such action as to allow the continuance of the permit, continuance of the permit subject to additional restrictions, or revocation of the permit.

ARTICLE XXVI.

ADDITIONAL REGULATIONS

DIVISION 1.

GENERALLY

Sec. 48-26.00. Use and requirements.

The following principal uses are listed as provisional uses or conditional use permits in various districts in this chapter. These uses are required to meet the regulations indicated, in addition to the regulations of the district in which the uses are allowed, only when this article is referenced to in the requirements for each use. In case of any conflict between the regulations of the district in which the use is allowed as a provisional use or conditional and the additional regulations of this article, the most restrictive regulations shall govern:

(a) *Adult motion picture theater:*

- (1) An adult motion picture theater shall not be located within one thousand (1,000) feet of any building or premises used as a church, school or hospital.
- (2) An adult motion picture theater shall not be located within one thousand (1,000) feet of any of the following districts: agriculture, residential dwelling, multiple-family dwelling, office and institutional, university, and medical service districts.
- (3) An adult motion picture theater shall not be constructed or reconstructed unless there is provided on the same lot, or within three hundred (300) feet thereof, a space for off-street parking which contains an area adequate to accommodate one automobile for every twelve (12) seats in the theater.

(b) *Automobile or vehicle car wash facility:*

- (1) All washing facilities shall be within the interior of the structure.
- (2) Vacuum facilities shall not be located in such a manner that will restrict the orderly ingress to the facility.
- (3) The structure shall be set back a minimum of fifty (50) feet from any public street.
- (4) All accesses, drives and off-street parking spaces shall be in accordance with the parking standards.
- (5) The traffic circulation plan for the facility shall be subject to the approval of the traffic engineer or authorized designee of the public works department.

(c) *Automotive service station:*

- (1) *Type 1:* A facility which dispenses automotive fuels and oil only together with the retail sales of incidental merchandise such as packaged beer, nonalcoholic beverages, ice, candy, cigarettes, snacks and convenience packaged foods.
- (2) *Type 2:* A facility which dispenses automotive fuels and oil together with replacement

automotive parts such as fan belts, hoses, sparkplugs, tires and tubes, ignition parts, batteries, shock absorbers, fuses, etc., including incidental merchandise as defined above. Minor automotive services shall be permitted, which includes minor repair and replacement.

- a. Lubrication.
- b. Tire repair.
- c. Brake repair and wheel balancing.
- d. Muffler and exhaust system repair.
- e. Shock absorber replacement.
- f. Engine adjustment (tune-up).
- g. Replacement of pumps, cooling systems, generators, alternators, wires, starters, air conditioners, bearings and other similar devices.
- h. Radio repair.
- i. Glass replacement.
- j. And other similar repair and replacement services normally deemed to be emergency and convenience services; however, the same shall not include drive train units such as the engine, transmission or drive components.

(3) *Type 3*: A facility which may include those uses defined in types 1 and 2, and specifically includes repair, rebuilding and replacement of drive train units of automobiles, pickup trucks, street vans, motorcycles, and racing vehicles.

(d) *Cemetery*:

- (1) **Areas.** Any cemetery established after the effective date of this ordinance shall be located on a site containing not less than twenty (20) acres.
- (2) **Setback.** All structures including but not limited to a mausoleum, permanent monuments or maintenance building shall be set back not less than thirty (30) feet from any property line or street right-of-way line and all graves or burial lots shall be set back not less than thirty (30) feet from any property line or street right-of-way line.
- (3) Shall have the principal entrance or entrances on a major traffic thoroughfare as designated on and in accordance with the provisions of the transportation plan, with ingress and egress so designed as to minimize traffic congestion.

- (4) All on-site private drive location and width shall be reviewed by the traffic engineer or designee of the applicable department of public works in respect to providing efficient vehicular access and traffic flow; and to minimize vehicle conflict with pedestrians. Development of the cemetery shall not commence until approval of the aforementioned drive location and width has been secured.
- (e) *Day care facility, type I:*
- (1) An on-site automobile drop off/pickup area for a minimum of two (2) vehicles shall be provided for a facility which only has street frontage on a major traffic thoroughfare as designated by the transportation plan; and said drop off/pickup shall be in accordance with any applicable provisions of said plan.
- (2) Playground equipment or structures shall not be permitted to be located in a required yard adjacent to a public street on a continuous or permanent basis.
- (f) *Day care facility, type II:*
- (1) An on-site automobile drop off/pickup area for a minimum of two (2) vehicles shall be provided for a facility which only has street frontage on a major traffic thoroughfare as designated on the transportation plan; and said drop off/pickup shall be provided in accordance with any applicable provisions of said plan.
- (g) *Demolition landfill:*
- (g) *Demolition landfill:*
- (1) In addition to the standard application components required of an applicant to petition for a conditional use permit (fee, certificate of ownership for notification purposes and completed application form), a petition for a conditional use permit shall be accompanied by documentation that a demolition landfill permit has been issued by the appropriate agency . At the time of application to the appropriate agency for said demolition landfill permit, the applicant shall provide and submit plans, information and data as established by the governing body and agency. Further, the petitioner for a conditional use permit shall submit documentation of the issuance of any other licenses or permits required by the state department of health and environment.
- (h) *Extraction, processing, storage and sale of raw materials, including ore, minerals, sand, rock, stone, gravel, topsoil, fill dirt, and other materials delivered by quarry, mining, dredging, or stripping operations.* In addition to the standard application components required of an applicant to petition for a conditional use permit (fee, certificate of ownership for notification purposes and completed application form), a request for the subject use shall identify the specific raw material and type of operation under consideration and furthermore, shall include the below-listed additional information, plans and data.
- (1) Site plan. A site plan prepared by a registered civil engineer, drawn to scale on a sheet measuring twenty-four (24) inches by thirty-six (36) inches in size and including the

following:

- a. Contour intervals: two (2) feet for slopes thirty (30) percent or less; ten (10) feet for greater slopes when map scale is one (1) inch equals one hundred (100) feet.
 - b. Contour intervals: two (2) feet for slopes twenty (20) percent or less; ten (10) feet for greater slopes when map scale is one (1) inch equals two hundred (200) feet.
 - c. Identify name, grade, right-of-way and street width of existing and proposed streets extending through or adjacent to the site.
 - d. Identify width and purpose of easements extending through or adjacent to the site.
 - e. Identify natural land features including but not limited to watercourses and drainage ways, floodplains, rock outcropping, springs, wooded areas, etc.
 - f. Identify manmade features such as buildings and other structures, dams, dikes and impoundments of water.
 - g. Identify all of the above-noted adjacent land features within three hundred (300) feet of the site. In addition, show all platted subdivision lots and metes and bounds parcels.
 - h. Show location of at least five (5) borings, which show depths to ground water.
 - i. Provide a cross section to illustrate physical conditions of the site. Show vertical scale equal to, or in exaggeration of, horizontal scale.
- (2) Development plan. A development plan prepared in the same manner as the site plan and including the following:
- a. North point, scale and date.
 - b. Extent of area to be excavated.
 - c. Location, dimension and intended use of proposed structures.
 - d. Location of all areas on the property subject to inundation or flood hazard, and the location, width, and directions of flow of all watercourses and flood control channels that may be affected by the excavation.
 - e. Benchmarks.
 - f. Typical cross section, at sufficient intervals, showing the extent of overburden, extent of sand and gravel deposits or rock, and the water table.

- g. Identification of processing and storage areas, the boundaries of which to be shown to scale.
 - h. Proposed fencing, gates, parking areas and signs.
 - i. Sequences of operation showing approximate areas involved shall be shown to scale and serially numbered with a description of each.
 - j. Ingress/egress roads including on-site haul roads and proposed surface treatment and means to limit dust.
 - k. A map showing access routes between the property and the nearest arterial road.
 - l. Location of screening berms shall be shown to scale, and notes shall be provided indicating when they will be used as reclamation material. In the same manner overburden storage areas shall be identified and noted.
 - m. Proposed location of settling basins and process water ponds.
 - n. Site drainage features shall also be shown and flow direction indicated.
- (3) A restriction of use statement, which shall include:
- a. The approximate date of commencement of the excavation and the duration of the operation.
 - b. Proposed hours of operation and days of operation.
 - c. Estimated type and volume of the excavation.
 - d. Method of extracting and processing, including the disposition of overburden or top soils.
 - e. Equipment proposed to be used in the operation of the excavation.
 - f. Operating practices proposed to be used to minimize noise, dust, air contaminants, and vibration.
 - g. Methods to prevent erosion and pollution of surface or underground water.
- (4) Reclamation plan. A reclamation plan prepared in the same manner as the site plan and including the following:
- a. A statement of planned reclamation, including methods of accomplishment, phasing, and timing.

- b. A plan indicating: The final grade of the excavation; any water features included in the reclamation and methods planned to prevent stagnation and pollution; landscaping or vegetative planting; and areas of cut or fill. This plan, if clearly delineated, may be included with the site plan. For quarry applications, the final grade shall mean the approximate planned final grade.
- c. A phasing plan, if the excavation of the site is to be accomplished in phases. This plan shall indicate the area and extent of each phase and the approximate timing of each phase.
- d. The method of disposing of any equipment or structures used in the operation of the excavation upon completion of the excavation.
- e. Show location of any proposed streets within the reclaimed area and their connection to present public streets beyond.
- f. Show location of any lakes, ponds, or streams proposed within the reclaimed area and their connections to streams or drainage ways beyond.
- g. Show areas where vegetation is to be established, and indicate types of vegetative cover.

(i) *Golf course; country club:*

- (1) A golf course or country club shall be established on a minimum contiguous area of eighty (80) acres and shall consist of a minimum of nine (9) holes.
- (2) Vehicular access to a golf course or country club may ingress/egress directly to a local street provided said local street intersects with a major traffic thoroughfare as designated on the transportation plan; and further provided, that said points of ingress/egress are located within three hundred (300) feet of the centerline of the aforementioned thoroughfare.
- (3) All patron parking lots, clubhouse and recreational facilities other than those for golf, shall be located a minimum distance of five hundred (500) feet from all property boundaries of the golf course or country club.
- (4) All maintenance facilities and employee parking lots shall be located a minimum distance of two hundred (200) feet from all property boundaries of the golf course or country club.

(j) *Portrait or artist studio:*

- (1) Portrait or artist studios may include the production of studio photographs for customers, scheduled portrait sittings, the display of finished products, and the custom processing of film providing that the area devoted for the film processing is no more than four hundred (400) square feet or twenty (20) percent of the entire area whichever is less and that the

remaining area is devoted to the creation of studio portraits; but expressly prohibiting the selling of picture frames, related accessory items and equipment.

(k) *Reception, conference and assembly facility:*

- (1) As an independent principal use within any subdistrict of the agricultural, residential dwelling, and multiple-family dwelling districts, the facility shall be located only within a structure that exists on the date of the adoption of these regulations, except for the "RA-1" and "RR-1" districts; and further, vehicle parking lots shall not be permitted within the established front yard setback.
- (2) All applications requesting a conditional use permit shall include and address the following considerations in respect to:
 - a. Maximum occupant load at any one time.
 - b. Presentation of a plan of operation which shall include:
 1. Days of the week and hours of operation in which the facility will function.
 2. Any permitted outdoor activities.
 3. Supervision of guests and arrangements for enforcement of any provisions of the conditional use permit.
 - c. Any proposed screening, buffering, or landscape plan.
 - d. On-site vehicle parking and ingress/egress plan.
 - e. Address the general applicability of building, life safety, and associated codes and standards to the facility.
- (3) All activities of the facility as a conditional use permit shall be by prearranged lease, contract, or agreement and therefore the facility shall not be open to the general public.

(l) *Recycling depot:*

- (1) Shall be limited to the collection, storage and processing of metal, glass or plastic food or beverage containers and paper resources as an initial phase of a recycling process.
- (2) The recycling process shall be limited to the volume reduction of such materials by a mechanical method only.
- (3) All storage and processing operations in conjunction therewith shall be contained within the principal structure.

(m) *Religious assembly:*

- (1) Vehicular access to a facility of religious assembly may ingress/egress directly to a local street provided said local street intersects with a major traffic thoroughfare as designated on the transportation plan; and further provided, that said points of ingress/egress are located within three hundred (300) feet of the centerline of the aforementioned thoroughfare.

(n) *Relocation, remodeling or rebuilding of legal non-conforming billboards:*

No application for a Conditional Use Permit to relocate, remodel, or rebuild an existing legal non-conforming billboard shall be approved unless the Governing Body, after review of the recommendation by the Zoning and Platting Committee, shall determine that the proposed billboard is appropriate in the location proposed based upon its consideration of the general standards set forth below.

- (1) General Standards. No application for a Conditional Use Permit to relocate, remodel, or rebuild a legal non-conforming billboard shall be recommended or granted unless the application is determined to be in compliance with the following general standards:
 - a. Paragraph (n) shall apply only to existing legal non-conforming billboards presently located within the "C-4" Commercial District. In seeking a Conditional Use Permit, the applicant shall specify the location, size, height and area of the existing billboard proposed to be removed.
 - b. The structural members of all billboard materials shall be constructed entirely of noncombustible materials excepting only the sign face, ornamental molding and platform and shall be installed only on single-pole structures.
 - c. The proposed relocated sign shall not be larger than the existing billboard proposed to be removed, but not to exceed seven hundred fifty (750) square feet including extensions; nor shall such relocated sign have more than two (2) sign faces.
 - d. No billboard to be relocated shall be erected upon the roof of any building or attached to any building.
 - e. No billboard to be relocated shall be setback less than twenty (20) feet from any public right-of-way line.
 - f. No billboard to be relocated shall be less than either one thousand three hundred twenty (1,320) feet from any other such sign on the same street or closer than a four hundred (400) foot radius on different streets.
 - g. No billboard to be relocated shall be less than two hundred (200) feet from any underpass, overpass or bridge structure.

- h. No billboard to be relocated shall be placed within three hundred (300) feet of a residential dwelling, which fronts on the same street right-of-way, nor within five hundred (500) feet of any religious assembly or public or private elementary or secondary school on the same street.
- i. No billboard shall result in the loss or damage of natural, scenic, or historic features of significant importance; and shall be constructed and operated with minimal interference of the use and development of neighborhood property.
- j. No billboard shall be so designed to include the vertical stacking of billboards on the sign pole. Each billboard shall be comprised of a single sign face oriented in a given direction. This provision does not preclude double sided billboards where arranged back to back on the sign pole.

(o) *Small animal hospital or veterinary clinic for small domestic animals:*

- (1) That medical treatment or care of large animals such as horses, cattle, sheep, goats, swine, etc., shall not be permitted on the premises.
- (2) That medical treatment or care shall be practiced only within the confines of an enclosed building or structure.
- (3) Kennel or boarding operations incidental to the principal use shall be permitted only within the confines of an enclosed building or structure.
- (4) The building or structure shall be constructed in such a manner as to prevent the extension of audible noise and/or odor from the animals to the adjoining properties.
- (5) The governing body shall have the authority to order the discontinuance of this use upon the proper showing that such use constitutes a nuisance or has violated the above-listed provisions.

(p) *Television, radio, and microwave transmission towers; telecommunication equipment; and accessory facilities:* In addition to the standard application components required of an applicant to petition for a conditional use permit (fee, certificate of ownership for notification purposes, and completed application form), a petition for a conditional use permit for the subject use shall include:

- (1) A site plan or plans drawn to scale of one (1) inch equals thirty (30) feet or larger and identifying the site boundary; tower(s); guy wire anchors; existing and proposed structures; vehicular parking and access; existing vegetation to be retained, removed, or replaced; and uses, structures, and land-use designations on the site and abutting parcels.
- (2) A plan drawn to scale showing any proposed landscaping, including species type, size, spacing, and other features.

- (3) The applicant shall provide written communications obtained from the Federal Communications Commission and the Federal Aviation Administration indicating whether the proposed tower complies with applicable regulations administered by that agency or that the tower is exempt from those regulations. If each applicable agency does not provide a requested statement after the applicant makes a timely, good-faith effort to obtain it, the application is complete. The applicant shall send a subsequently received agency statement to the planning director.
- (4) Demonstrate that the tower complies with any applicable provisions of the airport hazard zone regulations if the tower site is located within the hazard zone as established by said regulations.

(q) *Vehicle surface parking lot:*

- (1) The parking lot site shall be of like district zoning classification as that of an associated principal use or that of a less restrictive district. Said parking lot site shall not be separated from the associated principal use by an intervening zoning district of a more restrictive classification.
- (2) The parking lot site shall not be separated from an associated principal use by an intervening public street right-of-way.
- (3) The nearest point of a parking lot site to the nearest point of the building in which the parking lot is in association shall not be greater than five hundred (500) feet.

(r) *Bed and breakfast home.*

- (1) Specific Requirements. Requests to establish a bed and breakfast home shall conform to all of the following requirements:
 - (a) The bed and breakfast shall operate as an ancillary use to the principal use of the residence as a single-family dwelling.
 - (b) The bed and breakfast shall be located in an existing single-family dwelling and no new structure shall be built expressly for a bed and breakfast establishment.
 - (c) The bed and breakfast shall be operated within the single-family dwelling and not in any accessory structure.
 - (d) The primary entrance to all guestrooms shall be from within the dwelling. A guestroom can retain an original secondary exterior entrance opening onto a porch or balcony.
 - (e) The exterior of the dwelling and premises shall outwardly remain and appear to be a single-family dwelling giving no appearance of a business use.

- (f) Individual guestrooms shall not contain cooking facilities.
- (g) The bed and breakfast shall not be used for weddings, receptions, parties, business meetings, or similar such activities.
- (h) One (1) non-illuminated nameplate sign, attached flat on the face of the principal dwelling, shall be permitted not to exceed nine (9) square feet. The nameplate shall be styled and detailed architecturally with the principal building and shall be limited to the name of the bed and breakfast or owner or both.
- (i) Retail sales of a nature clearly incidental and subordinate to the primary use of the premises as a bed and breakfast establishment shall be permitted subject to the following requirements:
 - (1) The merchandise offered for sale shall be confined to the dwelling and not located within a garage or accessory structure, whether attached or detached.
 - (2) Merchandise offered for sale shall be restricted to that produced on-site; souvenir items bearing the name and/or logo of the establishment; and, those items customarily provided for the convenience of resident guests.
 - (3) There shall be no advertising, display or other indication of merchandise offered for sale on the premises.
 - (4) No commercial telephone listing, newspaper, radio or television service shall be used to advertise the sale of merchandise.
 - (5) The total area devoted to the display or merchandise shall not exceed five percent (5%) of the gross floor area of the dwelling, excluding an attached garage.
- (s) *Bed and breakfast inn.*
 - (1) Specific requirements. Requests to establish a bed and breakfast inn shall conform to all of the following requirements:
 - (a) The bed and breakfast shall be located in an existing single-family dwelling and no new structure shall be built expressly for a bed and breakfast establishment.
 - (b) The bed and breakfast shall be operated within the single-family dwelling and not in any accessory structure.
 - (c) The primary entrance to all guestrooms shall be from within the dwelling. A guestroom can retain an original secondary exterior entrance opening onto a porch or balcony.
 - (d) The exterior of the dwelling and premises shall outwardly remain and appear to be a single-family dwelling giving no appearance of a business use.

- (e) Individual guestrooms shall not contain cooking facilities.
- (f) One (1) non-illuminated nameplate sign, attached flat on the face of the principal dwelling, shall be permitted not to exceed nine (9) square feet. The nameplate shall be styled and detailed architecturally with the principal building and shall be limited to the name of the bed and breakfast or owner or both.
- (g) Retail sales of a nature clearly incidental and subordinate to the primary use of the premises as a bed and breakfast establishment shall be permitted subject to the following requirements:
 - (1) The merchandise offered for sale shall be confined to the dwelling and not located within a garage or accessory structure, whether attached or detached.
 - (2) Merchandise offered for sale shall be restricted to that produced on-site; souvenir items bearing the name and/or logo of the establishment; and, those items customarily provided for the convenience of resident guests.
 - (3) There shall be no advertising, display or other indication of merchandise offered for sale on the premises.
 - (4) No commercial telephone listing, newspaper, radio or television service shall be used to advertise the sale of merchandise.
 - (5) The total area devoted to the display or merchandise shall not exceed five percent (5%) of the gross floor area of the dwelling, excluding an attached garage.
- (h) In the "RA-1" and "RR-1" Districts, a bed and breakfast inn shall not be established on less than a three (3) acre parcel. In all other districts where permitted, a bed and breakfast inn shall be established on a parcel having a minimum size equivalent to five hundred (500) square feet per guestroom plus the minimum lot area of the district, for a single-family dwelling, in which located.
- (i) Social events such as weddings, receptions, parties, business engagements or similar activities may be accommodated in conjunction with a bed and breakfast inn, subject to the following requirements:
 - (1) The scheduling and conduct of social events shall be incidental and subordinate to the principal use of the premises as a bed and breakfast inn.
 - (2) All scheduled events shall be by pre-arranged contract or agreement. Such event shall not be open to the general public.
 - (3) No amplified sound or music, noise or glare shall be allowed outside the inn nor be perceptible from beyond the property line.

- (4) Social events shall be restricted between the hours of 9:00 AM and 11:00 PM.
- (5) Submission of a plan of operation which shall include:
 - (a) Types of social events anticipated to be scheduled at the inn including the types of services to be offered in conjunction with a social event and the anticipated maximum number of guests to be accommodated.
 - (b) Days of the week and hours of operation for which social events would be scheduled.
 - (c) Any permitted outdoor activities and the location on the premises that may be used for such activities.
 - (d) Supervision of guests and arrangements for enforcement of any provisions of the Conditional Use Permit, when applicable.
 - (e) Any proposed screening, buffering, or landscaping to mitigate potential negative effects.
 - (f) Arrangements for parking. Specify the added number and location of guest parking in conjunction with social events. Additional on-site parking shall not interfere with accessing guest parking spaces nor conflict with internal traffic circulation.

(r)[t] *Management/leasing office and maintenance facility:* A facility for leasing, managing and/or maintaining a residential community in the "M-1" Two-Family Dwelling District in accordance with the following specific requirements:

- (1) The proposed facility shall be located within the boundaries of and operate exclusively in association with a legally described residential community consisting of rental housing units. No tenant space or other activity not exclusively associated with the management of the residential community shall be permitted within the facility.
- (2) The proposed facility shall be comparable in size and scale to the rental units located within the residential community.
- (3) The proposed facility shall be designed to appear as a residential structure comparable in design, construction, materials, siding and roofing to the rental units located within the residential community.
- (4) All materials, equipment and supplies shall be maintained within the facility or within a detached accessory structure that is comparable in size to other detached accessory structures located within the residential community.

- (5) Off-street parking shall be assessed at the rate of one (1) space per employee.
- (6) No exterior advertising shall be permitted except for a wall mounted identification sign not exceeding six (6) square feet.

(u) *Automobile rental establishments:*

- (1) No automobile sales and/or long-term lease of vehicles exceeding six months shall be permitted.
- (2) No on-site vehicle maintenance or mechanical service shall be permitted except to clean and prepare a vehicle for rental.
- (3) No gasoline service shall be provided on-site.
- (4) No exterior storage or display of products, materials, supplies or equipment shall be permitted except for the rental vehicles.
- (5) The inventory of rental vehicles shall not displace the required number of off-street parking spaces to be provided.
- (6) A solid, opaque screen fence or sight prohibitive landscaping shall be provided along lot lines adjoining residential property at a height of not less than six (6) feet.
- (7) Rental vehicles shall not exceed a gross vehicle weight of twelve thousand (12,000) pounds.

(v) *Group residence general, group residence limited, correctional placement residence or facility general; correctional placement residence or facility limited:* In considering an application for a conditional use permit for a correctional placement residence or facility general; a correctional placement residence or facility limited; a group residence general; or a group residence limited, the planning commission and governing body will give consideration to the following criteria:

- (1) The conformance of the proposed use to the Comprehensive Plan and other adopted planning policies.
- (2) The character of the neighborhood including but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space and floor-to-area ratio (commercial and industrial).
- (3) The zoning and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zoning and uses.
- (4) The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.
- (5) The length of time the property has remained vacant as zoned.

- (6) The extent to which approval of the application would detrimentally affect nearby properties.
- (7) The extent to which the proposed use would substantially harm the value of nearby properties.
- (8) The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.
- (9) The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution or other environmental harm.
- (10) The economic impact of the proposed use on the community.
- (11) The gain, if any, to the public health, safety and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.

(12) The recommendation of professional staff.

(Ord. No. 16754, § 31, 9-13-94; Ord. No. 17144, § 1, 7-8-97; Ord. No. 17412, § 2, 9-28-99; Ord. No. 17410, § 14, 9-28-99; Ord. No. 17465, § 2, 2-8-00; Ord. No. 17562, § 2, 10-26-00; Ord. No. 17871, § 26, 8-6-02; Ord. No. 18237, §§ 31--34, 6-15-04)

Secs. 48-26.01--48-26.15. Reserved.

DIVISION 2.

COMMUNICATION TOWERS

Sec. 48-26.16. Statement of purpose.

The purpose of these regulations is to establish reasonable restrictions for the siting and screening of communication towers and their related equipment in order to accommodate the growth of wireless communication systems while protecting the public against any adverse impacts on the community's aesthetic resources and the public welfare. To balance the growth of wireless communication systems while protecting the public health, safety and welfare, these regulations establish minimum standards for construction and facility siting to minimize adverse visual effects of towers through careful design, siting, lighting and screening, avoid potential damage to adjacent properties from tower failure through engineering and appropriate siting of tower structures, encourage the joint use of any new communication tower to reduce the number of such towers needed in the future, and require the removal of abandoned towers.

(Ord. No. 17138, § 1, 7-1-97)

Sec. 48-26.17. Regulations.

1. Each application for a conditional use permit for a communication antenna or communication tower or where the same is permitted as a provisional use and where the location of the proposed communication antenna or communication tower is within the incorporated boundaries of the city, shall be

accompanied by a development plan which shall include the following information:

- a. Site development plan: A site plan or plans drawn to scale of one inch equals 30 feet or larger and identifying the site boundary; tower(s); guy wire anchors; existing and proposed structures; vehicular parking and access; existing vegetation and proposed landscaping; and uses, structures, and land-use designations on the site and abutting parcels.
- b. A report from a registered professional engineer which describes the tower's design standards and structural capacity, including the number and type of antennas it can accommodate.
- c. A study comparing all potential host sites within an approximate one-half mile radius of the subject site. Potential sites shall include existing structures and towers in excess of 100 feet and properties where towers are permitted under existing regulations or by conditional use permit. The study shall include a description of the surrounding sites, a discussion of the ability or inability of the site/tower to host a communications facility and the reasons why the site/tower was excluded from consideration. The planning director, the planning commission or the city council may require the review of additional sites pending review of the initial study. The applicant shall demonstrate to the city's satisfaction that the alternative site or tower is not available due to one or more of the following reasons:
 1. Unwillingness of the owner to entertain a communications facility proposal.
 2. Topographic limitations of the site.
 3. Adjacent impediments that would obstruct adequate communication tower transmission.
 4. Physical site constraints that would preclude the construction of a communication tower.
 5. Technical limitation of the system.
 6. The planned equipment would exceed the structural capacity of existing and approved towers and facilities, considering existing and planned use for those facilities.
 7. The planned equipment would cause frequency interference with other existing or planned equipment, which cannot be reasonably prevented.
 8. Existing or approved towers or facilities do not have space on which proposed equipment can be placed so it can function effectively and reasonably.
 9. The applicant demonstrates that there are other limiting factors that render the use of existing towers and structures unsuitable.
- d. A photo simulation of the proposed facility from the perspective of affected residential properties and public rights-of-way as may be required by the planning director.
- e. An explanation of the need for the facility to maintain the integrity of the communication system.

A map showing the service area of the proposed tower shall be made available to the staff, the planning commission and/or the city council upon request.

- f. A signed statement from the applicant indicating their intention to share space on the tower with other providers subject to reasonable, acceptable terms and the total anticipated number of providers the communication tower can support.
- g. A copy of the lease between the applicant and the landowner. The lease shall contain the following provisions:
 - 1. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - 2. The landowner shall be responsible for the removal of the communication tower or facility in the event the lessee fails to remove it upon abandonment as required by these regulations.

2. An initial request for a conditional use permit shall be limited to five years. At the time of renewal the applicant shall demonstrate to the satisfaction of the planning director that a good-faith effort has been made to cooperate with other providers to establish co-location at the tower site. Good-faith effort shall include, but is not limited to, timely response to co-location inquiries from other providers and sharing of technical information to evaluate the feasibility of establishing co-location. Failure to demonstrate that a good-faith effort has been made may result in the denial of the request for a renewal. Renewal of a conditional use permit is not required as set forth herein upon a finding by the planning director that (a) the communication tower has the capacity to support collocation of additional providers and/or collocation of additional providers has occurred during the preceding five years, and (b) that the tower and site continues to be in conformity with the development plan approved for the original conditional use permit.

3. Height. The maximum height which may be approved for a communications tower is 320 feet. A lightning rod shall not be included within the height limitations. All new towers in excess of 250 feet shall be designed to accommodate at least three additional providers. The location of additional antenna on a legally existing tower shall not require additional approval from the planning commission or city council. The height limitation for towers may be waived as recommended by the planning commission and approved by the city council.

4. Tower design. All communication towers shall be designed and engineering sealed by a registered professional engineer and conform to the design standards of the Electronic Industry Association's EIA/TIA-222-E, as amended. All communication towers of 150 feet or less shall be of a monopole design unless otherwise recommended by the planning commission and approved by the city council. Communication towers under 150 feet may be lattice or guyed tower construction provided the tower is designed to accommodate one or more providers. Communication towers in excess of 150 feet may be a self-supporting lattice tower or guyed tower.

5. Setbacks. Towers and accessory buildings shall meet the yard requirements of the zoning district in which they are located unless adjacent to residentially zoned property wherein the setback shall be not less than one-half the height of the tower. In the event the adjacent residentially zoned property is unplatted and not

developed or used as residential property then the set back may be reduced at the request of the applicant for cause shown with the written authorization of the planning director. The set back requirement may be waived by the planning commission, subject to approval by the city council, if documentation from a registered professional engineer is submitted certifying that in the event of a tower failure or collapse, the fall zone of the tower will be contained within the proposed set back area. All guy wire anchors shall be no closer than 20 feet from any lot line wherein the adjacent property is zoned for residential use.

6. Separation requirements. All communication towers, except those designed as an architecturally compatible element in terms of the material, design and height to the existing or proposed use of the property, shall comply with the following separation requirements:

	Towers in excess of 100 feet	Towers less than 100 feet
Towers in excess of 100 feet	1,500'	1,000'
Towers less than 100 feet	1,000'	1,000'

7. Separation deviations. The planning commission may recommend to the city council which shall have the authority to grant a deviation from the separation standards. In support of a deviation request from the separation requirements, the applicant shall submit a technical study acceptable to the city which confirms that there are not other suitable sites available within the separation requirements. The planning commission may also recommend to the city council that a deviation be granted to allow two or more communication towers within a 200-foot radius be clustered for the purpose of lessening the overall visual impacts of such towers on the community.

8. Towers on structures. The location of towers and antennas on existing buildings and other structures is encouraged as an alternative to placement on the ground and may be upon buildings and other structures within any zoning district where such is a lawful use subject to the following:

- a. The height of the tower or antenna does not extend more than 20 feet above the height of the structure.
- b. The setback of the tower from a building roof edge shall be at least ten feet.

The location of communication towers or communication antenna on existing structures pursuant to this subsection shall not require a conditional use permit or other approval from the planning commission or city council provided, structural information is provided to the planning department which indicates the structure is physically capable of supporting the communication tower or communication antenna.

9. Parking areas and drives. All parking areas and drives associated with the communication tower shall comply with applicable city design criteria except that the planning commission may recommend that the city council waive the requirements for curbing and drainage facilities when they are not needed for drainage purposes.

10. Equipment storage. Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of the communication tower unless repairs to the tower are being made.

11. Accessory uses. Accessory uses shall include only such buildings and facilities necessary for transmission functions and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage area, nor other similar uses not necessary for the transmission function. All accessory building shall be constructed of building materials consistent with the primary use of the site and shall be subject to site plan approval. Where there is not primary use other than the tower, the building materials for the accessory building shall be subject to the review and approval of the planning commission and/or city council.

12. Lighting. Communication towers shall not be lighted except to insure public safety as required by the Federal Aviation Administration (FAA). Security lighting around the base of a tower may be provided if the lighting is shielded so that no light is directed towards adjacent properties or rights-of-way. Any lighting required by the FAA shall consist of a white flashing light during the daytime and a red flashing light during the nighttime.

13. Screening. The base of the tower shall be screened from view with a solid screening fence a minimum of six (6) feet in height. The materials of the fence, including security wire, shall be specified in the development plan and subject to the review and approval of the planning commission and the city council. The planning commission and the city council may waive the required screening where the design of the accessory building is architecturally compatible to the primary use of the property.

14. Aesthetics and advertising. All towers and accessory facilities shall be sited, designed, screened and landscaped to have the least practical adverse visual effect on the environment. Appropriate landscaping shall be provided to buffer the facility from adjacent residential areas and public streets. Existing plant material shall be preserved to the extent possible. No portion of the communication tower, antenna, or perimeter fence, shall be used for commercial advertising, provided, a sign not exceeding four square feet shall be posted on the tower, or the exterior fence around the base of the tower, noting the name and telephone number of the tower owner and operator.

15. Removal of abandoned antennas and towers. Any antenna or tower that is not operated for a period of 12 continuous months or which was operated under a conditional use permit which has expired and not renewed shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of a receipt of notice from the planning director notifying the owner of such required abandonment. If such antenna or tower is not removed within said 90 days, the city council may cause the removal of such antenna or tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users have ceased using the tower for a period of 12 continuous months.

16. Application of regulations to existing communication towers, communication antenna or accessory facilities. For purposes of determining fair market value pursuant with the provisions of section 48-28.02 of this chapter, it shall be based upon the combined value of the communication tower(s), communication antenna(s) and on-site principal building(s) to which accessory.

17. Platting requirements. Nothing in this ordinance/resolution shall be construed to require the platting or replatting of separate lots for the location of towers that may be unrelated to another principal use located on such lot.

(Ord. No. 17138, § 3, 7-1-97)

ARTICLE XXVII.

DIMENSIONAL REQUIREMENTS

Sec. 48-27.00. General.

Any building, structure or use hereafter erected, enlarged or structurally altered, shall comply with the lot, yard and height requirements of the district in which located, except as specified herein.

Sec. 48-27.01. General lot requirements.

(a) *Existing lots of record:* An individual lot (platted or unplatted) of record in the office of the Shawnee County register of deeds on the effective date of this chapter which has less than the minimum required lot area, lot width, or lot depth, and where no adjoining undeveloped land fronting on the same street was under the same ownership on said effective date, may be occupied according to the permitted uses of the district on which the lot is located, provided, all front, side and rear yard requirements are met and all other requirements of this chapter are complied with.

(b) *Street frontage and access required:* No lot shall hereafter be created nor shall any principal building be constructed or placed on any lot unless such lot has frontage on either a public street or on a private street which has been approved as part of a planned unit development. In order to be approved such street shall provide permanent and unobstructed vehicular access, have a roadway of adequate width and surface, and meet all other applicable standards and requirements established by the applicable city or county engineer.

(c) *Number of structures per zoning lot:* Every building or structure hereafter erected, enlarged or structurally altered shall be located on a lot as herein defined, and in no case shall there be more than one principal building or structure located upon such lot or zoning lot as proposed in conjunction with submission of a site plan. Site plans shall be submitted to the Planning Department for review and approval in accordance with City of Topeka Ordinance 17913 and Shawnee County Resolution 2002-272. The site plan shall state the intended purpose, design and character of the proposed development along with the arrangements to be made with respect to common area maintenance, access drives, parking, and, any other common amenities. All other requirements of this chapter shall be met except for internal adjustments which may be approved by the Planning Director consistent with the stated design, purpose and character of the project.

(d) *Lots held in common ownership:* Where two or more contiguous substandard recorded lots are in common ownership and are of a size as together constitute at least one conforming zoning lot, such lots or portions thereof shall be joined, developed, and used for the purpose of forming an effective and conforming zoning lot or lots.

(e) *Public improvement projects:* Where a public improvement project results in the creation of a setback, yard or other deviation from the requirements of this chapter, the same shall be deemed to be in accordance with the requirements of this chapter.

(f) *Administrative variances to minimum lot size requirements:* An individual lot (platted or unplatted) of record in the office of the Shawnee County Register of Deeds, for which application for zoning

reclassification of said lot has been filed with the Topeka-Shawnee County Metropolitan Planning Department and which does not comply with the minimum lot size requirements as set forth for the desired zoning classification may be granted an administrative variance by the Director of the Planning Department provided that:

- (1) The individual lot of record comprises 90 percent or greater of the minimum lot size requirement of the desired zoning district;
- (2) The use group of the desired zoning district will be comparable to that of surrounding properties in the neighborhood;
- (3) The proposed zoning reclassification of the individual lot does not conflict with, or alternatively, promotes the policies or objectives as stated in the adopted Metropolitan Comprehensive Plan.

(Ord. No. 17912, § 1, 11-21-02; Ord. No. 18085, § 1, 9-9-03)

Sec. 48-27.02. General yard requirements.

(a) Location of required yards. The required yard space for any building, structure or use shall be contained on the same zoning lot as the building, structure or use and such required yard space shall be entirely upon land in a district in which the principal use is permitted.

(b) Yard requirements for open land. If a zoning lot is, or will be, occupied by a permitted use without buildings or structures, then the minimum yards that would otherwise be required for said zoning lots shall be provided and maintained unless some other provision of this chapter requires or permits a different minimum yard. The minimum yards shall not be required on zoning lots used for gardening purposes without structures, or on zoning lots used for public recreational areas.

(c) Restrictions on allocation and disposition of required yards or space.

(1) No part of a lot, yard, off-street parking space, open space or other space provided in connection with any building, structure or use in order to comply with this chapter shall, by reason of change of ownership or otherwise, be included as part of the minimum lot area, yard, off-street parking space, open space or other space required for any other building, structure or use, except as specifically provided herein.

(2) All of the lot area, yards, off-street parking, open space or other space provided in connection with any building, structure or use in order to comply with this chapter shall be located on the same zoning lot as such building, structure or use.

(3) No part of a lot, yard, off-street parking, open space or other space provided in connection with any building, structure or use (including, but not limited to, any building, structure or use existing on the effective date of this chapter) shall be subsequently reduced below, or further reduced if already less than, the minimum requirements of this chapter for the equivalent new construction.

(d) Computing rear yard. In computing the required depth of a rear yard for any principal building,

structure or use where such yard abuts on an alley, one-half of the alley right-of-way width may be included as part of the required rear yard.

(e) Front yards for corner and double frontage lots. Front yard requirements included in the district regulations within which the zoning lot is located shall apply on both frontages.

(f) Front yard building setbacks on existing lots of record. An individual unimproved lot of record in the Office of the Shawnee County Register of Deeds, may be developed irrespective of the front yard setback requirements of the applicable zoning district, subject to the following requirements:

- (1) The proposed development of said property does not conflict with, or alternatively, promotes the policies and objectives as stated in the adopted comprehensive metropolitan plan or an adopted neighborhood plan;
- (2) The proposed development is intended to compliment the existing character and architecture of the surrounding properties in the neighborhood;
- (3) The proposed development shall be consistent with the established building front yard setbacks so as to reflect and align with existing setbacks of buildings on the block face or surrounding neighborhood. Where variable building setbacks exist with respect to surrounding properties, an average of building setbacks may be applied.

(g) Platted building and setback lines. If a recorded plat imposes a building or setback line for a lot which is greater than the minimum front yard of the district in which located, then notwithstanding any other provisions of this chapter, the minimum setback shall be the setback as imposed by the plat.

(h) Where a lot in the "O&I," "C," "I" or "MS" district abuts an "R" district, a yard at least equal to the abutting yard required in the "R" district shall be provided along the "R" district boundary line.

(i) An owner of an existing improved property who desires to undertake further improvements to the property but which property does not comply with the yard requirements, shall not be required to file a variance with the metro board of zoning appeals for such further improvement provided the following conditions are met:

- (1) The additional improvement will not result in any less yard than that observed by the existing structure; and
- (2) The original structure was in compliance with regulations existing at the time the original structure was built; or a variance was previously granted which allowed for the deviation from the dimensional requirements; and
- (3) Applicable designated yard requirements in which the existing improvements are in conformance with, shall continue to be observed and conformed to, unless an official variance is granted by the metro board of zoning appeals.

(Ord. No. 17781, § 1, 1-15-02)

Sec. 48-27.03. Permitted encroachments in required yards.

Under the terms of this chapter, a required yard shall be open, unoccupied, and unobstructed from grade to the sky. The following are permitted encroachments in required yards except in the case of platted setbacks and recorded easements, in which case no encroachments are permitted.

- (a) *Accessory building:* Accessory buildings may be located in any yard except the front yard, provided they shall comply with the requirements of article XXIX of this chapter.
- (b) *Architectural features:* Eaves, cornices, marquees, awnings, canopies, belt courses, sills, buttresses or other similar features which extend beyond the wall of a building may encroach into any required yard by not more than 30 inches.
- (c) *Canopy, gas pump island:* Unenclosed canopies over gas pump islands may encroach into any required yard provided the supports shall be no closer than ten feet to the right-of-way line and do not conflict with the sight distance triangle as established by the city or county.
- (d) *Chimneys, bay windows and balconies:* Chimneys, bay windows and balconies may encroach into any yard not more than 30 inches provided such features do not occupy, in the aggregate, more than one-third of the length of the building wall on which they are located.
- (e) *Fences, hedges and walls:* Fences, hedges and walls may be located in any yard subject to the requirements of section 48-29.03 of this chapter.
- (f) *Fire escapes and unenclosed stairways:* Fire escapes and unenclosed stairways may encroach into any yard provided they shall not extend into a side yard more than three feet or into a rear yard more than five feet.
- (g) *Dispensing equipment and devices:* Fuel pump and air dispensing devices located in districts where allowed shall be exempt from the front yard requirement, but, on a corner lot all such dispensing equipment and devices shall be subject to the sight distance triangle as established by the city or county.
- (h) *Parking, off-street:* Except as otherwise provided in article XXX of this chapter open off-street parking may be located in any yard.
- (i) *Porches, deck and stoops:* An unenclosed porch, deck or stoop may encroach not more than ten feet into the front or rear yard and shall maintain a minimum distance of 12 1/2 feet from a street right-of-way line; provided further, the aforementioned improvements shall not be in conflict with an established setback line as reflected on a plat of subdivision.
- (j) *Signs:* Signs may be located in any yard except as provided in article XXXI of this chapter.
- (k) *Telephones, coin-operated:* In "O&I," "C," "I," "U-1" and "MS" districts, coin-operated telephones may be located in any yard subject to the sight distance triangle as established by the city or county.

(Ord. No. 16754, § 18, 9-13-94)

Sec. 48-27.04. Exceptions to height limitations.

(a) The following structures or parts thereof shall be exempt from the height limitations set forth in the zones indicated, provided that an increase in height shall not conflict with the provisions of the airport hazard zones of Forbes Field and Philip Billard Airport as set by the Federal Aviation Administration.

(1) *In all districts:*

- a. Chimneys or flues.
- b. Church spires.
- c. Cupolas, domes, skylights and other similar roof protrusions not used for the purpose of obtaining habitable floor space.
- d. Farm structures.
- e. Parapet or firewalls extending not more than three feet above the limiting height of the building.
- f. Poles, towers, television and amateur radio antenna support systems and similar apparatus, flagpoles, erected for noncommercial purposes shall not exceed 62 feet in height. Poles, towers, etc., shall be a minimum distance of 80 percent of that structure's height from public right-of-way and from adjacent property belonging to other than the owner of the structure being erected, unless anchored to a permanent building at a point above the ground at a distance of at least 20 percent of the height of the structure being erected.
- g. Roof structures, including elevator bulkheads, stairways, ventilating fans, cooling towers and similar necessary mechanical and electrical appurtenances required to operate and maintain the building.

(2) *In the "C" and "I" districts:*

- a. Grain elevators.
- b. Communication tower except as otherwise provided in this chapter.
- c. Stacks.
- d. Storage tanks and water towers.

(Ord. No. 16754, § 19, 9-13-94; Ord. No. 17138, § 4, 7-1-97)

Sec. 48-27.05. Restrictions on access.

The use regulations of a district shall also include and apply to the access to be provided in conjunction with such uses. No part of any lot located in a more restrictive district shall be used for vehicular access to a more intensive use.

ARTICLE XXVIII.

LEGAL NONCONFORMING USES

Sec. 48-28.00. Purpose; intent.

The purpose of this article is to identify and describe the legal requirements and specific conditions with respect to the use of land and/or structures which existed as legal nonconforming uses prior to the date of the adoption of these regulations and which did not comply with then existing regulations of their assigned district.

Sec. 48-28.01. Continuance of nonconforming uses.

The legal nonconforming use of any land and/or structure that existed at the time of adoption of this zoning ordinance, may be continued, although such use does not conform with the provisions hereof, provided; no structural alterations, except as may be required or authorized by law or ordinance are made hereafter. A nonconforming use may be changed to another nonconforming use of the same or more restricted classification as determined by the code enforcement director of the City of Topeka or the Shawnee County zoning administrator, as applicable. A change in the district map shall not effect the status of a nonconforming use except in such case when the change brings the use into conformity. Whenever a nonconforming use has been changed or converted to a more restricted use or to a conforming use, such use shall not thereafter be changed or converted to a lesser restricted use.

Sec. 48-28.02. Destruction of structures.

No building or structure which has been damaged by fire, explosion, act of God or the public enemy, to the extent of more than 50 percent of its fair market value, shall be restored except in conformity with the regulations of this zoning ordinance.

Sec. 48-28.03. Use discontinued.

Upon the discontinuance of any nonconforming building, structure or land for a period of one year, the use thereof shall thereafter conform to the regulations of the district in which it is located.

Sec. 48-28.04. Reconstruction; alteration; enlargement.

No existing building, structure or premises devoted to a use not permitted by existing zoning regulations in the district in which such building or premises is located, except when required to do so by law or ordinance, shall be enlarged, extended, reconstructed or structurally altered, unless such use is changed to one permitted in the district in which such building or premises is located, or an exception has been granted by the board of zoning appeals.

ARTICLE XXIX.

ACCESSORY USES AND REQUIREMENTS

Sec. 48-29.00. Authority.

Accessory uses, buildings and land customarily incidental to a permitted use, provisional use or conditional use permit shall be permitted provided they are:

- (a) Subordinate to and commonly associated with a principal building or use.
- (b) Subordinate in area, extent and purpose to the principal building or use.
- (c) Operated and maintained under the same ownership and are contributory to the comfort, convenience or necessity of the occupants, business or industry in the principal building or use served.
- (d) Located on the same building site and/or zoning lot as the principal building or use.

Sec. 48-29.01. Permitted accessory uses and buildings.

The accessory uses, buildings and other structures permitted in each zone may include the following:

- (a) *In the "RA-1" and the "RR-1" districts:*
 - (1) Open or enclosed storage of farm materials and equipment.
 - (2) Farm buildings, including barns, stables, sheds, toolrooms, shops, tanks, bins and silos.
 - (3) Fuel storage tanks and dispensing equipment for fuels used solely for farming operations. No wholesale/retail sales of such fuels shall be allowed as an accessory use.
 - (4) Wholesale and retail sales of agricultural products grown or raised upon the premises.
 - (5) Roadside stands for the sale of produce grown on the premises, provided, that such a stand shall not contain more than 600 square feet of floor area, the stand is located no closer than 20 feet from the right-of-way, and access to the stand is from an entrance to the farm or residence.
 - (6) Private, noncommercial antenna and supporting structure when used for amateur radio service; citizens band radio; a telecommunication device that receives only a radio frequency signal; a sole-source emitter with more than one kilowatt average output, and; satellite receiving devices provided they shall not be located in the area between the street and principal building nor within the required side yard.
 - (7) Fences as regulated by section 48-29.03.

- (8) Gazebos, enclosed patios and similar buildings for passive recreational use.
- (9) Home occupations provided the same does not detract from the residential character of a neighborhood and will not cause excessive traffic, nuisance or hazards to safety; provided further that each home occupation shall comply with the following standards and permit requirements:
- a. Standards: The following shall apply to any home occupation:
1. The use or activity shall be carried on by a resident of the dwelling.
 2. Not more than one employee not a resident of the dwelling is permitted.
 3. The exterior of the dwelling shall not be changed or modified in any way, nor shall any exterior signs be erected that will indicate any accessory use of the property nor adversely effect the residential character of the neighborhood.
 4. The sale of any commodity, goods or products on the premises is prohibited.
 5. All equipment, materials and work in progress shall be confined to the principal dwelling exclusive of an attached garage.
 6. The projection of any obnoxious sound, odor, smoke, vibration, light or dust is prohibited.
 7. The home occupation shall not occupy more than 25 percent of the total floor area (including a basement) of the dwelling, exclusive of an attached garage.
 8. The home occupation shall not be available or open to the public except during the hours between 8:00 a.m. and 8:00 p.m.
 9. The home occupation shall not create a need for off-street parking, pedestrian and vehicular traffic, sanitary sewer and storm sewer usage, public water usage as well as other municipal services in excess of the normal and usual levels for other residential dwellings.
 10. Only one accessory use or activity shall be carried on in a dwelling during the period authorized by a home occupation permit.
- b. Permit required: Prior to the establishment of any accessory use or activity as defined herein as a home occupation, the owner(s) of the subject property shall make an application to the City of Topeka code enforcement director or Shawnee

County zoning administrator as appropriate. At such time as the appropriate city or county official has determined that the proposed accessory use or activity meets the standards as set forth herein, a home occupation permit shall be issued. The governing official shall have the authority to specify conditions and requirements as deemed necessary to assure compliance with the standards as set forth herein. The home occupation permit shall specify the conditions and requirements and the duration of said permit. The permit shall be displayed within the interior of the dwelling and at the location of the proposed activity.

A home occupation permit may be issued to a tenant or occupant of a dwelling who is to be engaged in the accessory use or activity, provided the owner(s) of record of the property have endorsed and/or certified the application.

A home occupation permit shall not be transferable or assignable. Discontinuance or abandonment of the home occupation for a period of 60 days shall render the permit void.

The enforcement and administration of this subsection shall rest with the appropriate city or county governmental official. Upon a finding that any of the foregoing provisions have not been complied with, the director shall direct the home occupation permit invalid and shall order the use therein to be vacated. The governmental official or designee shall have the right to inspect the premises at any reasonable time. Failure to allow periodic inspections by representatives of the city or county code enforcement division at any reasonable time shall result in the immediate revocation of the home occupation permit. In the event of a revocation, one year shall elapse prior to an application by the same owner of the same residential dwelling structure.

- (10) Private garages and carports.
- (11) Private greenhouses or conservatories.
- (12) Private recreational uses and facilities including but not limited to swimming pools and tennis courts, if the use of such facilities is restricted to occupants of the principal use and guests for whom no admission or membership fees are charged.
- (13) Private or public utility transmission, distribution and/or collection systems; and not, however, including substations and distribution substations, pump stations, reservoirs, towers, transmission equipment buildings and similar facilitating structures.
- (14) Residential accessory storage buildings for the storage of wood, lumber, gardening equipment and other materials and equipment, exclusively for the use of the residents of the premises but not including a storage building for commercial purposes.
- (15) Signs as regulated by article XXXI.

- (16) Statuary, arbors, trellises, flagpoles, and barbecue stoves.
 - (17) Structures for the shelter of household pets except kennels.
 - (18) Temporary construction buildings for on-site construction purposes for a period not to exceed the duration of the construction project.
- (b) *In the "R-1," "R-2," "R-3," "R-4," "M-1" and "M-1a" districts:* In addition to the accessory uses included in subsection (a)6 through 18, the following shall be permitted:
- (1) Storage buildings for the storage of wood, lumber, gardening equipment and other materials and equipment, exclusively for the use of the residents of the premises but not including a storage building for commercial purposes and provided that only one such building shall be permitted on a lot.
 - (2) No trucks with a net legal carrying capacity exceeding 1 1/2 tons; no truck trailers; no truck tractors; no farming equipment or machinery; and no construction, repair or maintenance equipment, vehicles, machinery or materials shall be parked or stored on a lot or tract of land unless within an enclosed lawful structure, or screened from view from any abutting property or street; except if such vehicles, equipment, machinery and materials are in temporary usage to actively accomplish permitted temporary activities on the premises such as construction, repair, moving, and other similar activities. In such case they shall, upon completion of said activity, be removed from the lot or tract of land, or placed in an enclosed structure thereon, or otherwise screened from view from any abutting property or street, except that no truck, trailer, bus, boat, tractor, or similar vehicle, machinery, or equipment with a gross vehicle weight, or gross carrying weight of five tons or more shall be parked or stored any place on a lot or tract of land within an "R" or "M-1" or "M-1a" districts.
 - (3) Off-street parking as regulated by article XXXI.
 - (4) A child's playhouse, provided it shall not be more than 120 square feet in area.
- (c) *In the "M-2," "M-3" and "M-4" districts:* In addition to the accessory uses included in subsection (b), the following shall be permitted:
- (1) A maintenance storage building incidental to a permitted use provided no such structure shall exceed 160 square feet in gross floor area, and shall be in keeping with the principal structure.
 - (2) Carports.
 - (3) A facility for leasing, managing and/or maintenance of a multiple-family dwelling or planned unit development, provided such facility is of such size and scale which is in keeping with, and is accessory in nature to, said multiple-family dwelling or planned unit development, all as determined by the planning director.

- (d) *In the "O&I-1," "O&I-2" and "O&I-3" districts:*
- (1) For residential uses, the accessory uses included in subsection (c) shall be permitted.
 - (2) Off-street parking as regulated by article XXX.
 - (3) A storage building incidental to a permitted use provided no such structure shall exceed 200 square feet in gross floor area, and shall be in keeping with the principal structure.
 - (4) Employee restaurants and cafeterias, when located in a principal structure.
 - (5) Signs as regulated by article XXXI.
 - (6) Fences as regulated by section 48-29.03.
 - (7) Flagpoles and statuary.
- (e) *In the "C-1," "C-2," "C-3," "C-4" and "C-5" districts:* In addition to the accessory uses included in subsection (d), the following shall be permitted:
- (1) Restaurants, drugstores, gift shops, clubs, lounges, newsstands, and travel agencies when located in a permitted hotel or motel.
 - (2) One independent, freestanding commercial structure of 400 square feet or less shall be permitted on a zoning lot. Such accessory structure shall not be required to provide off-street parking, but, shall be located as to not interfere with or reduce the amount of required parking for the principal use. The location of such accessory structure shall be reviewed and approved by the city code enforcement director or county zoning administrator and planning director at the time of building permit application, provided such location does not conflict or interfere with site access and interior vehicular circulation.
- (f) *In the "I-1" and "I-2" districts:* There may be any accessory use including but not limited to printing, publishing, design, development, fabrication, assemblage, storage and warehousing, and child care facilities provided that:
- (1) Fences as regulated by section 48-29.03.
 - (2) Off-street parking as regulated by article XXX.
 - (3) Signs as regulated by article XXXI.
 - (4) Gatehouse and/or residence of a night watchman.
 - (5) Employee recreational facilities.

- (6) Flagpoles and statuary.
- (7) Employee restaurants and cafeterias when located in the principal building of the use served.

(g) *In the "U-1" district:* The accessory uses included in subsection (c) of this article.

(h) *In the "M-S" district:* The accessory uses included in subsection (d) of this article.
(Ord. No. 16720, § 3, 6-14-94; Ord. No. 16754, § 20, 9-13-94)

Sec. 48-29.02. Accessory use and building regulations.

(a) *Detached accessory uses and buildings:* In all districts, except as otherwise provided, detached accessory uses and buildings shall be subject to the following requirements:

(1) *Time of construction.* No accessory building shall be constructed or established more than 120 days prior to the time of completion of the construction or establishment of the principal building or use to which it is an accessory.

(2) *Setback from property lines.* Except as otherwise provided, an accessory building shall be separated from lot lines in compliance with the following requirements:

a. Accessory structures shall not be located within a required front yard as established by the comprehensive zoning regulations for interior and corner lot street frontages; and further, except for roadside stands, garages and carports, accessory structures shall observe interior and corner lot street frontage front yard setbacks as established by the principal structure. In all instances, a minimum setback of 20 feet from all street rights-of-way shall be provided for roadside stands, garages and carports. If, in the judgment of the planning director, construction of an accessory building is compatible with the neighborhood, in respect to availability of public sidewalks, right-of-way needs, other nonconforming structures within the block and the location of principal structures within the block, then such construction may occur without regard to the setback. If more restrictive than provided above, setbacks as set forth by plats of subdivision shall apply to any and all accessory structures.

b. In residential districts an accessory building shall not be located closer than three feet from a side lot line and five feet from a rear lot line. An accessory building for a zero lot line dwelling shall comply with the above requirements and shall not be located in the required ten-foot side yard.

c. *Setback from alley.* When a garage or carport is entered directly from an alley, it shall not be located closer than ten feet from the alley right-of-way line.

(3) *Setback from principal building.* No portion of an accessory building shall be located closer than six feet to the principal building or another accessory building on the same lot. Provided however

that a roof section may be extended between the principal structure and the accessory structure for the purpose of providing a covered walkway between the structures. Provided further that such connecting structure (roof) shall not be enclosed. In no event shall the construction of a covered walkway be deemed to join the principal and accessory structures into one principal structure.

- (4) *Maximum rear yard coverage.* In residential districts, accessory buildings shall not occupy more than 30 percent of the rear yard area.
- (5) *Maximum height.* Accessory buildings and structures shall not exceed a height of 20 feet in residential districts nor the maximum height permitted for a principal building in other districts.
- (6) *Reverse corner lot.* On a reversed corner lot in a residential district, and within 15 feet of any adjacent property to the rear in a residential district, no detached accessory building or portion thereof located in a required rear yard shall be closer to the side lot line abutting the street than a distance equal to the least depth which would be required under this chapter for the front yard on such adjacent property to the rear. Further, in above instance, all such accessory buildings shall meet the minimum side yard requirements of such adjacent property which coincides with the side lot line or portion thereof of property in any residential district.

(b) *Attached accessory buildings:* Attached accessory buildings shall be located pursuant to the requirements for principal buildings. Attached garages and carports shall be located on a lot so that a minimum 20-foot length "aisle" between the building and the street right-of-way line is provided.

(Ord. No. 16754, §§ 21, 22, 9-13-94; Ord. No. 16957, § 16, 6-4-96)

Sec. 48-29.03. Fences.

(a) *Location and height:* Fences and hedges, shall be subject to the following location and height requirements:

- (1) No portion of a fence shall exceed eight feet in height.
- (2) Fences and hedges shall be located so no part thereof extends into public right-of-way nor closer than one foot from a public sidewalk.
- (3) In "R" or "M" districts, fences beyond the front face of the principal structure shall not exceed four feet in height.

(b) *Hazards:*

- (1) No fence shall be constructed which will constitute a traffic hazard, and no permit shall be granted for the construction of a fence until the city or county engineer has certified that the proposed fence will not constitute a traffic hazard.

No fence shall be constructed in such a manner or design as to be hazardous or dangerous to persons or animals.

(c) The following shall constitute exceptions to the requirements of subsection (a);

(1) Fences in or around parks and recreational facilities excepting those facilities which are accessory to a single-family dwelling.

(Ord. No. 16754, § 23, 9-13-94; Ord. No. 16957, § 17, 6-4-96)

ARTICLE XXX.

OFF-STREET PARKING REQUIREMENTS

Sec. 48-30.00. Scope and application.

In any zoning district, all structures built and all uses established after the effective date of this article, and, when an existing structure is expanded, off-street parking shall be provided in accordance with the following regulations.

(a) *Scope of regulations:*

(1) *New construction and new uses:* For all buildings and structures erected, and all uses of land established after the effective date of this article, accessory off-street parking facilities shall be provided in accordance with the provisions contained herein. However, where a building permit has been issued prior to the effective date of this article, and provided that construction has commenced within six months of such effective date and diligently prosecuted to completion, parking facilities in the amounts required for the issuance of said building permit may be provided in lieu of any different amounts required by this article.

(2) *Expansion of a building or use:* When the intensity of use of any building, structure, or premises shall be increased, additional parking facilities shall be provided as follows:

- a. Whenever a building, structure or use existing prior to the effective date of this article is enlarged to the extent of less than 50 percent in floor area, the addition or enlargement shall comply with the parking requirements set forth herein.
- b. Whenever a building, structure or use existing prior to the effective date of this article is enlarged by one or more additions, the sum total of which increases the floor area to the extent of 50 percent or more, the uses contained within the original building or structure and all enlargements shall thereafter comply with the parking requirements set forth herein.
- c. Whenever an existing single-family dwelling with more than 950 square feet in floor area has less than two parking spaces, it shall be permitted to expand by not more than 25 percent in floor area without having to comply with the off-street parking requirements set forth herein.

- (3) *Change of use:* Whenever a use existing prior to the effective date of this article shall be changed to a new use, parking facilities shall be provided as required for such new use.
- (4) *Exempt district:* Notwithstanding any other provision of this article, no parking facilities shall be required for any building or use as permitted in the "C-5" commercial district.
- (b) *Existing parking facilities:* Accessory off-street parking facilities in existence on the effective date of this article, and located on the same zoning lot as the building or use served, shall not hereafter be reduced below, or if already less than, shall not be further reduced below the requirements for a similar new building or use.
- (c) *Permissive parking facilities:* Nothing in this article shall be deemed to prevent the establishment of additional off-street parking facilities to serve any existing building or use, provided that all regulations herein governing the location, design, and operation of such facilities are satisfied.
- (d) *Damage or destruction:* Whenever a building or use existing prior to the effective date of this article, and for which the required number of parking spaces is not provided, is damaged or destroyed by fire, tornado or other natural causes to the extent of 50 percent or more of its fair market value, shall be required to meet the off-street parking requirements and standards for that portion proposed to be rebuilt.

Sec. 48-30.01. Off-street parking requirements.

- (a) *General requirements:* The following requirements shall govern in the design, location and number of off-street parking and stacking spaces.
 - (1) *Computation:* When determination of the number of off-street parking and stacking spaces 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 space.
 - (2) *Utilization:* Off-street parking and stacking facilities provided for the uses hereinafter listed shall be reserved exclusively for the parking of motor passenger vehicles, in operating condition, of patrons, occupants, visitors or employees of such uses.
 - (3) *Computing off-street parking:* In computing the floor area to determine the requirement for off-street parking, such computations for a structure shall exclude:
 - a. The exterior wall width of the structure;
 - b. Elevator shafts;
 - c. Common courts or lobby areas;
 - d. Mechanical equipment rooms;
 - e. Stairways;

- f. Restrooms;
- g. Basements, except those portions not used exclusively for service to the structure;
- h. Balconies;
- i. Incidental storage areas including but not limited to janitorial rooms, supply rooms, etc.

The appropriate city or county building official shall determine the net floor area of the structure and shall require off-street parking as specified for the use set forth in the applicable district regulations.

- (4) *Shared parking provisions:* In the case of mixed uses, the off-street parking and stacking spaces required shall equal the sum of the requirements of the various uses computed separately, provided all regulations governing the location of accessory off-street parking and stacking spaces in relation to the uses served are adhered to.
- (b) *Specific requirements:*
 - (1) *Open and enclosed parking:* Accessory off-street parking and stacking spaces may be open to the sky or enclosed within a garage.
 - (2) *Surfacing:* All off-street parking and stacking spaces, aisles and drives shall be surfaced in accordance with the standards and specifications of the city or county.
 - (3) *Location:* Off-street parking and stacking spaces, aisles and drives shall be located as follows:
 - a. General.
 - 1. All required off-street parking and stacking spaces, aisles and drives shall be located on the same zoning lot as the use served except as provided in subsection 48-30.03.
 - 2. Protective curbs shall be required to be installed three feet from public sidewalks to protect pedestrians a minimum of two feet from adjacent property lines, and at other places on the parking lot as may be required by the code enforcement director or Shawnee County zoning administrator; or the applicable city or county engineer to protect the adjacent property.
 - 3. Aisles and drives shall not be considered in determining whether off-street parking and stacking requirements have been met except in the instance of single-family dwellings and duplexes.
- (4) *Design:* Except for single-family dwellings and duplexes, all off-street parking and stacking spaces, aisles and drives shall comply with the following prescribed standards:

- a. *Area:* Off-street parking and stacking spaces shall comply with the minimum dimensions illustrated in figure 1.
 - b. *Access:* Each off-street parking space shall open directly upon an aisle of such width and design as illustrated in figure 1. The greatest aisle width shown in figure 1 shall be provided when combining different parking space configurations on the same aisle. All off-street parking facilities shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movement; and all such points of access must be approved by the city or county public works department as appropriate. Aisles designed for two-way traffic shall have a minimum width of 24 feet.
 - c. *Exiting a parking facility:* No off-street parking facility shall be designed in such a manner that when exiting a parking facility it would require backing into a public street.
 - d. *Curbing:* Protective curbing shall be installed a minimum of three feet from a public sidewalk and two feet from adjacent property lines.
 - e. *Markings:* The parking spaces in all off-street parking areas shall be visibly delineated on the surface by painted or marked stripes.
- (5) *Screening:* All open, off-street parking facilities containing eight or more parking spaces shall be effectively screened on each side adjoining residential property (including single-family, duplex and multiple-family) or institutional property with a continuous, view-reducing wood fence, masonry wall, compact evergreen hedge or other landscape screening material which, when planted, will constitute an immediate view-reducing barrier. Such view-reducing screen shall be at least four feet but, not more than eight feet in height. The requirement for screening may be waived with written approval from the adjacent property owner.
 - (6) *Lighting:* Any lighting used to illuminate off-street parking facilities shall be directed away from residential properties and public streets in such a way as not to create a nuisance. However, in no case shall such lighting exceed three footcandles measured at the lot line.
 - (7) *Drainage:* All stormwater runoff shall be collected, transported and disposed of in a manner as approved by the city or county engineer as appropriate.
 - (8) *Accessible parking:* Where a use is required to provide accessibility for persons with disabilities, the required parking spaces shall be located and designed in accordance with standards as set by the Americans with Disabilities Act (ADA).
 - (9) *Modification of parking requirements:* Where it can be demonstrated by the property owner that a specific use has such characteristics that the number of parking or stacking spaces required is too restrictive, the planning director, and appropriate city or county traffic engineer and building official may upon request grant up to a 25-percent reduction in the number of required spaces. Such request shall be filed with the city or county building official, as appropriate on forms as may be provided. Should a reduction greater than 25 percent be requested, a variance will need

to be granted by the metro board of zoning appeals in accordance with the procedures set forth in article XXXIV. Where a reduction of 25 percent or less is requested, the applicant shall be required to reserve an area of land on the site of the use served equal in size to the area of land needed to provide the spaces for which a reduction is granted. Such land reserved shall be suitable for development of a parking facility and conform with the parking requirements.

- (10) *Condition of off-street parking facility:* Any parking facility which does not meet the standards of this chapter and which shall create a nuisance to the public from any cause shall meet the requirements as recommended by the city or county traffic engineer, city or county engineer, planning director and city or county building official, pertaining to screening, surfacing or entrances or exits.

(Ord. No. 16754, § 24, 9-13-94)

GRAPHIC UNAVAILABLE: Parking Configurations and Dimensions

Sec. 48-30.02. Required number of off-street parking spaces.

In all districts, except the "C-5" district, there shall be provided prior to the occupation of a building or commencement of a principal use a minimum number of off-street parking and stacking spaces as set forth herein except as otherwise provided for in section 48-30.04(b).

Principal Use		Number of Spaces
(a)	Residential uses.	
	(1) Single- and two-family dwellings.	1 per dwelling unit having not more than 950 square feet of floor area
		2 per dwelling unit having more than 950 square feet of floor area
	(2) Multiple-family dwelling and apartment hotels.	2 per dwelling unit for first 20 units, and 1.5 per dwelling unit after the first 20 units for dwelling units not more than 800 square feet of floor area
		2 per dwelling unit having more than 800 square feet of floor area
	(3) Multiple-family dwelling, elderly housing.	1 per every 2 dwelling units
	(4) Multiple-family dwelling, high-rise.	1.5 per dwelling unit for first 20 dwelling units and 1 per dwelling unit thereafter
	(5) Bed & breakfast inn.	1 per sleeping room
	(6) Hotels & motels.	1 per sleeping room plus additional space for restaurant, convention centers and other facilities as may be open to public
	(7) Congregate living & dormitory type dwellings.	1 per sleeping room

	(8)	Fraternity/sorority house.		1 per 300 square feet of floor area
	(9)	Developmentally disabled group home.		1 per each 2 sleeping rooms
(b)	Community facilities and institutional uses.			
	(1)	Public and private educational facilities.		
		a.	Elementary & secondary	2.5 per classroom
		b.	Senior high	10 per classroom
	(2)	Religious assembly.		1 per every 4 seats in auditorium or largest room
	(3)	Cultural facility.		1 per 300 square feet of floor area
	(4)	Community center.		1 per 300 square feet of floor area
	(5)	Reception, conference and assembly facility.		1 per 150 square feet of floor area or 1/3 of the occupant load, whichever is less
	(6)	Day care center, type II.		1 per every 10 persons the facility is licensed to serve, but, not less than 5 spaces. To provide for the safe and convenient loading and unloading of persons as well as minimize traffic congestion, a paved unobstructed pickup space with adequate stacking area (as determined by the city or county building official) shall be provided at the building entrance or stacking space to accommodate 5 vehicles
	(7)	Residential care facility types II & III.		1 per every 3 roomers, but, not less than 2 spaces.
	(8)	Medical care facility, type II.		1 per every 3 beds
	(9)	Community living facility, type I.		1 per every 2 roomers
	(10)	Community living facility, type II.		1 per every staff member determined by the maximum number of staff present at any one time, but, not less than 5 spaces
	(11)	Crisis center, type I.		1 per 300 square feet of floor area
	(12)	Crisis center, type II.		1 per 200 square feet of floor area
	(13)	Hospital or medical center.		1.75 per hospital bed
	(14)	Private membership association, club, lodge or fraternal organization.		1 per 300 square feet of floor area
	(15)	Business or vocational school, technical college.		1 per 200 square feet of floor area
	(16)	College or university.		1 per 2.63 students enrolled
(c)	Professional offices.			
	(1)	Medical and related offices and clinics, chiropractic, dental, optometrist, osteopath, pediatrician, etc.		1 per 300 square feet of floor area

	(2)	Professional and governmental offices: accounting, architectural, engineering, governmental, insurance sales, law, real estate, sales & brokerage, etc.	1 per 400 square feet of floor area
	(3)	Financial institution.	1 per 200 square feet of floor area, plus 3 stacking spaces for each external teller or customer service window
	(4)	Veterinarian.	1 per 400 square feet of floor area
(d)	Commercial uses.		
	(1)	Business and retail establishments (other than listed).	1 per 200 square feet of floor area
	(2)	Restaurants:	
		a.	Family dining type, where all food consumed within an enclosed structure.
			1 per 150 square feet of floor area or 1/3 the occupant load, whichever is less
		b.	Carry-out and delivery only, where no food consumed on the premises.
			1 per each employee based upon maximum shift, plus 5 stacking spaces per drive-in window. Such stacking spaces shall not be designed to impede pedestrian or vehicular circulation on the site or on any abutting street.
		c.	Drive-in type, where food may be consumed on the premises, outside a completely enclosed building, or served directly to customers in parked vehicles.
			1 per 35 square feet of floor area, plus 5 stack spaces per drive-in window. Such stacking spaces shall not be designed to impede pedestrian or vehicular circulation on the site or on any abutting street
		d.	Fast food, an establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off premises
			1 per 85 square feet of floor area or 1/3 the occupant load, whichever is less, plus 5 stack spaces per drive-in window. Such stacking spaces shall not be designed to impede pedestrian or vehicular circulation on the site or on any abutting street.
	(3)	Automotive service station, types I & II.	1 per 4 gas pumps, but, not fewer than 4 spaces. In no instance shall a required parking space or its maneuvering area conflict with vehicles being fueled or awaiting fuel
	(4)	Funeral home or mortuary.	1 per every 3 seats in the main seating area
	(5)	Theater, adult/nonadult.	1 per each 2.5 seats
	(6)	Automotive or vehicle carwash.	1 per each 2 washing stalls plus 2 stacking spaces per washing stall

	(7)	Shopping centers.	4.55 per 1,000 square feet of gross floor area
(e)	Recreation, entertainment and amusement.		
	(1)	Commercial recreational facility (unless otherwise listed).	1 per 150 square feet of floor area
	(2)	Courts, racquetball, handball, squash and tennis (when operated as an independent use).	4 per each court, or 1 per 3 spectator seats, whichever is greater
	(3)	Amusement indoor establishments.	1 per 100 square feet of floor area
	(4)	Bowling alley.	5 per alley, plus additional space for any other associated use (e.g. bar, restaurant, etc.) open to the public
	(5)	Amusement park.	1 per 200 square feet of floor area plus 1 per 200 square feet of land area used for outdoor recreational areas
	(6)	Auditorium, fairgrounds, stadiums and grandstands.	1 per every 4 seats
	(7)	Athletic field.	15 spaces for every diamond; 20 spaces for every soccer or athletic field, or 1 space for every 4 seats, whichever is greater
	(8)	Golf courses.	4 per each green, plus additional space for any other associated uses (e.g. tavern, restaurant, etc.) open to the public
	(9)	Golf driving range.	1.5 per every tee, if provided or 1.5 per each 20 feet of range width along the tees
	(10)	Miniature golf course.	2 per hole
	(11)	Outdoor range, archery, rifle, trap or skeet.	2 per target area or 1 per 5 seats, whichever is greater
(f)	Industrial uses.		
	(1)	Industrial establishments (other than listed).	1 per 1,000 square feet of floor area
	(2)	Research and testing laboratory.	1 per 600 square feet of floor area
	(3)	Warehousing.	1 per 1,000 square feet of floor area to a maximum of 5 spaces for establishments up to 25,000 square feet of floor area. For warehouses over 25,000 square feet, 5 spaces plus 1 for each additional 5,000 square feet above 25,000 square feet of floor area
	(4)	Manufacturing or establishments engaged in production, processing, packing and crating, cleaning, servicing, or repair of materials, goods or products.	1 per 600 square feet of floor area up to 25,000 square feet of floor area; and 1 per 1,000 square feet of floor area above 25,000 square feet of floor area

(g)	Other uses. For uses not listed, parking spaces shall be provided on the same basis as required for the most similar listed use as determined by the appropriate city or county building official.	
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(Ord. No. 16754, §§ 25, 26, 9-13-94)

Sec. 48-30.03. Reserved.

Editors Note: Ord. No. 16754, § 31, adopted Sept. 13, 1994, repealed former § 48-30.03, which pertained to control of off-site parking facilities.

Sec. 48-30.04. Approval of off-street parking facilities.

The design of all off-street parking facilities shall be subject to the approval of the city or county building official as appropriate prior to issuance of a building and/or parking lot permit, or for any certificate of occupancy where no building permit is required. Before approving any off-street parking plan, the appropriate governmental official shall find the spaces, aisles and drives provided are usable as designed and meet the requirements as set forth herein.

- (a) *Submission of site plan:* Any application for a parking lot and/or building permit, or for any certificate of occupancy where no building permit is required, shall include therewith a site plan drawn to scale and fully dimensioned. Said plan shall show the full extent of the area to be used for off-street parking including angle and dimension of parking and stacking spaces, aisles and drives; type of surfacing; radius of curb return; width of curb opening; identify protective curbing; direction of traffic flow; drainage pattern and method of collection; sidewalks and type and height of screening and parking area trees.
- (b) *Temporary permit:* Prior to issuance of a certificate of occupancy, all parking and stacking spaces, aisles and drives shall be properly constructed and surfaced; except that the appropriate city or county building official may issue a temporary certificate of occupancy in those instances where the building official finds that the surfacing cannot reasonably be completed due to adverse weather conditions or settling of land on the site after demolition or filling. A temporary certificate of occupancy shall be effective only to a date specified.
- (c) *Enforcement:* If the applicant fails to construct the parking facility in conformity with the requirements of this article or other prescribed requirements, the appropriate governing body may order the removal or replacement of the nonconforming parking facility or portion thereof. The cost of removal or replacement and any necessary reconstruction shall be levied as a special assessment against the property.
- (d) Public right-of-way shall not be utilized for internal traffic circulation or stacking for drive-up window facilities and similar such car-service features.
- (e) All facilities proposing "drive-in" and/or "carry-out" service features shall be reviewed and considered by the applicable traffic engineer or designee in respect to: ingress/egress to public right-of-way; the impact upon street side parking; adequacy of on-site vehicle storage, parking

and traffic patterns; and pedestrian safety. The traffic engineer or designee shall not approve the proposal if the public safety and welfare are negatively impacted.

(Ord. No. 16754, § 27, 9-13-94)

ARTICLE XXXI.

SIGN REGULATIONS*

* **Cross References:** Advertising, ch. 6; signs, ch. 118.

Sec. 48-31.00. Scope; intent.

The provisions of this article shall govern the placement and use of privately owned outdoor signs together with their appurtenant and auxiliary apparatus. Unless specifically restricted or prohibited herein, these regulations do not preclude the erection or placement of signs otherwise regulated by Chapter 118 of the Code of the City of Topeka. No sign shall be erected, enlarged, constructed, reconstructed or otherwise altered without first obtaining a separate sign permit from the appropriate city or county building official. The types of signs permitted by district is nonappealable.

(Ord. No. 18164, § 1, 1-27-04)

Sec. 48-31.01. District regulations.

All signs listed hereafter are regarded as accessory structures as distinguished from off-premises billboard or poster panel signs which are regarded as a principal use in the districts in which allowed. All signs shall be located upon a lot, parcel or tract of land so as not to encroach upon a recorded easement or public dedicated right-of-way, except as may be provided by Chapter 118 of the Code of the City of Topeka.

- (a) *Agricultural and residential districts:* The following types of signs are permitted in the "RA," "RR," "R" and "M" districts:
- (1) Church or public building identification sign, not exceeding twenty-five (25) square feet per sign face. Such sign may be lighted only if indirect lighting or shaded lighting is used.
 - (2) Monument signs limited to the identification of a multifamily building or complex, or residential subdivision. Such sign shall be limited to a maximum sign area of forty (40) square feet and not more than five (5) feet in height. Monument signs shall be limited to two (2) per public street, or designated private drive, entrance into the subject development.
 - (3) Nameplate or flat wall signs (in the "M-2" district) nonilluminated on the face of the building which contain the name of the building only. Only one (1) such sign shall be permitted on one (1) building except where the building fronts two (2) principal streets, one (1) such sign may be permitted on each front face of the building.
 - (4) Nameplate or flat wall sign (in the "M-3" and "M-4" districts) may be permitted where

mounted on the face of the building and containing the name of the building only. Such sign may be interior illuminated, limited to a maximum sign area of forty (40) square feet.

- (b) *Office and commercial districts:* The following types of signs are permitted in the "O&I" and "C" districts:
- (1) Church or public building identification sign (in the "O&I-1," "O&I-2," "O&I-3," and "C-1" districts) shall be permitted not to exceed twenty-five (25) square feet per sign face. Such sign may be lighted only if indirect lighting or shaded lighting is used.
 - (2) Monument signs (in the "O&I-1," "O&I-2," "O&I-3" and "C-1" districts) limited to a maximum sign area of two (2) square feet per foot on lot frontage, not to exceed a total of one hundred (100) square feet or fifty (50) square feet per sign face, and limited to a maximum height of five (5) feet.
 - (3) Nameplate or flat wall sign where mounted on the face of the building and containing the name of the building only. Such sign may be interior illuminated, limited to a maximum sign area of forty (40) square feet.
 - (4) Advertising signs (in the "C-2" district) relating to either the name of the business or products sold therein. Such signs shall not contain more than two hundred (200) square feet per single sign face, and shall not exceed a height of thirty-five (35) feet; provided, however, that where such signs are within a seven hundred (700) foot radius of the intersection of the centerline of an interstate highway with any major street or thoroughfare, as designated on the current adopted transportation plan, such signs shall not exceed a height of fifty-five (55) feet.
 - (5) Advertising signs (in the "C-3," "C-4" and "C-5" districts) shall not contain more than three hundred (300) square feet per single sign face and shall not exceed a height of fifty-five (55) feet.
- (c) *Industrial districts:* The following types of signs are permitted in the "I" districts:
- (1) Nameplate or flat wall sign where mounted on the face of the building and containing the name of the building only. Such signs may be interior illuminated, limited to a maximum sign area of forty (40) square feet.
 - (2) Monument signs limited to a maximum sign area of two (2) square feet per foot of lot frontage, not to exceed a total of one hundred (100) square feet or fifty (50) square feet per sign face, and limited to a maximum height of five (5) feet.
 - (3) Advertising sign relating to either the name of the business or products sold therein. Such sign shall not contain more than three hundred (300) square feet per single sign face, and shall not exceed a height of fifty-five (55) feet.

- (d) *University and medical service districts:* The following types of signs are permitted in the "U-1" and "M-S" districts:
- (1) Nameplate or flat wall signs, nonilluminated on the face of the building which contain the name of the building only.
 - (2) Monument signs limited to a maximum sign area of forty (40) square feet or twenty (20) square feet per sign face, and limited to a height of five (5) feet.
- (e) *Mixed use districts:* The following types of signs are permitted in the X districts:
- (1) Permanent signs:
 - (A) A non-residential property is permitted any combination of wall sign and/or projecting sign totaling one hundred (100) square feet per building face except in no case shall any individual wall sign exceed seventy (70) square feet, nor projecting sign exceed fifteen (15) square feet in size. An exception to these size limitations may be made by the Planning Director in cases where it can be demonstrated that any proposed wall or projecting sign supports or restores the historical significance of a building. Wall signs shall not cover or obstruct any architectural features deemed integral to the historic appearance or character of the building. Such features shall include, but are not limited to, transom windows, detailed brick, tile, or shingles.
 - (B) Properties are permitted one (1) double-faced ground sign, which shall include portable signs, not to exceed forty (40) square feet per sign face, nor seven (7) feet in height above grade.
- (f) *Conditional use permits:* Uses permitted by conditional use permit shall be subject to the sign regulations of the district where permitted, or specifically reviewed and considered as part of the conditional use permit.

(Ord. No. 18164, § 2, 1-27-04; Ord. No. 18741, § 1, 10-24-06)

ARTICLE XXXII.

RESERVED

ARTICLE XXXIII.

AMENDMENTS

Sec. 48-33.00. Amendments initiated.

The governing body may, from time to time, supplement, change or generally revise the boundaries or regulations contained in this chapter by amendment. A proposal for such amendment may be initiated by the governing body or the planning commission. Further, a proposal to amend the district zoning map may also be

initiated upon application of the owner of property affected.

Sec. 48-33.01. Procedure.

Amendments to this chapter may be made to either the specific provisions or text of this chapter, or to the district map. Any amendment shall be adopted by the governing body by ordinance (applicable to the jurisdiction of the City of Topeka, Kansas) and resolution (applicable to the jurisdiction of unincorporated Shawnee County, Kansas); and said documents shall be published in the official newspaper as required by law.

- (a) The procedure for amending the textual provisions of this chapter shall be in accordance with state statutes and specifically provide for the order set forth below:
 - (1) All proposed amendments shall be referred to the planning commission for a public hearing and recommendation.
 - (2) The proposed amendment shall be published setting forth the existing provision and the purpose and extent of the proposed amendment, in the official newspaper at least twenty (20) days prior to the date of the public hearing when the matter will be considered. Such notice shall fix the time and place for such hearing.
 - (3) The hearing may be adjourned from time to time and at the conclusion of the same, a majority of the members of the entire planning commission shall be required to recommend approval or denial of the amendment to the governing body. An individual motion to approve or to deny which receives less than a majority vote of the members of the planning commission shall be deemed a failed motion and no further action by the planning commission is required. In such instances, the matter shall not be transmitted to the governing body for consideration.
 - (4) Upon receipt of the recommendation and written summary of the hearing, the governing body either may:
 - a. Approve such recommendations by the adoption of the same by ordinance in a city or resolution in a county;
 - b. Override the planning commission's recommendations by a two-thirds (2/3) majority vote of the membership of the governing body;
 - c. May return the same to the planning commission for further consideration, together with a statement specifying the basis for the governing body's failure to approve or disapprove.
 - (5) If the governing body returns the planning commission's recommendations, the planning commission, after considering the same, may resubmit its original recommendations giving the reasons therefore or submit new and amended recommendations. Upon the receipt of such recommendations, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by the respective

ordinance or resolution, or the governing body need take no further action thereon.

- (6) If the planning commission fails to deliver its recommendations to the governing body following the planning 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 planning commission as a resubmission of the original recommendations and proceed accordingly.
- (b) The procedure for amending the district map shall be in accordance with state statutes and specifically provide for the order set forth below:
- (1) All proposed amendments to the district map shall be referred to the planning commission as initiated by the governing body or the commission; or upon a property owner by filing the request with the planning agency.
 - (2) The planning director shall have the authority and responsibility to establish the processing schedule and administrative procedures to consider the request, as well as determine required basic information and data relative to the proposal in respect to processing of any proposed amendment or conditional use permits.
 - (3) Any proposed district map amendment initiated by a property owner of the property affected, shall be processed as follows:
 - a. Prior to filing an application, the applicant is encouraged to request a preapplication conference with the planning agency staff. The purpose of the conference is to provide the owner an opportunity to explain the general development concept and site conditions, and for the planning staff to explain this chapter, and regulations, standards, policies, alternatives and constraints applicable to the proposal and site, as well as the comprehensive plan or other adopted plans, programs, or development policies.
 - b. At the time of the preapplication conference, the owner shall provide the following general information:
 1. A legal description and area of subject property.
 2. The present or existing use of the site.
 3. The use of adjacent properties.
 4. Relationship to supporting public or community facilities including utility services.
 5. A statement as to the schedule or timeframe for intended use and development.

- c. The owner shall file an official application for an amendment, which shall consist of:
1. Filing fee.
 2. Official application and justification.
 3. Supporting information, including the following:
 - The location and relationship of the property to the surrounding area.
 - Legal description of the property.
 - The proposed district.
 - The circulation or transportation network serving the property.
 - Surface drainage and limitations.
 - Sewer, water, and other utility availability and capacity limitations.
 - Other unique or special site conditions.
 - All public easements of record.
 - Traffic analysis impact study, if deemed necessary by the planning director.
 - The planning director may require the subject property to be platted or replatted simultaneously with consideration of a zoning amendment on the subject property.
 4. Petitioners of the planned unit development district shall submit for review processing and adoption, the plan of development in accordance with provisions set forth in the "PUD" district.
 5. Proof that all real property taxes including any special assessments are paid to date and are current for the subject property. In the event real property taxes including any special assessments are delinquent, the application for amendment shall not be scheduled for public hearing until such time as the taxes, including any special assessments are paid or satisfactory escrow arrangements for the payment of such taxes or special assessments have been made and presented to the city attorney's office and/or Shawnee County counselor's office for approval.

- d. The proposed amendment shall be published in the official newspaper at least twenty (20) days prior to the public hearing.
- e. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least twenty (20) days before the hearing to all owners of record of lands located within at least two hundred (200) feet of the area proposed to be altered for regulations of the city and to all owners of record of lands located within at least one thousand (1,000) feet of the area proposed to be altered for regulations of the county. The notice shall fix the time and place of the public hearing to consider a proposed rezoning, and of an opportunity granted to interested parties to be heard. 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 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 planning commission or the governing body.
- f. If the city proposes a zoning amendment to property located adjacent to the city's limits, the area of notification of the city's action shall be extended to at least one thousand (1,000) feet in the unincorporated area. Notice of the county's action shall extend two hundred (200) feet in those areas where the notification area extends within the corporate limits of a city.
- g. Notice requirements as set forth in this article are sufficient to permit the planning commission to recommend amendments to zoning regulations which affect only a portion of the land described in the notice of 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 of a zoning classification of lesser change than that set forth in the notice shall not be valid without republication and, where necessary, remailing, unless the planning commission has previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning classifications.
- h. The planning staff shall examine the application with respect to the comprehensive plan, policies and other development requirements, existing infrastructure and capacities with respect to essential public improvements, and shall make a report to the planning commission.
- i. The planning commission shall hold a public hearing and act in a quasijudicial capacity to hear testimony; weigh the facts and conditions; and make findings and conclusions with respect to:
 - 1. The character of the neighborhood.
 - 2. The zoning and use of properties nearby.
 - 3. The suitability of the subject property for the uses of which it has been

restricted.

4. The extent to which removal of the restrictions will detrimentally affect nearby properties.
 5. The length of time the subject property has remained vacant (or unused) as zoned.
 6. The relative gain to the public health, safety and welfare by the destruction of the value of affected property as compared to the hardship imposed upon the individual landowner.
 7. Recommendation of professional staff.
 8. Conformance to adopted or recognized comprehensive plan.
- j. The planning commission members shall publicly disclose any ex parte contacts prior to receiving testimony at the time of the public hearing.
- k. For action on an amendment, a quorum of the planning commission is more than one-half (1/2) of all the members. A majority of the members of the planning commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the governing body. If the planning commission fails to make a recommendation on a rezoning request, the planning commission shall be deemed to have made a recommendation of disapproval. The adoption of an amendment to the district map shall conform to all provisions pertaining to legal protest as set forth elsewhere in this chapter.
- l. Upon receipt of a recommendation of approval or disapproval of such proposed amendment and the reasons, therefor the governing body may:
1. Adopt such recommendation by ordinance in a city or by resolution in a county;
 2. Override the planning commission's recommendation by a two-thirds majority vote of the membership of the governing body; or
 3. Return such recommendation to the planning commission with a statement specifying the basis for the governing body's failure to approve or disapprove.
- m. If the governing body returns the planning commission's recommendation, the planning commission, after considering the same, may resubmit its original recommendation giving the reason therefor or submit new and 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 respective ordinance or resolution, or it need take no further action thereon.

- n. If the planning commission fails to deliver it's recommendation to the governing body following the planning 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 planning commission as a resubmission of the original recommendation and proceed accordingly.
 - o. All such actions by the governing body shall be based upon findings, conclusions, with respect to the factors contained in paragraph "i" above and the same shall be entered into the official record.
 - p. All proposed amendments to the district map which the governing body approves, shall be adopted by an ordinance (City of Topeka) or resolution (Shawnee County) to complete the amendment to the district map. The proposed rezoning shall become effective upon publication of the respective adopting ordinance or resolution.
 - q. If such amendment affects the boundaries of any zone or district, the respective ordinance or resolution shall describe the boundaries as amended, or if a provision is made for the fixing of the same upon an official map which has been incorporated by reference, the amending ordinance or resolution shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment, shall amend the section of the ordinance or resolution incorporating the same and shall reincorporate such map as amended.
 - r. Development permits may then be issued in accordance with the appropriate district regulations as well as in compliance with other ordinances, resolutions, regulations, and policies of the subject jurisdiction. Except for the planned unit development district, site development plans and construction plans shall be required only in conjunction with an application of a construction permit.
- (c) (1) Whenever five (5) or more property owners of record owning ten (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 by the submission of a petition bearing the signatures of such owners to the governing body, then such petition shall be referred to the planning commission and Staff for study, consideration, hearing, recommendation and report back. Such amendments to the district map under this provision shall require notice by publication in the official newspaper twenty (20) days prior to the date of hearing and shall be considered at a public hearing by the planning commission. Provided further, written notice to any property owners shall not be required and the proposal shall not be subject to a protest petition provision. A filing fee under this provision shall not be required.
- (2) Whenever a governing body initiates a rezoning from a less restrictive to a more restrictive zoning classification of ten (10) or more contiguous or noncontiguous lots,

tracts or parcels of the same zoning clarification having five (5) or more owners of record, such amendments to the district map under this provision shall require notice by publication in the official newspaper twenty (20) days prior to the date of hearing and shall be considered at a public hearing by the planning commission. Provided further, written notice shall only be required to be mailed to the owners of record of the properties to be rezoned and only such owners shall be eligible to file a protest petition. A filing fee under this provision shall not be required.

(Ord. No. 16754, § 28, 9-13-94; Ord. No. 16982, § 1, 7-23-96; Ord. No. 18085, § 2, 9-9-03)

Sec. 48-33.02. Restriction on filing.

Whenever the governing body has denied a proposed amendment to the district map, or whenever the planning commission has conducted a public hearing and made a recommendation on a request to amend zoning and which a request is subsequently withdrawn by the applicant prior to governing body consideration, a one-year refiling limitation from the date of the original petition filing of the application shall apply, except when the planning commission, after due consideration, grants permission to refile within the specified time.

Sec. 48-33.03. Certificate of ownership.

The certificate of ownership compiled by a land title insurance company provided for the purposes of notification to the affected property owners, when prepared and filed not more than 60 days prior to filing an application for rezoning, shall be valid throughout the rezoning process.

Sec. 48-33.04. Legal protest.

(a) *Approval requirements.* Regardless of whether or not the planning commission approves or disapproves a proposed zoning amendment, if a protest against such amendment is filed in the office of the city clerk or county clerk as applicable, within 14 days after the date of the conclusion of the public hearing pursuant to the publication notice, signed by the owners of record of 20 percent or more of any real property proposed to be rezoned or by the owners of 20 percent or of the total area required to be notified by this act of the proposed rezoning of a specific property, excluding streets and public ways, the ordinance or resolution adopting such amendment shall not be passed except by at least a three-fourths vote of all of the members of the governing body.

(b) *Protest petition.* A protest petition shall be submitted on the form provided by the planning agency and shall be considered to be valid when the following information is completed thereon:

- (1) Case identification and location.
- (2) Signature of all owner(s) of record.
- (3) Legal description of the property owned by the protest petitioner.
- (4) Notary public hand and seal.

(c) *Withdrawal of protest.* In the event a petition protesting a change of zoning is filed and the

petitioner desires to withdraw the petition, the petitioner shall file a written statement with either the city clerk or county clerk as was originally filed by the petitioner, prior to the close of business hours of the concluding date to file protest petitions as provided by state statutes applicable to the relevant jurisdiction set forth above.

(d) *Amendment or revision of rezoning application.* In the event there is an amendment or revision to the proposed zoning application with respect to the boundary or zoning classification following the conclusion of the public hearing by the planning commission, resulting from either consideration by the applicant or the governing body, the matter shall be referred back to the planning commission for reconsideration. Prior to reconsideration, publication notice, mailing of notice and a new public hearing shall be held in the like manner of the original application.

In the event that a legal protest of 20 percent has been filed, said protest shall apply regardless of any proposed revisions or amendments to the petition in respect to classification and/or property boundary.

(e) *Action by the governing body.* Whenever a legal protest of 20 percent or more has been filed, the governing body shall not take any action on any proposed change of zoning when any member(s) of the governing body is not present.

(f) *[No further consideration or subsequent action.]* Whenever the governing body has taken a final and conclusive action to amend the district map, henceforth no further consideration or subsequent action shall be taken that will override or overturn the previous action taken; unless and until a new or amended application shall have been filed and the rezoning process shall have been complied with as provided for above.

Sec. 48-33.05. Building and development permit issuance.

No building permit shall be issued nor shall any use be established or increased in intensity, nor shall there be any requested alterations to or construction upon a site in any of the districts for the erection or alteration of a structure or building until a site plan has been submitted and approved for a use as permitted in the applicable district and appropriate development permits including building and zoning permits issued. Said site plan and development permits shall not be approved nor issued which are not in accordance with applicable provisions of the following regulatory measures:

- (a) Floodplain zoning regulations as established by the governing body.
- (b) Airport hazard regulations as established by the governing body.
- (c) Protective measures of the Kansas Historic Preservation Act, K.S.A. 75-2715--75-2725 as amended.
- (d) Permit requirements relating to excavation or construction within 1,000 feet landward to riverward of the centerline of any portion of a flood control works located within the jurisdiction.
- (e) Consideration of applicable changes in zoning, in height or setback restrictions and the granting of variances or exceptions within the state zoning area by the Capitol Area Plaza Authority pursuant to the provisions of K.S.A. 75-3619 et seq.

- (f) Plat of subdivision regulations and subject plat of subdivision except as set forth below:
- (1) Land utilized for agricultural uses as defined by this chapter shall not be required to be a subdivided lot of record.
 - (2) Land on which the principal structure is that of an existing detached single-family dwelling building may be exempted from being a subdivided lot of record by determination of the applicable director of public works of the jurisdiction, all in respect to the issuance of certain permits when the director finds the following conditions exist:
 - a. The requested permit is for an accessory structure or as an addition or alteration to an existing dwelling as determined to be minor in nature by said director of public works.
 - b. Adequate utility and drainage easements exist; adequate street right-of-way exists; and the property is not involved with the future alignment or extension of a public street.
 - c. There are no existing or anticipated drainage problems related to the site or the development.
 - d. The site is serviced by adequate public utilities and services; and the proposed development conforms to the dimensional regulations of the zoning district.
 - (3) Land on which existing or proposed development is to be devoted to such usage that the requirement to plat is impractical and would not result in the betterment to the public interest; and when it is determined by both the planning agency director and the director of public works of the jurisdiction considering the permit that a waiver of the plat of subdivision requirement will not adversely affect the subject property nor nearby properties, and they find that all of the following conditions exist:
 - a. Adequate utility and drainage easements exist; adequate street right-of-way exists; and the property is not involved with the future alignment or extension of a public street.
 - b. There are no existing or anticipated drainage problems related to the site or the development.
 - c. The site is serviced by adequate public utilities and services; and the proposed development conforms to the dimensional regulations of the zoning district.
 - d. That there are special circumstances or conditions affecting the property.
 - e. That the waiver is necessary for the reasonable and compatible development of the subject property.

f. That the granting of the waiver will not be detrimental to the public interest or other properties in the vicinity and will effect substantial justice and promote the general welfare.

(g) Current adopted Shawnee County Wastewater Management Plan, or variances as may be granted by the applicable governing body as provided by said plan.

Sec. 48-33.06. Filing fees.

All applications for amendments to the district map, and conditional use permit shall be accompanied by the appropriate filing fee as herein set forth. In the event, an application may be withdrawn prior to the consideration of either the planning commission or governing body, the applicant may recover the filing fee less the actual expenses incurred by the planning staff.

District		Fee
(a) RA-1; RR-1; R-1; R-2; R-3; and R-4 districts	0--5 acres	\$500.00
	5.1--10 acres	600.00
	10.1--20 acres	700.00
	20.1 + acres	800.00
(b) M-1; M-1a; M-2; M-3; and M-4 districts, per acre		650.00/acre
(c) O&I-1; O&I-2; and O&I-3 districts	0--5 acres	650.00
	5.1--10 acres	700.00
	10.1--20 acres	750.00
	20.1 + acres	800.00
(d) C-1; C-2; C-3; C-4; and C-5 districts	0--5 acres	650.00
	5.1--10 acres	750.00
	10.1--20 acres	850.00
	20.1 + acres	950.00
(e) I-1 and I-2 districts	0--5 acres	650.00
	5.1--10 acres	750.00
	10.1--20 acres	850.00
	20.1 + acres	950.00
(f) U-1 district	Initial petition	950.00 plus 50.00/acre or fraction thereof
	Minor amendment	450.00
	Major amendment	700.00
(g) MS district	0--5 acres	650.00
	5.1--110 acres	700.00
	10.1--120 acres	750.00
	20.1 + acres	800.00
(h) PUD district	Initial petition	950.00 plus 50.00/acre or fraction thereof
	Not to exceed \$7,500.00 Revised master plans (minor amendment)	450.00

	Revised master plans (major amendment)	700.00
	Site plan review/phase	450.00
(i) Conditional use permits	1--5 acres	700.00
	Revisions	325.00
	Site plan amendment	450.00
(j) Revision of conditional use permits or special use permits or former planned districts Other modifications		200.00
(k) Board of appeals		130.00
(l) "H" Historic landmark overlay	Single property	25.00
	Historic district	10.00 per property: 100.00 maximum

(Ord. No. 16720, § 4, 6-14-94; Ord. No. 17464, § 1, 2-1-00; Ord. No. 17740, § 2, 10-16-01; Ord. No. 18085, § 3, 9-9-03)

Sec. 48-33.07. Status of filed petitions.

Any pending applications for an amendment to the district map, a special use permit, or a conditional use permit, which has not received final and concluding action by the respective governing body prior to the enactment and effective date of these regulations, shall meet the requirements of these regulations unless such final and concluding action is taken within 150 days of the date of these regulations shall become effective.

ARTICLE XXXIV.

APPEALS*

* **Cross References:** Boards, commissions and committees, § 2-181 et seq.; board of zoning appeals, § 2-192.

Sec. 48-34.00. Topeka Board of Zoning Appeals.

There is hereby created a Topeka Board of Zoning Appeals, hereinafter referred to as the board of zoning appeals.

(Ord. No. 18288, § 2, 7-13-04)

Sec. 48-34.01. Composition; appointment.

The board of zoning appeals shall consist of seven (7) members appointed by the mayor. None of the members shall hold any other public office by the city except that two (2) members may be members of the Topeka Planning Commission. The appointees shall reside inside the corporate area of the City of Topeka.

(Ord. No. 17156, § 7, 8-12-97; Ord. No. 18288, § 3, 7-13-04)

Sec. 48-34.02. Terms of members.

The members first appointed shall serve respectively for terms of one (1), two (2) or three (3) years, divided equally or as nearly equally as possible between the members. Thereafter, members shall be appointed for terms of three (3) years each. Vacancies shall be filled by appointment for the unexpired term. The members shall serve without compensation.

(Ord. No. 18288, § 4, 7-13-04)

Sec. 48-34.03. Meetings.

The board of zoning appeals shall at its regular meeting in January of each year elect one (1) of its members as chairperson and vice-chairperson. The planning director, or designee, shall act as secretary for the board of zoning appeals. The board of zoning appeals shall adopt its own rules, consistent with the authority granted herein. The board of zoning appeals shall cause records of its meeting to be kept which records contain evidence presented, findings by the board of zoning appeals, decisions of the board of zoning appeals and the vote on each appeal case. Meetings shall be scheduled by the chairperson on a monthly basis.

(Ord. No. 18288, § 5, 7-13-04)

Sec. 48-34.04. Powers and duties, generally.

The board of zoning appeals shall administer the details of appeals from or other matters referred to it regarding the application of the zoning regulations in accordance with the general rules set forth in this chapter, including the power to hear and determine appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning regulations and to permit exceptions to, or variations from this chapter in the classes of cases or situations, in accordance with the purpose, conditions and procedures specified in this chapter. In addition, the board of zoning appeals shall have power to hear and determine appeals from any person whose application for a permit to hang, erect or locate a sign under adopted sign regulations relating to size, height, and illumination has been denied or an appeal by any person desiring to appeal from any decision of the code enforcement director in the enforcement of the city sign regulations.

(Ord. No. 17742, § 1, 10-16-01; Ord. No. 18288, § 6, 7-13-04)

Sec. 48-34.05. Records.

Records of all official actions of the board of zoning appeals shall be filed with the planning department and shall be a public record.

(Ord. No. 18288, § 7, 7-13-04)

Sec. 48-34.06. Notice of appeal.

Appeals to the board of zoning appeals may be taken by any person aggrieved or by any governmental body affected by any officer administering the provisions of this chapter or the provisions of the city sign regulations. Such appeal shall be taken within thirty (30) calendar days of the decision by filing a notice of appeal specifying the grounds thereof and the payment of the filing fee. Said notice of appeal and payment of the filing fee shall be made in the planning department.

(Ord. No. 18288, § 8, 7-13-04)

Sec. 48-34.07. Appeal stays proceedings.

An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies under oath to the board of zoning appeals that a stay would cause imminent threat to life or property. In such case, proceedings shall not be stayed otherwise than by appropriate injunctive relief granted by a court of competent jurisdiction.
(Ord. No. 18288, § 9, 7-13-04)

Sec. 48-34.08. Notice and hearing.

The board of zoning appeals shall fix the time for the hearing of the appeal, give notice of the time, place and subject in such hearing by publishing the same once in the official city newspaper at least twenty (20) days prior to the date fixed for the hearing and by mailing a copy of the notice to each party to the appeal . Notice of appeal as provided for herein shall also be mailed to adjoining property owners, if any, by first class mail. Ownership of adjoining properties shall be established by the records of the register of deeds office, Shawnee County. Failure by any party or adjoining property owner to receive notice shall not invalidate the appeal proceedings. Upon the hearing, any party may appear in person or by agent or by attorney.
(Ord. No. 18288, § 10, 7-13-04)

Sec. 48-34.09. Variances/authority.

The board of zoning appeals may in specific cases authorize a variance from the specific terms of this chapter which will not be contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of this chapter will in an individual case result in unnecessary hardship and provided that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done. Such variance shall not permit either directly or indirectly any use, including defined types of signs, not otherwise permitted by each district use regulations. In no event shall the board of zoning appeals vary or otherwise grant appeals from building and setback lines shown on a recorded plat of subdivision unless done so in accordance with the findings set forth in this chapter.
(Ord. No. 18288, § 11, 7-13-04)

Sec. 48-34.10. Findings.

Before a variance may be granted, the board of zoning appeals shall find that all of the following conditions have been met:

- (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 zone or district and is not created by an action of the property owner or the applicant;
- (b) That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- (c) That the strict application of the provisions of this chapter of which 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, property or general welfare; and

- (e) That granting the variance desired will not be opposed to the general spirit and intent of this chapter.

The secretary of the board of zoning appeals shall cause all variances which are granted by the board of zoning appeals to be filed of record with the Register of Deeds Office, Shawnee County, Kansas.

(Ord. No. 16754, § 29, 9-13-94; Ord. No. 18288, § 12, 7-13-04)

Sec. 48-34.11. Conditions.

The board of zoning appeals may impose such conditions on a variance as are necessary to accomplish the purposes of the zoning regulations, to prevent or minimize adverse impacts upon the public and neighborhoods, and to ensure compatibility of the site with its surroundings. These conditions may include but are not limited to limitations on size, bulk and location; standards for landscaping, buffering and screening, lighting and adequate ingress and egress, and guarantees of performance.

(Ord. No. 18288, § 13, 7-13-04)

Sec. 48-34.12. Exceptions.

The board of zoning appeals shall have the power to permit the following exceptions to the district regulations set forth in this chapter by the issuance of a permit maintaining conditions governing design, construction or operation of the exception so as to adequately safeguard the health, safety and welfare of the occupants of adjoining and surrounding property:

- (a) The reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God or public enemy to the extent of less than fifty percent (50%) of its fair market value where the board finds some compelling necessity requiring a continuance of the nonconforming use and the primary purpose of continuing the nonconforming use is not to continue a monopoly.

(Ord. No. 18288, § 14, 7-13-04)

Sec. 48-34.13. Variances not allowed.

In exercising its authority, the board of zoning appeals shall not grant a variance that would create any of the following effects:

- (a) The effect of the variance on the specific property would adversely affect the land use pattern as outlined by any city land use plan or policy.
- (b) The variance would be material detriment to the public welfare or create injury to the use, enjoyment or value of property in the vicinity.
- (c) The variance is not the minimum variance that will relieve the proven hardship.
- (d) The variance would allow a use not allowed in the permitted zoning district in which the parcel

is located.

- (e) The variance will relieve the applicant of conditions or circumstances that are caused by the illegal subdivision of land, which subdivision of land caused the property to be unusable for any reasonable development under the existing regulations.
- (f) The variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.
- (g) The variance will modify any condition imposed by the Topeka Planning Commission or City Council as part of a conditional use or planned unit development.

(Ord. No. 18288, § 15, 7-13-04)

Sec. 48-34.14. Recording with register of deeds.

The secretary of the board of zoning appeals shall cause all variances which are granted by the board of zoning appeals to be filed of record with the register of deeds.

(Ord. No. 18288, § 16, 7-13-04)

ARTICLE XXXV.

DEFINITIONS

For the purpose of this chapter, certain terms and words are hereby defined. The word "building" shall include the word "structure"; the word "lot" shall include the word "plot, tract, or parcel" and the word "shall" is mandatory and not directory. Any terms not herein defined shall be construed as defined in any applicable building code or upon the interpretation of the legal advisor of the applicable governing body.

Abandonment: The relinquishment of property, or a cessation of the use of the property, for a period of one year (365 calendar days) or longer by the owner with the intention neither of transferring rights to the property to another owner nor of resuming the use of the property.

Abutting: Having property or district lines in common; e.g., two lots are abutting if they have property lines in common.

Accessory building or use: A building or use which: (1) is subordinate to and serves a principal building or principal use; (2) is subordinate in area, extent, or purpose to the principal building or principal use served; (3) contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use; and (4) is located on the same zoning lot as the principal building or principal use.

Addition: Any construction which increases the size of a building such as a porch, attached garage or carport or a new room or wing.

Adjacent: Nearby, but not necessarily touching.

Adjoining lot or land: A lot or parcel of land which shares all or part of a common lot line with another

lot or parcel of land.

Adult motion picture theater: An enclosed building used for presenting filmed material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as defined herein) for observation by patrons therein.

Agriculture: Land devoted to the production of plants, animals, or horticultural products, including but not limited to: forages, grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef, cattle, sheep, swine and horses; trees and forest products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes; suburban residential acreages, rural homesites or farm homesites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.

Aisle: A paved surface which is connected directly to a parking space and designated to permit ingress or egress of a vehicle to or from the parking space. In no case can an aisle be a drive.

Alley: A public thoroughfare which affords only a secondary means of access to abutting property.

Alteration: Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders or interior partitions, as well as any change in doors or windows, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another.

Animal hospital (small): A building or premises for the medical or surgical treatment of domestic animals or pets, including dog, cat and veterinary hospitals.

Animal hospital (large): An establishment, where animals are admitted principally for examination, treatment, board, or care, by a doctor of veterinary medicine.

Antenna: An exterior apparatus designed for transmitting or receiving television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electronic communication.

Apartment hotel: A building designed for or containing both apartments or suites of rooms, which caters primarily to tenants with flexible occupancy duration needs. Incidental businesses may be conducted only as a service for persons residing therein, provided there is no entrance to such place(s) of business except from the interior of the building.

Apartment house: A building or that portion thereof containing more than four dwelling units or efficiency apartments.

Area: Synonymous with the word "tract," which is "a piece of land capable of being described with such definiteness that its location may be established and boundaries definitely ascertained."

Automobile sales lot: A lot arranged, designed, or used for the storage and display for sale of any motor vehicle or any type of trailer provided the trailer is unoccupied, and where no repair work is done except minor

incidental repair of automobiles or trailers displayed and sold on the premises.

Automobile wrecking yard: An area outside of a building where motor vehicles are disassembled, dismantled, junked or "wrecked," or where motor vehicles not in operable condition or used parts of motor vehicles are stored.

Automotive service station:

Type 1: A facility which dispenses automotive fuels and oil only together with the retail sales of incidental merchandise such as packaged beer, nonalcoholic beverages, ice, candy, cigarettes, snacks and convenience packaged foods.

Type 2: A facility which dispenses automotive fuels and oil together with replacement automotive parts such as fan belts, hoses, sparkplugs, tires and tubes, ignition parts, batteries, shock absorbers, fuses, etc., including incidental merchandise as defined above. Minor automotive services shall be permitted, which includes minor repair and replacement.

1. Lubrication.
2. Tire repair.
3. Brake repair and wheel balancing.
4. Muffler and exhaust system repair.
5. Shock absorber replacement.
6. Engine adjustment (tuneup).
7. Replacement of pumps, cooling systems, generators, alternators, wires, starters, air conditioners, bearings, and other similar devices.
8. Radio repair.
9. Glass replacement.
10. And other similar repair and replacement services normally deemed to be emergency and convenience services; however, the same shall not include drive train units such as the engine, transmission or drive components.

Type 3: A facility which may include those uses defined in types 1 and 2, and specifically includes repair, rebuilding and replacement of drive train units of automobiles, pickup trucks, street vans, motorcycles and racing vehicles.

Awning: A roof-like cover that is temporary in nature and that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

Basement: A story partly or wholly underground. For purposes of height measurement, a basement shall be counted as a story where more than one-half of its height is above the average finished grade.

Bed and breakfast home: A private, owner-occupied single-family dwelling where no more than four guestrooms are provided for overnight paying guests for not more than seven consecutive nights. The dwelling shall be the primary residence of the owner with no employees permitted, other than permanent residents of the dwelling.

Bed and breakfast inn: A single-family structure or portion thereof, that provides not more than ten guestrooms for overnight paying guests. Food service may be provided for guests and in conjunction with social events.

Block: A piece of land usually bounded on all sides by streets or other transportation routes such as railroad lines, or by physical barriers such as water bodies or public open space, and not traversed by a through street.

Boarding home: Any dwelling where for compensation and by prearrangement lodging with or without food is provided for three or more persons but not exceeding 20 persons in contradiction to hotels. No personal care is provided.

Building: Any structure for the shelter, support or enclosure of persons, animals, chattels or property, of any kind; and when separated by dividing walls without openings, each portion of such building, so separated, shall be deemed a separate building.

Buildable area: The space remaining on a zoning lot after the minimum open-space requirements (coverage, yards and setbacks) have been met.

Building code: Regulations governing building design, construction and maintenance, to protect the health, safety and welfare of the public.

Building coverage: The proportion of the lot area, expressed as a percent, that is covered by the maximum horizontal cross section of a building or buildings. Structures which are below the finished lot grade, including shelters for nuclear fallout, shall not be included in building coverage.

Building, detached: A building having no party wall in common with another building.

Building line: A building limit fixed at a specific distance from the front, side or rear boundaries of a lot beyond which a structure cannot lawfully extend.

Building, principal: A building in which is conducted the principal use of the lot on which it is situated.

Building setback line: The line nearest the street and across a lot establishing the minimum open space to be provided between buildings and specified structures and street lines.

Bulk: The term used to describe the size of buildings or other structures, and their relationships to each

other and to open areas and lot lines, and therefore includes: (a) the size of buildings or other structures, (b) the area of the zoning lot upon which a residential building is located, and the number of dwelling units or rooms within such building in relation to the area of the zoning lot, (c) the shape of buildings or other structures, (d) the location of exterior walls of buildings or other structures in relation to lot lines, to other walls of the same building, to legally require windows, or to other buildings or other structures, and (e) all open areas relating to buildings or other structures and their relationship thereto.

Bulk regulations: The combination of controls which established the maximum size of a building and its location on the lot. Components of bulk regulations include: size and height of building; location of exterior walls at all levels with respect to lot lines, streets, or other buildings; building coverage; gross floor area of buildings in relation to lot area (floor area ratio); open space (yard) requirements; and amount of lot area provided per dwelling unit.

Business; business use: Employment of one or more persons for the purpose of earning a livelihood, activities of persons to improve their economic conditions and desires, and generally relate to commercial and industrial engagements.

Carport: Space for the housing or storage of motor vehicles and enclosed on not more than two sides by walls.

Caterer: An individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit selling alcoholic liquor in accordance with the terms of such permit.

Cellar: A space with less than one-half of its floor-to-ceiling height above the average finished grade of the adjoining ground or with a floor-to-ceiling height of less than 6 1/2 feet.

Cemetery: Property used for the interring of the dead.

Certificate of occupancy: Official certification that a premises conforms to provisions of the zoning ordinance (and building code) and may be used or occupied.

Class A club: A premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veteran's club, as determined by the State of Kansas, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests accompanying them.

Class B club: A premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

Classification: (1) Division of uses or activities into groups or subgroups for regulatory purposes; (2) the process of deciding what uses should be permitted in what zoning districts; and (3) the zone requirements imposed on a particular piece of property. A subsequent change in a classification is called a reclassification.

Clinic: An establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists or social workers and where patients are not usually lodged overnight.

Club or lodge, private: A building and facilities owned, leased or operated by a corporation, association, person, or persons for a social, educational or recreational purpose; but not primarily for profit or to render a service which is customarily carried on as a business; and shall not include or be construed as a class A or class B club.

Common open space: A parcel of land, an area of water, or a combination of land and water within a development which is designed for, and designated as space for the use and enjoyment of residents of the development. Common open space may contain landscaping, and such recreational improvements as are necessary for the benefit and enjoyment of the residents, such as swimming pools, tennis courts, etc. Parking lots and storage areas shall not be considered as open space.

Communication antenna: An antenna or array of antennas at one location intended to broadcast and receive signals as part of a wide-area, communication system such as cellular telephone systems, pager systems or wireless computer networks, but excluding short-wave radio antennas operated primarily as a hobby.

Communication tower: A ground-mounted guyed, monopole or self-supporting tower, constructed as a free-standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication. Not included in this definition are towers which are held, used or controlled exclusively for public purposes by any department or branch of government. Such towers are defined as a public use facility and regulated accordingly.

Community center: A building together with lawful accessory buildings and uses, used for recreational and cultural activities and usually not operated for profit. Membership may be restricted to persons living in a specific geographical area.

Community facilities: Public or privately owned facilities used by the public, such as streets, schools, libraries, parks and playgrounds; also facilities owned and operated by nonprofit private agencies such as churches, settlement houses and neighborhood associations.

Community living facility, type I: A dwelling building or portion thereof, and premises other than a hospital, operated and licensed in accordance with any and all applicable state and local requirements, in which short term residential care for profit or not-for-profit is provided as well as supportive programs which assist or train the recipients to address or improve their living skills relative to chemical dependency, behavioral modification, domestic abuse, mental illness, economic recovery, job training, emergency shelter, and similar such physical, economic, or social reintegration programs. Although recipients do not require intensive treatment or secure environment, structured programs often include individual and group counseling, recreational and social activities, milieu therapy and individual work therapies designed to provide a transition and reentry into society, gainful employment, and sustained welfare upon leaving the facility. Residents are not in need of acute medical or psychiatric care and the facility is operated on a 24-hour basis. Community living facility, type I, does not include correctional placement residence or facility.

Community living facility, type II: A dwelling building or portion thereof, and premises other than a hospital, operated and licensed in accordance with any and all applicable state and local requirements, in which residential care for profit or not-for-profit is provided; intermediate treatment programs in a therapeutic setting for diagnostic and primary treatment environment relative to chemical dependency, behavioral modification, and mental illness and similar such physical and social treatment programs may be provided. Residents are not in need of acute medical or psychiatric care and the facility is operated on a 24 - hour basis and may be operated as a secure facility. Community living facility, type II, does not include correctional placement residence or facility.

Community service organization: An organization, group or association formed for the single purpose of providing a philanthropic service for the community, but not to include any use which provides social or physical entertainment, except as a part of the philanthropic services.

Compatibility: The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict.

Comprehensive plan: A plan intended to guide the growth and development of a community or region and one that includes analysis, recommendations and proposals for the community's population, economy, housing, transportation, community facilities and land use.

Conditional use: A use permitted in a particular zoning district only upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of such use as specified in a zoning ordinance and authorized by the governing body.

Condominium: The legal arrangement in which a dwelling unit in an apartment building or residential development is individually owned but in which the common areas are owned, controlled and maintained through an organization consisting of all the individual owners.

Construction and demolition waste: Means waste building materials and rubble resulting from construction, remodeling, repair or demolition operations on houses, commercial buildings, other structures and pavements.

Conversion: The conversion of the use of an existing building into another use.

Correctional facility: A public use facility providing housing and care for individuals confined for violations of law. Typical uses include jails, prisons, and juvenile detention centers. A correctional facility does not include a correctional placement residence or facility general or a correctional placement residence or facility limited.

Correctional placement residence or facility: A facility for individuals or offenders that provides residential and/or rehabilitation services for those who reside or have been placed in such facilities due to any one of the following situations: (1) prior to, or instead of, being sent to prison; (2) received a conditional release prior to a hearing; (3) as a part of a local sentence of not more than one year; (4) at or near the end of a prison sentence, such as a state operated or franchised work release program, or a privately operated facility housing parolees; or (5) received a deferred sentence and placed in a facilities operated by community corrections. Such

facilities will comply with the regulatory requirements of a federal, state or local government agency; and if such facilities are not directly operated by a unit of government they will meet licensure requirements that further specify minimum service standards.

Correctional placement residence or facility general: A facility occupied by more than 15 individuals, including staff members who may reside there.

Correctional placement residence or facility limited: A facility occupied by three to 15 individuals, including staff members who may reside there.

Country club: A land use consisting of both a golf course and a clubhouse building for social assembly, food and beverage preparation/service, pro shop, club office, recreational and physical exercise facilities including fitness center, spa, swimming pool, court games, locker and shower facilities; and vehicle parking areas and drives. Country club facilities are open to members and their guests for a membership fee.

Court: An open space which may or may not have street access, and around which is arranged a single building or group of related buildings.

Court, inner: That portion of a lot unoccupied by any part of a building, surrounded on all sides by walls, or by walls and a lot line.

Court, outer: That portion of a lot unoccupied by any part of a building, opening onto a street, alley, or yard.

Crisis center, type I: A facility or portion thereof and premises, which is used for purposes of emergency shelter, crisis intervention, including counseling, referral, hotline response, and similar human social service functions. Said facility shall not include meal preparation, except for residents of the center, distribution, or service; merchandise distribution; or shelter, including boarding, lodging, or residential care.

Crisis center, type II: A facility or portion thereof and premises, which is used for purposes of emergency shelter, crisis intervention, including counseling, referral, hotline response, and similar human social service functions; meal preparation, distribution, and service; merchandise distribution; and temporary and/or transient shelter, including boarding and lodging facilities.

Cultural facilities: Establishments such as museums, libraries, art galleries, botanical and zoological gardens of a historic, educational or cultural interest which are not operated commercially.

Dancehall or ballroom: An establishment used primarily for dancing and where serving of drinks, food or entertainment is secondary.

Day care: Providing various levels of some or all of the following care as well as those services generally so associated, to individuals for less than 24 hours a day: food and dietetic services; transportation, social, recreational, educational and activity arrangements; watchful and protective oversight; and supervision.

Day care facility, type I: A structure inhabited as a dwelling unit or portion thereof, and premises, operated and licensed in accordance with any and all applicable state and local requirements and conducted in

the resident's dwelling unit in which care is provided for profit or not for profit, to children and/or adults on a regular schedule for less than 24 hours a day to a maximum of 12 persons.

Day care facility, type II: A structure or portion thereof, and premises, operated and licensed in accordance with any and all applicable state and local requirements, in which care is provided for profit or not for profit, to children and/or adults on a regular schedule for less than 24 hours a day, and which may be operated as a secondary and/or ancillary use to a primary or principal use, such as, but not limited to a place of worship, community center, library, or private business, and associated with that activity.

Demolition landfill: The disposition of nonputrescible materials or debris such as concrete, asphalt, brick, wood, plastic, rubber, metal, and other similar materials.

Density: The average number of families, persons, or housing units per unit of land; usually density is expressed "per acre."

Developer: The legal or beneficial owner or owners of a lot or of any land included in a proposed development including the holder of an option or contract to purchase, or other persons having enforceable proprietary interests in such land.

Development: The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance and any use or extension of the use of land.

Disability: With respect to a person:

- (a) A physical or mental impairment which substantially limits one or more of such person's major life activities;
- (b) A record of having such an impairment; or
- (c) Being regarded as having such an impairment. Such term does not include current, illegal use or addiction to a controlled substance, as defined in section 102 of the Controlled Substance Act (21 USC 802).

District: Any section of the jurisdiction for which the regulation governing the use of buildings and premises or the height and area of building and premises or the height and area of buildings are uniform.

District map: The boundaries of the zoning districts as they presently exist or as they may from time to time be amended are shown upon the "district map" on file in the office of the planning director, which boundaries shall have the same force and effect as though fully set forth or described herein.

Domestic animal: Small animals that are customarily kept for personal use or enjoyment such as, but not limited to, dogs, cats, tropical birds, rabbits and rodents.

Dormitory: A building or part of a building operated by an institution and containing a room or rooms forming one or more habitable units which are used or intended to be used by residents of the institution for

living and sleeping, but not for cooking or eating purposes.

Drinking establishment: A premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

Driveway: A paved surface designed to provide vehicular access to a parking area.

Dwelling: A building or portion thereof, used exclusively for residential occupancy, including one-family, two-family and multiple-family dwellings, but not including hotels, motels, lodginghouses, boardinghouses, tourist homes, nor house trailers and mobile homes as defined by this article.

Dwelling, attached: A one-family dwelling attached to two or more one-family dwellings by common vertical walls.

Dwelling, detached: A dwelling which is designed to be and is substantially separate from any other structure or structures except accessory buildings.

Dwelling, farm: A residence which is or intended to be occupied by a family or persons engaged in agricultural pursuits; and the same is located on the premises where the agricultural pursuits are being performed.

Dwelling, multiple-family: A building or portion thereof used for occupancy by three or more families living independently of each other, and doing their own cooking in the building, including apartments, group houses, and row houses.

Dwelling, row house or townhouse: One of a series of three or more attached dwelling units separated from one another by continuous vertical party walls without openings from basement floor to roof.

Dwelling, semidetached: A one-family dwelling attached to one other one-family dwelling by a common vertical wall, and each dwelling located on a separate lot.

Dwelling, single-family: A building designed and/or used exclusively for residential purposes for one family only and containing not more than one unit, including site-built homes and residential-design manufactured homes, but not including house trailers and mobile homes as defined by this article.

Dwelling, single-family detached: A dwelling which is designed for and occupied by not more than one family and surrounded by open space or yards and which is not attached to any other dwelling by any means.

Dwelling, two-family: A structure on a single lot containing two dwellings units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units.

Dwelling unit: Consists of one or more rooms, including a bathroom and complete kitchen facilities, which are arranged, designed or used as living quarters for one family or household.

Easement: A grant of one or more of the property rights by the property owner to and/or for the use by

the public, a corporation or another person or entity.

Eating place: A retail establishment primarily engaged in the sale of prepared food and/or beverages.

Educational institution: A college, university or incorporated academy providing general academic instruction equivalent to the standards prescribed by the state board of education.

Elderly housing: A dwelling especially designed for use and occupancy of persons who are aged or who are handicapped within the meaning of section 202 of the Housing Act of 1959, section 102(5) of the Development Disabilities Services and Facilities Construction Amendments of 1970 or section 223 of the social security act.

Enlargement, or to enlarge: An "enlargement" is an addition to the floor area of an existing building, an increase in the size of any other structure, or an increase in that portion of a tract of land occupied by an existing use.

Establishment: Shall mean all the physical facilities, land and buildings or portions thereof, which when considered as a whole comprise a specific use.

Exception: An exception shall mean the allowance of an otherwise prohibited use within a given district, such use and the conditions by which it may be permitted being clearly and specifically stated within these zoning regulations, and the allowance being by express permission of the board of zoning appeals.

Extension, or to extend: An increase in the amount of existing floor area used for an existing use within an existing building. To "extend" is to make an extension.

Exterior wall surface: The most exterior part of a wall, sun screen or any screening or material covering a building.

Fabrication: That part of manufacturing which relates to stamping, cutting or otherwise shaping processed materials into objects and may include the assembly of standard component parts, but does not include extracting, refining, or other initial processing of basic raw materials.

Family: An individual or two or more persons related by blood, marriage, or adoption, or a group of not more than five persons (excluding servants) not related by blood or marriage, living together as a single housekeeping unit in a dwelling unit.

Fence: Any construction of wood, metal, wire mesh, masonry, or other material, erected for the purpose of assuring privacy or protection.

Filling station: Any building or premises used solely or principally for the storing, dispensing, sale or offering for sale at retail of any automotive fuels and lubricants and automotive accessories.

Floor area, net: The sum of the areas of the several floors of the structure, as measured by the exterior faces of the walls, including fully enclosed porches and the like as measured by the exterior limits thereof, but excluding (a) garage space which is in the basement of a building or, in the case of garage space accessory to a

dwelling, is at grade, (b) basement and cellar areas devoted exclusively to uses accessory to the operation of the structure, and (c) areas elsewhere in the structure devoted to housing mechanical equipment customarily located in the basement or cellar such as heating and air conditioning equipment, plumbing, electrical equipment, laundry facilities, and storage facilities.

Floor area, gross: The sum of the gross horizontal areas of the several floors of a building, including interior balconies, mezzanines and accessory buildings. All horizontal dimensions are to be made between the exterior faces of the building walls.

Floor area ratio: A mathematical expression determined by dividing the total floor area of a building by the area of the lot on which it is located, as

Floor area/Lot area = Floor area ratio

Fraternity or sorority house, collegiate: A building used by an association of students, meeting periodically, limited to members, normally having culinary and sleeping facilities.

Frontage: The line(s) or portion of the bounding perimeter of a lot, tract, or parcel which abut, is coincident with and parallel to, the length segment of a public street right-of-way; or which abut and is coincident to the right-of-way line of a permanent public terminus or cul-de-sac.

Garage: A deck, building or structure, or part thereof, used, or intended to be used for the parking and temporary storage of vehicles.

Garage, attached: A private garage which has a roof or wall, or major portion of a roof or wall, in common with a dwelling. Where the garage is attached to a dwelling in this manner, it shall be subject to all yard requirements of the main building.

Garage, automobile repair: An establishment having facilities for the general repair of motor vehicles such as maintenance, mechanical repair, wreck rebuilding, body and fender repair, tire recapping, auto glass replacement, or for the hiring or storage of motor vehicles.

Garage, carwash: A building or portion thereof, designed or used exclusively for washing motor-driven vehicles, and matters incidental thereto.

Garage, private: An accessory building designed or used for the storage of motor-driven vehicles owned and used by the occupants of the building to which it is an accessory.

Garage, public: A building, or portion thereof, other than a private customer and employee garage or private residential garage, used primarily for the parking and storage of vehicles and available to the general public.

Garage, storage: A building or portion thereof designed or used exclusively for housing of motor-driven vehicles, not used by occupants of the lot on which the building or portion thereof is situated.

Golf course: A tract of land for playing golf, improved with tees, greens, fairways, hazards, and which

may include drives, vehicle parking and shelters.

Governing body: Means the Council of Topeka, Kansas, or the Board of Shawnee County Commissioners as applicable.

Grade:

- (a) For buildings having walls adjoining one street, the grade is the elevation of the sidewalk at the center of the building wall adjoining the street.
- (b) For buildings having walls adjoining more than one street, the grade is the average of the elevation of the sidewalk, at the centers of the building walls adjoining the streets.
- (c) For buildings having no wall adjoining the street, the grade is the average level of the finished surface of the ground adjacent to the exterior building walls. Any wall approximately parallel to and not more than five feet from a street line is to be considered as adjoining the street. Where no sidewalk exists the grade shall be established by the city engineer or county engineer.

Ground floor: The first floor of a building other than a cellar or basement.

Ground floor area: The square foot area of a building within the largest outside dimensions, exclusive of open porches, breezeways, terraces, garages, exterior stairways, and secondary stairways.

Group home: A dwelling occupied by not more than ten persons, including eight or fewer persons with a disability who need not be related by blood or marriage and not to exceed two staff residents who need not be related by blood or marriage to each other or to the residents of the home, which dwelling is licensed by a regulatory agency of this state. Group Home does not include group residence general or group home limited.

Group residence general: A residential dwelling that is occupied by nine to 15 persons, including more than eight persons each with a disability, none of whom needs to be related by blood or marriage, that is not a group home as defined herein.

Group residence limited: A residential dwelling that is occupied by not more than ten persons, including a maximum of eight persons each with a disability and a maximum of two staff residents, none of whom needs to be related by blood or marriage, that is not a group home as defined herein.

Habitable room: A room in dwelling unit designed to be used for living, sleeping, eating, or cooking, excluding bathrooms, toilet compartments, closets, halls, storage and similar space.

Handcrafts: Any occupation in which articles are fashioned totally or chiefly by hand with manual and often artistic skill involved, materials normally being leather, malleable metals, plastics, glass, fabrics or wood.

Handicap: With respect to a person:

- (a) A physical or mental impairment which substantially limits one or more of such person's major life activities;

- (b) A record of having such an impairment; or
- (c) Being regarded as having such an impairment. Such term does not include current, illegal use of or addition to a controlled substance, as defined in section 102 of the Controlled Substance Act (21 USC 802).

Health care facility: A facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, boardinghome or other home for sheltered care, and bioanalytical laboratory or central services facility serving one or more such institutions but excluding institutions that provide healing solely by prayer. See *Health services*.

Health services: Establishments primarily engaged in furnishing medical, surgical or other services to individuals, including the offices of physicians, dentists and other health practitioners, medical and dental laboratories, outpatient care facilities, blood banks, and oxygen and miscellaneous types of medical supplies and services.

Height of building: The vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whatever yields a greater height of building:

- (a) The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than ten feet above lowest grade.
- (b) An elevation ten feet higher than the lowest grade when the sidewalk or ground surface described in item (a) above is more than ten feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building.

Home occupation: Any activity carried out for gain by a resident conducted within the limitations and performance standards established by these regulations, as an accessory use in the resident's dwelling unit.

Hospital: An institution providing health services, primarily for inpatients, and medical or surgical care of the sick or injured, including as an integral part of the institution, such related facilities as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

Hotel: A commercial establishment containing 20 or more individual sleeping rooms or suites, having each a private bathroom attached thereto, for the purpose of providing overnight lodging facilities to the general public for compensation with or without meals, excluding accommodations for employees, and in which ingress and egress to and from all rooms is made through an inside office or lobby supervised by a person in charge at

all hours. Where a hotel is permitted as a principal use, all uses customarily and historically accessory thereto for the comfort, accommodation and entertainment of the patrons, including the service of alcoholic beverages, shall be permitted.

House trailer: A vehicular portable dwelling unit designed especially for shortterm occupancy; such as travel trailers, campers, houseboats, converted buses and other similar units whether self-propelled, pulled or hauled and are designed primarily for highway travel without a special permit; and/or does not comply with all the requirements of the minimum housing code as a dwelling unit. See *Manufactured home*.

Improvement: Any building, structure, place, work of art, or other object constituting a physical betterment of real property, or any part of such betterment.

Industrial park: Is a special or exclusive type of planned industrial area designed and equipped to accommodate a community of industries, providing them with all necessary facilities and services in attractive surroundings among compatible neighbors.

Infill: Development or redevelopment of land that has been bypassed, remained vacant, and/or is under utilized as a result of the continuing urban development process. Generally, the areas and/or sites are not particularly of prime quality, however they are usually served by or are readily accessible to the infrastructure (services and facilities) provided by the applicable local governmental entity. Utilization of such lands for new housing and/or other urban development is considered a more desirable alternative than to continue to extend the outer development pattern laterally and horizontally thus necessitating a higher expenditure for capital improvements than would be required for infill development. The use of infill development, among others, promotes best the utilization of resources and also will tend to have a positive impact upon the tax and other fiscal policies.

Institution: A building occupied by a nonprofit corporation or nonprofit establishment for public use.

Intensity: The degree to which land is used.

Intersecting street: Any street, public way or court, which joins another at an angle, whether or not it crosses the other.

Junk: Any scrap, waste, reclaimable material or debris, whether or not stored or used in conjunction with dismantling, processing, salvage, storage, baling, disposal or other use or disposition.

Junkyard: A place where junk, waste, discarded, or salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including automobile wrecking yards, house wrecking, and structural steel materials and equipment, but not including the purchase or storage of used furniture, household equipment and used cars in operable condition, used or salvaged materials as part of manufacturing operations.

Kennel: Any facility that is used for the boarding, breeding, raising and/or training of domestic animals for business or commercial purposes.

Kitchen: Any room used, intended to be used or designed to be used either wholly or partly for cooking and/or the preparation of food.

Laboratory: A building or part of a building devoted to the testing and analysis of any product or animal (including humans). No manufacturing is conducted on the premises except for experimental or testing purposes.

Laboratory, medical: An establishment which provides bacteriological, biological, medical, X-ray, pathological and other similar analytical or diagnostic services. Fabrication is limited to the custom fabrication of dentures, optical lenses, braces or other orthopedic appliances.

Landfill, demolition: Means a method of disposing on land of construction/demolition wastes which are transported to a permitted disposal area from an off-site source, and disposing of said wastes without creating nuisances or hazards to public health or safety of the environment.

Landfill, sanitary: Means a method of disposing of refuse/solid wastes on land without creating nuisances or hazards to the public health or safety of the environment at a permitted solid waste disposal area which meets the standards prescribed by the state or local unit of government.

Landscaped area: An area that is permanently devoted and maintained to the growing of shrubbery, grass and other plant material.

Landscaping: Landscaping shall mean that an area is permanently devoted to and maintained for the growing of trees, shrubs, lawns and other plant materials. Landscaping may also include such features as pedestrian walks, fountains, statuary, and similar ornamental objects designed and arranged to produce an aesthetically pleasing effect. All landscaping shall conform to all applicable development standards adopted by the City of Topeka.

Land-use plan: A basic element of a comprehensive plan, it designates the future use or reuse of the land within a given jurisdiction's planning area, and the policies and reasoning used in arriving at the decisions in the plan.

Lattice tower: A guyed or self-supporting three- or four-sided, open, steel frame structure used to support telecommunications equipment.

Laundromat: An establishment providing washing, drying or dry cleaning machines on the premises for rental use to the general public for family laundering or dry cleaning purposes.

Laundry: An establishment where commercial laundry work is undertaken.

Library: A place in which books, manuscripts, musical scores or other literary and artistic materials are kept for use and only incidentally for sale.

Loading space: An off-street space, at least ten feet by 50 feet, with a minimum height clearance of 14 feet, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts on a street or other appropriate means of access.

Lodginghouse: A building where lodging only is provided for compensation to three or more, but not

exceeding 20 persons, in contradistinction to hotels open to transients.

Lot: An area of land delineated on a subdivision plat as a separate and distinct parcel of land intended for the purpose of transfer of ownership, or establishment of individual building or use.

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

Lot, building: Land occupied or to be occupied by a building and its accessory buildings, or by a dwelling group and its accessory buildings, together with such open spaces as are required under the provisions of this ordinance, having not less than the minimum area and width required by this chapter for a lot in the district in which such land is situated, and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of the law to be adequate as a condition of the issuance of a building permit for a building on such land.

Lot-by-lot development: The conventional approach to development in which each lot is treated as a separate development unit conforming to all land-use, density, and bulk requirements.

Lot, corner: A lot abutting upon two or more streets at their intersection.

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.

Lot depth: The mean horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot, double frontage: A lot having a frontage on two nonintersecting streets, as distinguished from a corner lot.

Lot frontage: The length of the front lot line measured at the street right-of-way line.

Lot, interior: A lot bounded by a street on only one side; any lot other than a corner lot.

Lot line, front: The line separating the lot from the street.

Lot line, rear: The line which most nearly qualifies as the line most distant and opposite from the front lot line; where the lot is irregularly shaped, a line perpendicular to the mean direction of the side lot lines.

Lot line, side: Any lot line other than a front lot line or a rear lot line.

Lot lines: The lines bounding a lot.

Lot of record: A lot which is part of a recorded subdivision or a parcel land which has been recorded in the office of the register of deeds.

Lot width: The distance between the side lot lines, measured along the setback line as established by this chapter, or if no setback line is established, the distance between the side lot lines measured along the street

line.

Manufacture: To engage in the mechanical or chemical transformation of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

Manufactured home: Means a structure which is subject to the federal manufactured home construction and safety standards established pursuant to 42 USC 5403.

Marquee or canopy: A roof-like structure of a permanent nature which projects from the wall of a building and overhangs the public way.

Medical care facility, type I: A dwelling building or portion thereof, and premises, operated and licensed in accordance with any and all applicable state and local requirements, in which reception, accommodation, board, residential and personal care, nursing care (simple, supervised, or skilled) and treatment for profit or not for profit, is provided to a maximum of two individuals who are not acutely ill and not in need of hospital care, but who may require nursing care and domiciliary care; and who are unrelated by blood, adoption, or marriage to the caregivers, administrator or owner. Said facility may be staffed with licensed nursing personnel and other staff as required, and operate on a 24-hour-a-day basis.

Medical care facility, type II: A dwelling building or portion thereof, and premises, operated and licensed in accordance with any and all applicable state and local requirements, in which reception, accommodation, board, residential and personal care, nursing care (simple, supervised, or skilled) and treatment for profit or not for profit, is provided to three or more individuals who are not acutely ill and not in need of hospital care, but who may require nursing care and domiciliary care; and who are unrelated by blood, adoption, or marriage to the caregivers, administrator or owner. Said facility may be staffed with licensed nursing personnel and other staff as required, and operated on a 24-hour-a-day basis.

Metes and bounds: A system of describing and identifying land by measures (metes) and direction (bounds) from an identifiable point of reference.

Mobile home: A manufactured structure as constructed for dwelling purposes and which is not subject to the Federal Manufactured Home Construction and Safety Standards as established pursuant to 42 U.S.C. section 5403.

Mobile home, ANSI certified: A mobile home which has certification as being in compliance with parts B to E, inclusive, of the standard for mobile homes as developed by the American National Standards Committee on Mobile Homes and Recreational Vehicles and designated as ANSI no. A119.1 1975, all pursuant to the provisions of K.S.A. 75-1220.

Mobile home park: A parcel or tract of land under single ownership which has been planned and improved for the placement of mobile homes for dwelling purposes.

Mobile home stand: That part of an individual mobile home space which has been planned and improved for the placement of the mobile home and additions or attachments thereto.

Monopole tower: A communication tower consisting of a single pole, constructed without guy wires and ground anchors.

Mortuary: A place for the storage of human bodies prior to burial or cremation.

Motel: A commercial establishment consisting of a group of attached living or sleeping accommodations with bathrooms and closet space, located on a single zoning lot, and designed for use by transient automobile tourists. A "motel" furnishes customary hotel services such as maid service and laundering of linen, telephone and secretarial or desk service, and the use and upkeep of furniture. In a "motel" less than 50 percent of the living and sleeping accommodations are occupied or designed for occupancy by persons other than transient automobile tourists.

Museum: An establishment operated as a repository or a collection of nature, scientific, or literary curiosities or objects of interest or works of art, not including the regular sale or distribution of the objects collected.

Neighborhood: The smallest subarea in planning, defined as a residential area whose residents have public facilities and social institutions in common, generally within walking distance of their homes.

Nonconforming structure or building: A structure or building the size, dimension or location of which was lawful prior to the adoption, revision or amendment to a zoning, ordinance or resolution, but which fails by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.

Nonconforming use: A use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance or resolution, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the zoning district.

Occupancy, change of: A discontinuance of an existing use and substitution of a use of a different kind.

Occupy: To take or enter upon possession of.

Office: A building or portion of a building wherein services are performed involving predominantly administrative, professional, or clerical operations.

Open space: That ground area and the space above which is unimpeded from the ground to the sky by any main structure except that the area may be used for landscaping, recreational purposes such as for swimming, shuffleboard, tennis, etc. Parking lots and storage areas for vehicles and material shall not be considered as open space.

Owner: An individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

Ownership certificate: A listing of properties within an identified area by legal description and address, together with corresponding ownership of those having proprietary ownership; all as compiled by an abstract and/or title company for purposes for notification.

Parcel: A lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development.

Park: A tract of land designated and used by the public for active and passive recreation.

Parking lot: An off-street, ground-level area, usually surfaced and improved, for the temporary storage of motor vehicles.

Parking space: A paved surface, exclusive of an aisle, which is intended for off-street vehicular parking.

Performance standards: Specific criteria limiting the operations of certain industries; land uses, and buildings to acceptable levels of noise, air pollution emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic generation and visual impact.

Permitted use: Any use authorized in a particular zoning district.

Person: A corporation, company, association, society, firm, partnership or joint stock company as well as an individual, a state and all political subdivisions of a state or any agency or instrumentally thereof.

Personal care: Protective care with or without watchful oversight of a resident who does not have an illness or a condition which requires chronic or convalescent medical or nursing care with a 24-hour responsibility for the safety of the resident when in the building.

Personal services: Establishments primarily engaged in providing services involving the care of a person and his or her apparel.

Pharmacy: A place where drugs, prosthesis, rehabilitation equipment and medicines are prepared and dispensed.

Place: An open unoccupied space other than a street or alley permanently reserved as the principal means of access to abutting property.

Planned unit development (PUD): A form of development characterized by a unified site design for a number of housing units, clustering buildings and providing common open space, density increases, and a mix of building types and land uses.

Planning commission: The Topeka Planning Commission.

Plat: A map of a subdivision, showing the location, boundaries, and ownership of individual properties.

Platting: Whenever the term platting or platted is used within these zoning regulations it shall refer to the process established by the subdivision regulations of the City of Topeka, Kansas.

Plot: An indefinite term usually referring to a piece of usable property, often used synonymously with parcel or site.

Plot area: The total area within the property line of a plot.

Plot, corner: A plot abutting upon two or more streets at their intersection.

Plot coverage: The total area of building expressed as a percentage of the total plot area.

Plot, depth: The mean horizontal distance between the front and rear plot lines.

Plot, double frontage: A plot having a frontage of two nonintersecting streets, as distinguished from a corner plot.

Plot lines: The lines bounding a plot as defined herein.

Plot, width of: The mean horizontal distance between the side plot lines.

Porch, open: A roof partially supported by columns or wall sections.

Preapplication conference: Discussions held between developers and public officials, usually members of the planning staff, before formal submission of an application for a permit or for subdivision plat approval.

Premises: Any lot or combination of contiguous lots held in single ownership, together with the development thereon; a condominium complex constitutes one premises.

Principal use: The main use of land or structures as distinguished from a secondary or accessory use.

Professional office: The office of a person engaged in any occupation, vocation, or calling, not purely commercial, mechanical, or agricultural in which a professed knowledge or skill in some department of science or learning is used by its practical application to the affairs of others, either advising or guiding them in serving their interest or welfare through the practice of an act found thereon.

Provisional use: A principal use which is allowed in the zone in which listed provided it complies with the additional regulations listed for the use and all other dimensional and special (if any) requirements of the zone in which listed.

Public or private educational facility: A public elementary, secondary, high school and private schools with curricular equivalent to that of public elementary, secondary or high school.

Public use facility: Any building, structure, utility, facility or use of land held, used, controlled exclusively for public purposes by any department or branch of government: federal, state, county, municipal or subdivision thereof, which [with] reference to the ownership of the building or of the realty upon which it is situated.

Public utility: A closely regulated private enterprise with an exclusive franchise for providing a public service.

Public utility facilities: Telephone, electric and cable television lines, poles, equipment and structures;

water or gas pipes, mains, valves or structures; sewer pipes, valves or structures; pumping stations; telephone exchanges and repeater stations; and all other facilities, equipment and structures necessary for conducting a service by a government or a public utility.

Public way: Any sidewalk, street, alley, highway or other thoroughfare dedicated for public use.

Quarry: A place where rock, ore, stone and similar materials are excavated for sale or for off-tract use.

Railroad right-of-way: A strip of land with tracks and auxiliary facilities for track operation, but not including freight depots or stations, loading platforms, train sheds, warehouses, car or locomotive shops, or car yards.

Rear lot lines: Ordinarily that line of a lot which is opposite and farthest from the front lot line.

Reclassification: A form of rezoning in which the zone designation of an area or particular property is changed by changing the zoning map.

Recreational vehicle park: A plot of ground upon which 24 or more campsites are located, established or maintained for occupancy by camping units of the general public as temporary living quarters for recreation, education or vacation purposes.

Refuse/solid waste: Garbage and other discarded materials including, but not limited to solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Such term shall not include hazardous wastes.

Religious assembly: A structure or place in which worship, ceremonies, rituals, interring of the human dead, and education pertaining to a particular system of beliefs are held.

Research laboratory: An establishment or other facility for carrying on investigation in the natural, physical or social sciences, or engineering and development as an extension of investigation with the objective of creating and products [sic].

Residence: A home, abode or place where an individual is actually living at a specific point in time.

Residential board and care home: A building or part thereof that is used for the lodging and boarding of nine or more residents not related by blood or marriage to the owners or operators to provide personal care and/or counseling services, but not to provide nursing care.

Residential care: Providing various levels of some or all of the following care and assistance as well as these services generally so associated to permit individuals to live and function as independently as possible all on a 24-hour-a-day basis: food and dietetic services; transportation, social, educational, recreational, and activity arrangements; personal services, personal care and domiciliary assistance; watchful and protective oversight; simple nursing care; and supervision.

Residential care facility, type I: A nonsecure dwelling building or portion thereof; and premises, operated and licensed in accordance with any and all applicable state and local requirements, functioning as one

dwelling unit in which residential care for profit or not for profit; is provided to children and/or adults unrelated by blood, adoption, or marriage to the caregivers, administrator or owner, on a 24-hour-a-day basis to a maximum of four persons.

Residential care facility, type II: A nonsecure dwelling building or portion thereof; and premises, operated and licensed in accordance with any and all applicable state and local requirements; functioning as one dwelling unit in which residential care for profit or not for profit is provided to children and/or adults unrelated by blood, adoption, or marriage to the caregivers, administrator or owner, on a 24-hour-a-day basis to a maximum of ten persons.

Residential care facility, type III: A nonsecure dwelling building or portion thereof; and premises, operated and licensed in accordance with any and all applicable state and local requirements, in which residential care for profit or not for profit; is provided to children and/or adults unrelated by blood, adoption or marriage to the caregivers, administrator or owner, on a 24-hour-a-day basis.

Residential-design manufactured home: A manufactured home, as defined elsewhere in this article, on a permanent foundation which has: (a) minimum dimensions of 22 body feet in width, (b) a pitched roof and (c) siding and roofing materials which are customarily used on site-built homes.

Restaurant: A public eating establishment in which the primary function is the preparation and serving of food and beverage; and which may be family dining, carry-out, drive-in or fast food type.

Restaurant, carry-out: An establishment which by design of physical facilities or by service or packaging procedures permits or encourages the purchase of prepared ready-to-eat food and beverage intended primarily to be consumed off the premises, and where the consumption of food and beverage in motor vehicles on the premises is not permitted or not encouraged.

Restaurant, drive-in: A building or portion thereof where food and/or beverages are sold in a form ready for consumption and where all or a significant portion of the consumption takes place or is designed to take place outside the confines of the building, often in a motor vehicle on the site.

Restaurant, family dining: A public eating establishment in which the primary function is the preparation and serving of food and beverage for consumption on the premises.

Restaurant, fast-food: An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off premises.

Retail store: Any building or structure in which one or more articles of merchandise or commerce are sold at retail, including department stores.

Retail trade: Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Rezoning: An amendment to or a change in the district map provided by an ordinance or resolution, as applicable to the subject jurisdiction.

Riding academy: An establishment where horses are boarded and cared for and where instruction in riding, jumping and showing is offered and the general public may, for a fee, hire horses for riding.

Road system: (See *Street and highway network*)

Room: Any enclosed division of a building containing over 70 square feet of floor space and commonly used for living purposes, not including lobbies, halls, closets, storage space, bathrooms, utility rooms, and unfinished attics, cellars or basements. An enclosed division is an area in a structure bounded along more than 75 percent of its perimeter by vertical walls or partitions, or by other types of dividers which serve to define the boundaries of the division.

Roominghouse: Any dwelling where for compensation and by prearrangement lodging is provided for three or more persons but not exceeding 20 persons. A dormitory when not accessory to any institutional, educational, social or medical use, shall be deemed a roominghouse.

Rural home, suburban home: A residence located in the urban fringe or rural area that is occupied or intended to be occupied by a family or persons whom are not engaged in agricultural pursuits on the premises or zoning lot.

School: Any building or part thereof which is designed, constructed or used for education or instruction in any branch of knowledge.

School, elementary: Any school licensed by the state and which meets the state requirements for elementary education.

School, private: Any building or group of buildings the use of which meets state requirements for primary, secondary or higher education and which use does not secure the major part of its funding from any governmental agency.

School, secondary: Any school licensed by the state and which is authorized to award diplomas for secondary education.

School, vocational: A secondary or higher education facility primarily teaching usable skills that prepare students for jobs in a trade and meeting the state requirements as a vocational facility.

Setback: The distance of [sic] between a street right-of-way line and the front building line of a principal building or structure, projected to the side lines of the lot, and including driveways and parking areas, except where otherwise restricted by this ordinance.

Setback line: That line that is the required minimum distance from the street right-of-way line or any other lot line that establishes the area within which the principal structure must be erected or placed.

Setback regulations: The requirements of building laws that a building be set back a certain distance from the street or lot line either on the street level or at a prescribed height.

Sewage system: A facility designed for the collection, removal, treatment and disposal of waterborne sewage generated within a given service area.

Shop: A use devoted primarily to the sale of a service or a product or products but the service is performed or the product to be sold is prepared in its finished form on the premises.

Shopping center: A group of retail stores, originally planned and developed as a single unit, with immediate adjoining off-street parking facilities.

Sign: Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government or governmental agency.

Sign area: The total area of the space to be used for advertising purposes, including the spaces between open-type letters and figures, including the background structure or other decoration or addition which is an integral part of the sign. Sign supports shall be excluded in determining the area of a sign. A double-faced sign shall have twice the total area of a single-faced sign.

Sign, billboard or panel poster: Any sign or advertisement used as an outdoor display for the purpose of making anything known, the origin or point of sale which is remote from said display.

Sign, business: A sign which directs attention to a business, product, service or activity conducted or sold on the premises where the sign is displayed.

Sign, flashing: Any illuminated sign, whether stationary, revolving, or rotating, which exhibits changing light or color effects, provided that revolving or rotating signs which exhibit no changing light or color effects other than those produced by revolution or rotation, shall be deemed flashing signs only if they exhibit sudden or marked changes in such light or color effects.

Sign, illuminated: A sign designed to give forth any artificial light or reflect such light from an artificial source.

Sign, real estate: 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 on such lot or tract of land.

Site: Same as "lot," plot or zoning lot.

Site-built home: A home on a permanent foundation erected by the process of assembling individual building materials or members on-site and subject to adopted construction codes and safety standards.

Site plan: A plan to scale, showing uses and structures proposed for a parcel of land as required by the regulations involved.

Specified anatomical area: Less than completely or opaquely covered human genitals, pubic region, and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities: Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; and fondling or other erotic touching of human genitals or pubic region.

Stacking space: A paved surface which is designed to accommodate a motor vehicle waiting for entry to any drive-in facility or auto-oriented use, which is located in such a way that a parking space or access to a parking space is not obstructed, and which is at least nine feet in width and 19 feet in length.

Standards: Site design regulations such as lot area, height limits, frontage, landscaping, yards, and floor area ratio--as distinguished from use restrictions.

Start, commencement: The doing of some act upon the ground on which the building is to be erected, and in pursuance of a design to erect, the result of which act would make known to a person viewing the premises, from observation alone, that the erection of a building on that land had been commenced.

Storage: Holding or safekeeping goods in a warehouse or other depository to await the happening of some future event or contingency which will call for the removal of the goods.

Store: A use devoted exclusively to the retail sale of a commodity or commodities.

Street: Any vehicular way which: (1) is an existing state, county or municipal roadway, (2) is shown upon a plat approval pursuant to law, (3) is approved by other official action; or (4) is shown on a plat duly filed and recorded in the office of the county register of deeds prior to the appointment of the planning commission and the grant to such commission of the power to review plats, and includes the land between the street lines, whether improved or unimproved.

Street and highway network: A network of vehicular travelways, such as public roads, streets, highways, etc., as may be defined and identified in the transportation plan element of the metropolitan comprehensive plan, and/or subdivision regulations.

Street line: A dividing line between a lot and a street right-of-way.

Structural alterations: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

Structurally altered: The making of such a substantial change in the construction, identity, and use of the present building.

Structure: Anything which is built or constructed, an edifice or building of any kind, or any place of work artificially built up or composed of parts joined together in some definite manner and affixed to the property. For the purpose of construing this chapter, it includes buildings, towers, cages for transformer substations, pergolas, billboards, steak ovens, trash burners, but not excluding other assemblies of similar type which are permanently located on a lot, not including poles, fences and such minor incidental improvements.

Stub street: A nonpermanent dead-end street that is intended to be extended in conjunction with the subdivision and development of the adjacent unplatted land. Access from the stub street shall be permitted only

along the frontage of such street to the lots in the subdivision containing the stub street.

Subdivision: Division of a lot, tract or parcel of land into two or more parts for the purpose, whether immediate or future, of sale or building development, including resubdivision.

Subdivision plat: A plan or map prepared in accordance with the provisions of applicable subdivision regulations.

Subdivision regulation: Lawfully adopted subdivision ordinances of a city and the lawfully adopted subdivision resolutions of a county.

Temporary permit: A permit, issued in accordance with the law of Kansas, which allows the permit holder to offer the sale, sell and serve alcoholic liquor for consumption on unlicensed premises, open to the public.

Temporary use: A use of land, buildings or structures not intended to be of permanent duration.

Theater: A structure used for dramatic, operatic, motion pictures, or other performance, for admission to which entrance money is received and no audience participation or meal service allowed.

Tract: An area or parcel of land other than a lot described and recorded in the office of the register of deeds of Shawnee County as a single parcel of land under individual ownership.

Traffic impact analysis (TIA): A specialized study of the impact a development will have on the surrounding transportation system. It is specifically concerned with the generation, distribution, and assignment of traffic to and from a proposed development. The purpose of a TIA is to determine what impact that traffic will have on the existing and proposed roadway network, and what impact the existing and projected traffic on the roadway system will have on the proposed development. It will provide a credible basis for estimating roadway and on-site improvement requirements attributable to a particular project, and assess the compatibility of local transportation plans. The specific content of a TIA may vary depending upon the site, prevailing conditions, and safety considerations as expressed by reviewing staff during the preapplication conference, and shall conform to the recommended practice methods of the Institute of Transportation Engineers.

Transmission tower: A structure principally intended to support a source of nonionizing electromagnetic radiation (NIER) and accessory equipment related to telecommunications, other than the following uses which are exempt from this ordinance:

- (a) Portable, handheld and vehicular transmissions;
- (b) Industrial, scientific and medical equipment operating at frequencies designated for that purpose by the FCC;
- (c) A source of nonionizing electromagnetic radiation with an effective radiated power of seven watts or less;
- (d) A sole-source emitter with an average output of one kilowatt or less if used for amateur

purposes;

- (e) Marketed consumer products, such as microwave ovens, citizens band radios, and remote control toys; and
- (f) Goods in storage or shipment or on display for sale, provided the goods are not operated, except for occasional testing or demonstration.

Unobstructed open space: Land not covered by buildings or structures.

Urban fringe: An area at the edge of an urban area usually made up of mixed agricultural and urban land uses.

Urban design: The attempt to give form, in terms of both beauty and function, to entire areas or to whole cities.

Use: (a) Any purpose for which a building or other structure, or a tract of land may, be designed, arranged, intended, maintained, or occupied, or (b) any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Utility services: Establishments engaged in the generation, transmission and/or distribution of electricity, gas or steam, including water and irrigation systems and sanitary systems used for the collection and disposal of garbage, sewage and other wastes by means of destroying or processing materials.

Variance: The granting of permission by the board of zoning appeals to allow the development of a plot for uses allowed within a given zoning district beyond one or more of the specific controls and limitations of these zoning regulations.

Vehicle, motor: A self-propelled device used for transportation of people or goods over land or water surfaces and licensed as a motor vehicle.

Vehicle recreational: A vehicular-type portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

Vehicular sales area: An open area, other than a right-of-way or public parking area, used for display, sale or rental of new or used vehicles in operable condition and where repair work is done.

Vested right: A right is vested when it has become absolute and fixed and cannot be defeated or denied by subsequent conditions or change in regulations, unless is taken and paid for.

Warehouse: A structure or part of a structure, for storing goods, wares, and merchandise, whether for the owner or for others, and whether it is a public or private warehouse.

Width: A dimension measured from side to side at right angles to length.

Yard: A required area on a lot unoccupied by structures above grade except for projections and specific minor uses or structures as may be permitted under the provisions of this chapter. A yard extends from the grade upward.

Yard, front: The required area across the frontage of a lot from one side lot line to another side lot line, parallel to the street, and as far back from the street right-of-way line as required in this chapter for the front yard.

Yard, rear: The required area from one side lot line to another side lot line, parallel to the rear lot line, and as far forward from the rear lot line as required by this chapter for the rear yard. On corner lots, the rear yard shall be parallel to the front face of the principle structure and shall be indicated on the site plan as submitted by the property owner or general contractor.

Yard, required: The open space between a lot line and the buildable area within which no structure shall be located except as provided in the zoning ordinance.

Yard, side: The required area from the front yard line to the rear yard line, parallel to the side lot line, and as far from the side lot line as required by this chapter for the side yard.

Zone: An area within which certain uses of land and buildings are permitted and certain others are prohibited, yards and other open spaces are required, lot areas, building height limits, and other requirements are established, all of the foregoing being identical for the zone in which they apply.

Zoning: The regulation or restriction of the location and uses of buildings and uses of land.

Zoning district: A specifically delineated area or district in the city or county within which regulations and requirements uniformly govern the use, placement, spacing and size of land and buildings.

Zoning lot: A contiguous area of land within a district that is equal to or in excess of the prescribed minimum area (intensity of use) for any use permitted in the district.

Zoning map: The map or maps, which are a part of the zoning ordinance and delineate the boundaries of the zone districts.

Zoning regulations: The lawfully adopted zoning ordinances of a city and the lawfully adopted zoning resolutions of a county.

DEFINITIONS--SUPPLEMENTAL

For the purpose of this chapter the following terms shall be used in addition to those terms contained in definitions.

Vehicle, motor bicycle. A device a person may ride upon which may be propelled by either human power or helper motor or by both and has two (2) tandem or three (3) wheels with a cylinder capacity of not more than one hundred thirty (130) cubic centimeters and a maximum design speed of no

more than thirty (30) miles per hour.

Vehicle, motor scooter. A self-propelled device a person may ride upon having two (2) tandem or three (3) wheels each not greater than twelve (12) inches in diameter and in contact with the ground, a saddle seat, handle bars, and an electric or gas motor no more than two hundred (200) cubic centimeters.

A motor scooter may or may not require a State of Kansas Class M motorcycle license.

(Ord. No. 16754, § 30, 9-13-94; Ord. No. 16957, § 18, 6-4-96; Ord. No. 17138, § 2, 7-1-97; Ord. No. 17410, § 1, 9-28-99; Ord. No. 17503, § 1, 5-22-00; Ord. No. 17782, § 1, 1-15-02; Ord. No. 17871, § 1, 8-6-02; Ord. No. 18237, §§ 1--10, 6-15-04; Ord. No. 18666, § 1, 6-20-06)

ARTICLE XXXVI.

E MULTIPLE-FAMILY DWELLING DISTRICT

Sec. 48-36.00. Purpose; intent.

The purpose of this district and the regulations herein is only to retain this classification on individual properties that are undeveloped until such time as new development occurs. Thereafter, such district classification shall be converted in accordance with section 1.02 (7)(b), (c) of this chapter.

Sec. 48-36.01. Regulations generally.

The regulations set forth in this article, or set forth elsewhere in this chapter, when referred to in this article are the district regulations in the "E" multiple-family dwelling district.

Sec. 48-36.02. Use regulations.

A building or premises shall be used only for the following purposes:

- (1) Any use permitted in section 48-91.
- (2) Radio broadcasting studios.
- (3) Banks.
- (4) Savings and loan.
- (5) Business or commercial schools or dancing or music academies.
- (6) Office buildings.
- (7) Insurance offices either home offices or agency offices.
- (8) Clinics either psychiatric, surgical or diagnostic and laboratories for analytical research and testing; provided, however, that no animals be kept, sheltered or grazed on the premises outside of the principal building; provided further, that none of such uses shall contain or provide for

retail business of whatsoever kind or nature; and provided further, that no advertising sign of any type except the name of the building shall be permitted in this district, when used for purposes referred to in this section. Such signs may be either flat wall-type interior illuminated, limited to 40 square feet or nonilluminated, ground or monument type not to exceed four feet in height above grade.

Sec. 48-36.03. Height regulations.

No building shall exceed six stories or 75 feet in height.

Sec. 48-36.04. Area regulations.

(a) *Front yard:*

- (1) There shall be a front yard having a depth of not less than 25 feet, unless 40 percent or more of the frontage on one side of the street between two intersecting streets is improved with buildings that have observed a front yard line having a variation in depth of not more than six feet, in which case no building shall project beyond the average front yard so established, but this regulation shall not be interpreted to require a front yard of more than 50 feet.
- (2) Where lots have a double frontage, the required front yard shall be provided on both streets.

(b) *Side yard:*

- (1) The side yard regulations for buildings not exceeding 2 1/2 stories in height are as follows:
 - a. There shall be a side yard on each side of a building which shall have a width of not less than five feet or ten percent of the average width of the lot, whichever amount is larger, but the side yard need not exceed ten feet.
 - b. The side yard on each side of a building on a lot having a width of 25 feet or less, where the plat of the lot has been duly recorded, at the time of the passage of this ordinance in the office of the county register of deeds, shall have a width of not less than three feet.
- (2) There shall be a side yard on each side of a three-story building which shall have a width of not less than ten feet.

(c) *Rear yard.* There shall be a rear yard having a depth of not less than 25 feet in 20 percent of the depth of the lot whichever amount is larger, but such depth need not exceed 40 feet.

(d) *Intensity of use:*

- (1) The lot area regulations for single-family and two-family dwellings are as follows:
 - a. A lot on which there is erected a single-family dwelling shall contain an area of not less than 3,500 square feet.

- b. A lot on which there is erected or converted a two-family dwelling, shall contain an area of not less than 2,000 square feet per family.
 - c. Where a lot has less than herein required for a single-family dwelling and was of record in the office of the county register of deeds at the time of the passage of the ordinance from which this section was derived, that lot may be used for only single-family purposes.
- (2) A lot upon which a multiple-family dwelling is erected or converted shall have an area of not less than 600 square feet per family.
 - (3) Where a lot has less area than herein required for a single-family dwelling and was of record in the office of the county register of deeds, at the time of the passage of the ordinance from which this section was derived, that lot may be used only for single-family dwelling purposes.

Sec. 48-36.05. Parking regulations.

Whenever a structure is erected, converted, structurally altered or the use changed to any one of the following uses there shall be provided garage space in the main building, or in an accessory building or accessible and available automobile parking space on the lot or adjacent thereto in accordance with the following:

- (1) The parking regulations for two-family dwellings, multiple-family dwellings, boarding and lodging houses and hospitals and clinics are as follows:
 - a. Two-family or multiple-family dwellings shall provide one parking space for each dwelling unit.
 - b. Boarding and lodging houses shall provide one parking space for each three sleeping rooms, or portion thereof.
 - c. Hospital and clinics shall provide six parking spaces for the first 3,000 square feet or less of floor area and one additional parking space for each 1,000 square feet of floor area over 3,000. In determining floor area, use the gross floor area to determine the number of parking spaces required.
 - d. Unless shown by actual plan and count, 300 square feet of gross area shall be required for each parking space.
 - e. Such parking spaces as required above shall be deemed to be required open space, or garage space, associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.
- (2) All other uses shall provide parking space at the rate of one parking space for each 400 square feet of gross floor area; provided, that the provisions of this section shall not affect or apply to

any property, or to the use thereof, in respect to which a valid building permit has been granted, issued or is existing prior to the effective date of the ordinance from which this section was derived and under which construction of improvements is contemplated to be made after the effective date of such ordinance.

Sec. 48-36.06. Restrictions/amendments to district map.

This district and the regulations herein shall be applicable to only those properties contained in the "E" multiple-family dwelling district at the effective date of adoption of this ordinance. Other properties shall not be designated or classified in this district.

ARTICLE XXXVII.

"D&O" MULTIPLE-FAMILY DWELLING AND OFFICE DISTRICT

Sec. 48-37.00. Purpose; intent.

The purpose of this district and the regulations herein is only to retain this classification on individual properties that are undeveloped until such time as new development occurs. Thereafter, such district classification shall be converted in accordance with section 1.02(7)(b), (c) of this chapter.

Sec. 48-37.01. Regulations generally.

The regulations set forth in this article, or set forth elsewhere in this chapter, when referred to in this article are the district regulations in the "D&O" multiple-family dwelling and office district.

Sec. 48-37.02. Use regulations.

A building or premises shall be used only for the following purposes:

- (1) Any use permitted in section 48-9.02;
- (2) Office buildings, except those where the sale of products is conducted;
- (3) Parking lots in conjunction with the above uses provided such lots are adjacent to the main or principal use;
- (4) Portrait studios, which may include the production of studio photographs for customers, schedule portrait sittings, the display of finished products, and the custom processing of film providing that the area devoted for the film processing is no more than 400 square feet or 20 percent of the entire area whichever is less and that the remaining area is devoted to the creation of studio portraits; but expressly prohibiting the selling of picture frames, related accessory items and equipment.

Sec. 48-37.03. Height regulations.

- (a) No building shall exceed 2 1/2 stories or 35 feet in height.
- (b) For office buildings, no building shall exceed two stories or 24 feet in height.

Sec. 48-37.04. Area regulations.

(a) *Front yard:*

- (1) There shall be a front yard having a depth of not less than 25 feet, unless 40 percent or more of the frontage on one side of the street between two intersecting streets is improved with buildings that have observed a front yard line having a variation in depth of not more than six feet, in which case no building shall project beyond the average front yard so established, but this regulation shall not be interpreted to require a front yard of more than 50 feet.
- (2) Where lots have a double frontage, the required front yard shall be provided on both streets.

(b) *Side yards:*

- (1) There shall be a side yard on each side of a building which shall have a width of not less than five feet or ten percent of the average width of the lot, whichever amount is larger, but the side yard need not exceed ten feet.
- (2) The side yard on each side of a building on a lot having a width of 25 feet or less, where the plat of the lot has been duly recorded, at the time of the passage of this ordinance in the office of the county register of deeds, shall have a width of not less than three feet.

(c) *Rear yard.* There shall be a rear yard having a depth of not less than 25 feet or 20 percent of the depth of the lot whichever amount is larger, but such depth need not exceed 40 feet.

(d) *Intensity of use.*

- (1) A lot on which there is erected a single-family dwelling shall contain an area of not less than 3,500 square feet.
- (2) A lot on which there is erected or converted a two-family dwelling, shall contain an area of not less than 2,000 square feet per family.
- (3) A lot on which a multiple-family dwelling is erected or converted shall contain an area of not less than 1,500 square feet per family.
- (4) Where a lot has less area than herein required for a single-family dwelling and was of record in the office of the county register of deeds at the time of the passage of the ordinance from which this section was derived, that lot may be used for only single-family purposes.

Provided that office buildings shall be located on a lot containing not less than 6,500 square feet.

Sec. 48-37.05. Parking regulations.

(a) *Multiple-family and dwellings.* Whenever a structure is erected, converted, structurally altered or the use changed to a multiple-family dwelling there shall be provided garage space in the main building or in an accessory building, or accessible and available automobile parking space on the lot or adjacent thereto in accordance with the following:

- (1) Multiple-family dwellings shall provide one parking space for each dwelling unit.
- (2) Unless shown by actual plan and count, 300 square feet of gross area shall be required for each parking space.
- (3) Such parking spaces as are required above shall be deemed to be required open space, or garage space, associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.

(b) *Office buildings.* The minimum parking requirements for office buildings shall be as follows: there shall be at least one off-street parking space for each 300 square feet in the building. Additional off-street parking may be provided subject to the approval of the board of commissioners after receiving a report from the planning commission. All such parking lots shall meet the requirements for screening as required in article XXX of this chapter.

Sec. 48-37.06. Restrictions/amendments to district map.

This district and the regulations herein shall be applicable to only those properties contained in the "D&O" multiple-family dwelling and office district at the effective date of adoption of this ordinance. Other properties shall not be designated or classified in this district.

ARTICLE XXXVIII.

LANDSCAPE REQUIREMENTS

Sec. 48-38.00. Purpose.

The purpose of this article is to enhance, protect, and promote the aesthetic, ecological, and economic environment in the City of Topeka through landscaping associated with new construction. Landscaping achieves the following goals:

- (1) Preserves and enhances Topeka's urban forest;
- (2) Promotes the reestablishment of vegetation in urban areas for health and urban wildlife reasons;
- (3) Establishes and enhances a visual character which recognizes aesthetics and safety issues;
- (4) Promotes the compatibility between land uses by reducing the visual, noise, and lighting impacts of specific development on users of the site and abutting properties;

- (5) Unifies development, and enhances and defines public and private places;
 - (6) Promotes the use and retention of existing vegetation;
 - (7) Aids in energy conservation by providing shade from the sun and shelter from the wind;
 - (8) Mitigates the loss of natural resources; and
 - (9) Reduces soil erosion, and the volume and rate of discharge of storm-water run-off.
- (Ord. No. 17846, § 1, 6-11-02)

Sec. 48-38.01. Definitions.

The following words, terms and phrases, when used, shall have the meaning ascribed to them herein, except when the context clearly requires otherwise.

City forester: Refers to the City of Topeka Forester or designated authority.

D.B.H.: Diameter at breast height. D.B.H. is used for trees with a diameter greater than twelve (12) inches and is measured four and one-half (4 1/2) feet above the ground.

Developed area: All land area disturbed during the construction of structures, parking facilities, landscaped areas, and similar improvements.

Developer: The legal or beneficial owner of a lot or parcel or any land proposed for development and/or inclusion in a development, including the owner of an option, contract to purchase, or lease.

Development: The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure or parking facility, or their environs.

Diameter caliper: The size of a tree measured through the tree trunk. For trees less than four (4) inches in diameter, it is measured six (6) inches from the ground. For trees between four (4) inches and twelve (12) inches in diameter, it is measured twelve (12) inches from the ground.

Groundcover: An evergreen, deciduous planting or ornamental grass, growing generally to less than fifteen (15) inches in height and generally spreads more in width than height. Turf grass is specifically excluded.

Irrigation system: A permanent underground piping and sprinkler head system designed using industry standard methods to provide uniform irrigation coverage over a landscaped area.

Landscaped area: Any area planted with groundcover, trees, shrubs, or other plant material that meets the provisions contained herein.

Mono-culture: A single type of species of planting.

Mulch: A natural planting material such as pine straw or tree bark used to control weed growth, reduce soil erosion and reduce water loss.

Parallel planting peninsula: A planting island that extends out into the parking area, and is bounded on at least one (1) side by the outer edge of the asphalt or building.

Parking lot: Any off-street, unenclosed ground level facility used for the purpose of temporary storage of motor vehicles. Included within this definition are unenclosed carports associated with any or all development governed by this article. Enclosed parking facilities, such as single or multi-story garages or parking facilities constructed within the confines of a larger building or structure, or parking facilities associated with residential development are not included within this definition.

Parking lot island: A planting island contained completely within the confines of a parking facility.

Parking lot planting: A planting required due to the construction of non-covered surface parking.

Recommended tree: Any one (1) of the trees listed in "Recommended Trees" of this article. These trees are well suited for the soils and climate of Topeka, Kansas.

Significant tree: Any tree with a diameter caliper of six (6) inches or greater.

Shrub: An evergreen or deciduous planting no less than fifteen (15) inches in height.
(Ord. No. 17846, § 2, 6-11-02; Ord. No. 18255, § 1, 6-1-04)

Sec. 48-38.02. Applicability.

All requirements set forth in this article are applicable as follows:

- (A) Any construction within the "O&I-1," "O&I-2," "O&I-3," "C-1," "C-2," "C-3," "C-4," "M-S," "I-1," "I-2," "X-1," "X-2," "X-3," "U-1," and "D-2," and all planned unit development districts for the above listed use groups; parking lots in the "C-5" or "D-1" zoning district. Multi-family dwelling developments (buildings composed of four (4) or more dwelling units), churches or other religious or institutional uses in any zoning district and all developments constructed under the provision of a "conditional use permit," in any zoning district, are also subject to this article.
- (B) An alteration to an existing structure which increases or decreases the amount of gross floor area of such structure by more than fifty percent (50%) and an alteration to a parking lot which increases or decreases the gross area of the parking lot by more than fifty percent (50%) shall be required to come into compliance with all landscaping provisions contained in this article.
- (C) The provisions of this article shall apply to all legal nonconforming uses as established and defined in City of Topeka § 48-1.03 of the Comprehensive Zoning Regulations.

(Ord. No. 17846, § 3, 6-11-02; Ord. No. 18255, § 2, 6-1-04)

Sec. 48-38.03. Exceptions.

(A) Nothing contained herein shall affect in any way the rights of, or exercise by, any public utility of its present and future acquired rights to clear trees and other growth from lands used by the public utility. The utility shall cooperate and coordinate with the City of Topeka Forester when clearing or pruning in the right-of-way.

(B) Nothing contained herein shall reduce required lines of sight and traffic visibility standards adopted by the City of Topeka.

(C) All pervious surface areas of public and private parks, playgrounds, playing fields, and other outdoor recreation facilities shall be excluded from the calculation of base points as required by this article. (Ord. No. 17846, § 4, 6-11-02)

Sec. 48-38.04. Landscape plans.

(A) Requirements generally: Landscape plans shall be submitted at the time of application for a building permit, and also at the time of application for planned unit developments and conditional use permits. All landscaping plans shall include the following information:

- (1) North point and scale.
- (2) The dimensions drawn to scale of the developed area.
- (3) Topographic information and final grading adequate to identify and properly specify planting for areas needing slope protection.
- (4) The location, size, and surface of materials for all structures and parking areas.
- (5) The location, size, and type of all utilities and structures with notation, where appropriate, as to any safety hazards to avoid during installation of landscaping.
- (6) The location, size, type, and quantity of all proposed landscaping materials, along with common and botanical names of all plant species. The size, grading, and condition shall be specified according to American Nursery and Landscape Association standards.
- (7) The location, size, and common name of all existing plant materials to be retained on the site. Procedures for preserving existing trees during construction shall be submitted and followed accordingly.
- (8) Sizes of plant material shall be drawn to scale and shown at sixty percent (60%) to seventy percent (70%) of mature size, and shall be specified on the plan by a common name or appropriate key.
- (9) Location of watering sources shall be specified if an irrigation system is not provided.
- (10) The location of all trees, twelve (12) inch D.B.H. proposed for removal .

- (11) All screening required by this article.
- (12) Landscape plans shall be submitted on a separate drawing sheet(s) of a standard size (preferable 24 inches × 36 inches) and drawn to a standard scale.
- (13) Landscape plans shall demonstrate that all planting requirements have been met using the point system format illustrated in Template 1.
- (14) If the developed area is required to buffer, the landscape plan shall depict the buffer area.
- (15) Plants outside of the construction area need not be shown on the landscape plan.
- (16) Alternate plans which meet the spirit and intent of this article may be submitted to the planning director for approval.
- (17) Landscape plans shall be drawn by an architect, landscape architect, engineer, or other professional in the landscape or horticultural fields.
- (18) Significant trees located within public right-of-way which abuts the developed area shall be shown on the landscape plan.

(B) Certificate of landscape plan approval and appeal: If the planning director or designee determines following review of the landscape plan that the plan meets the provisions of this article then the planning director or designee shall issue a landscape plan certificate of approval.

A developer who is aggrieved by the administration of this article may file an appeal with the Metro Board of Zoning Appeals in accordance with the provisions of article XXXIV, Appeals.

Template 1.

Square footage of developed area: _____

Base points required: _____ (See Table 1)

Parking lot points required: _____ (1.5 points per parking space)

Total points required: _____

Existing tree credits claimed: _____

Irrigation credits claimed: _____

Total points obtained: _____

Residential bufferyard required? _____ yes _____ no

Parking lot buffer required? _____ yes _____ no
 (Ord. No. 17846, § 5, 6-11-02; Ord. No. 18255, § 3, 6-1-04)

Sec. 48-38.05. Landscape requirements.

(A) Performance Objectives: All required landscape plans shall emphasize plantings along visible street frontages and required buffer yards, as specified by this article to the greatest extent possible.

(B) Planting requirements/point system: The developer may use any combination of plantings to obtain the necessary number of points required for the developed area. Different developed areas will lend themselves to different types of plantings. This article encourages creativity and diversity in landscaping. In no case, shall a mono-culture of plantings be allowed. A variation of plantings, at least three (3) different species, is required.

Each landscape plan must equal or exceed a minimum number of base points in order to obtain approval. The number of points required depends on the size of the developed area (see Table 1). In order to obtain points, the plantings must be placed on the developed property and not on the public right-of-way, without the approval of the planning director in consultation with the public works department.

Table 1. Number of Points Required for the Site

Square Footage of the Developed Area	Number of Points Required
0--10,000	33 (+1.5 per parking space)
Greater than 10,000	33 points plus one point for each additional 300 square feet of developed area (+1.5 per parking space)

All designated outdoor storage, loading, or display areas, including, but not limited to car lots, lumber yards, warehouses, home improvement centers, and loading docks, will require an additional one (1) point per six hundred (600) square feet.

When only a portion of a large lot is developed (e.g. only one (1) acre of a ten (10) acre lot), only the developed area shall be considered when determining the number of points required.

Table 2. Point Values for Various Plantings

Type of Plant Material	Minimum Size	Point Value
Large tree	2.0 inches--2.5 inches caliper	11 per tree
Medium tree	1.25 inches--1.5 inches caliper	8 per tree
Understory tree	Single trunk: 1.25 inches--1.5 inches caliper	5 per tree
	Multiple trunk: 6 feet--8 feet in height	5 per tree
Coniferous tree	4 feet--5 feet initial height at planting	8 per tree

Shrub	2 gallon (established) minimum	1 per shrub
Ornamental grasses	2 gallon (established) minimum	1 per plant
Groundcover	Per square foot of landscaped area. Sufficient quantity of plants to cover the entire landscape area within 3 growing seasons.	0.25 per square foot
Landscape berm	30 inches minimum height with a sufficient quantity of trees, shrubs or plants to equal 1 point per 10 square feet.	.5 per 3 lineal feet
Turf Berm	30 inches minimum height. 3 foot minimum length, not to exceed 10% of total point requirements	.25 per 3 lineal feet

(C) Parking lot requirements: All street-level parking lots shall be landscaped in accordance with the following requirements:

- (1) In addition to the number of base points required, one and one-half (1 1/2) additional points are required for each parking space proposed. These additional points may be achieved by planting parking lot trees and/or parking lot shrubs. For example, a ten thousand (10,000) square developed area with ten (10) parking spaces requires thirty-three (33) base points plus one and one-half (1 1/2) points per parking space. The total point requirement for this developed area is forty-eight (48) (thirty-three (33) base points plus fifteen (15) parking lot points).
- (2) On parking lots with less than twenty-four (24) parking spaces, parking lot trees/shrubs may be spaced around the perimeter of the lot as desired to provide a uniform and attractive design.
- (3) On lots with more than twenty-four (24) parking spaces, landscaping shall be provided on parking lot islands and/or parking lot peninsulas within the confines of the developed parking lot at a ratio of one (1) landscaped island or peninsula per twenty-four (24) parking spaces. These plantings shall be located to minimize and break the expanse of asphalt and concrete. Each parking lot island or peninsula shall be equivalent in size to one (1) parking space.

(D) Buffers and buffer zones: A developed area may be required to buffer certain portions of the development as provided for herein. If a developed area is required to buffer, the more stringent buffer requirements contained herein shall apply. Accumulation of minimum required landscaping points shall not reduce the requirements for any landscaped buffer as specified herein.

- (1) Residential zone buffer: On any commercial, industrial, institutional, PUD, conditional use permit, or multi-family development (three (3) or more units), adjacent to a residential zoning district, a landscaped buffer along the property line(s) of the developing property is required. The buffer shall run the entire length of the abutting lot line(s). The type of buffer may consist of any combination of the following:
 - (a) A solid opaque fence not less than six (6) feet in height, and a six (6) foot wide buffer of

landscaped plantings located on the outside of the fence, not to exceed six (6) foot spacing between plants;

- (b) A landscaped buffer no less than six (6) feet in width, planted with a series of evergreen plantings which will grow to at least six (6) feet in height and spaced in a manner to provide an impervious visual barrier, not to exceed six (6) foot spacing between plants;
- (c) A landscaped berm at least thirty (30) inches in height continuing the entire length of the abutting property line. A landscape credit for a landscaped berm may be claimed (per Table 1) in order to meet the screening requirements for the developing property. Such berm must be planted with trees, shrubs and/or plants in order to satisfy buffer requirements. A berm planted exclusively in turf grass is not considered by itself sufficient to satisfy buffer requirements as required by this article.
- (d) Natural, undisturbed forest at least twenty (20) feet in width that provides a nearly impervious visual barrier due to the dense nature of the plants and/or trees. If this option is chosen, the planning director shall determine whether the barrier is satisfactory through a site inspection prior to plan approval. Protective measures shall be provided during construction to ensure the area is protected from damage due to construction.

(2) Parking lot buffer: All parking lots shall be buffered with landscaping as follows:

- (a) An area not less than four (4) feet in width shall be located between a parking lot and an adjacent property line of a non-residential zoning district. Such buffering shall not be required where an equivalent buffer exists on the adjoining property.
- (b) A landscaped setback not less than twenty (20) feet shall be located between all parking lots and any public street right-of-way. Landscaped setbacks shall only be required for lots platted after the adoption of this article.

(Ord. No. 17846, § 6, 6-11-02; Ord. No. 18255, § 4, 6-1-04)

Sec. 48-38.06. Existing trees.

(A) Credits for existing trees: In order to encourage the preservation of existing trees, credits up to fifty percent (50%) of required base points may be given in the event existing trees are preserved.

For each existing significant tree with a diameter caliper between six (6) inches and twelve (12) inches that is preserved on the landscape plan, a credit of fifteen (15) base points will be applied. For each existing significant tree with a D.B.H. between twelve (12) inches and twenty-four (24) inches, a credit of twenty (20) base points will be applied. For each existing significant tree with a D.B.H. over twenty-four (24) inches, a credit of twenty-five (25) base points will be applied. Any significant tree that dies during construction, or because of construction, must be replaced with a tree or trees of a similar species, or a species approved by the city forester, to equal or exceed the point value of the lost tree.

(B) Additional points required for removal of existing significant trees: Any existing significant trees removed from the site shall require additional base points above those calculated for the square footage of the

developed area. For trees removed between six (6) inches and twelve (12) inches diameter caliper, an additional fifteen (15) base points shall be required. For trees removed between twelve (12) inches and twenty-four (24) inches D.B.H., an additional twenty (20) base points shall be required. For any trees removed that are larger than twenty-five (25) inches D.B.H., an additional twenty-five (25) base points shall be required. If the planning director, in consultation with the city forester, determines that removal of any aforementioned significant trees will not be detrimental to the overall appearance of the development, some or all of these additional point requirements may be waived.

(C) Trees for which a developer wishes to receive credit must be within the developed area, and incorporated into an overall landscape design.
(Ord. No. 17846, § 7, 6-11-02; Ord. No. 18255, § 5, 6-1-04)

Sec. 48-38.07. Irrigation system credits.

In order to sustain the benefits of landscaped areas as required by this article, credits may be authorized if the developer provides an industry standard irrigation system. Credits may be authorized as follows:

- (A) A maximum of twenty percent (20%) of the total irrigated area may be deducted from the calculation of base points if developer installs an industry standard, permanent, underground irrigation system. Such deduction may be authorized only from the square footage of the area covered by the irrigation system.
- (B) If an underground irrigation system is claimed for credit against the base point formula, installation and operation plans of the irrigation system must be submitted to the planning director for approval.
- (C) Credits authorized for irrigation systems shall not reduce the requirements for residential zone buffers or parking lot buffers as established by this article.

(Ord. No. 17846, § 8, 6-11-02; Ord. No. 18255, § 6, 6-1-04)

Sec. 48-38.08. Stormwater best management practice credits.

Credits may be authorized up to twenty percent (20%) when stormwater best management practices are incorporated into the landscape plan, subject to the approval of the water pollution control division, City of Topeka. Such practices shall adhere to recognized principles of stormwater drainage engineering and consists of but are not limited to:

Bioretention systems

Open vegetated channels

Filter strip

Dry and wet swales

Detention systems

Retention/wetland systems

Stream buffers

A point value of credit for stormwater best management practices shall be established by separate resolution of the City of Topeka.

(Ord. No. 17846, § 9, 6-11-02; Ord. No. 18255, § 7, 6-1-04)

Sec. 48-38.09. Enforcement.

Enforcement of these regulations shall be subject to the authority granted to the City of Topeka zoning administrator as established in City of Topeka Code § 48-1.11 of the Comprehensive Zoning regulations.

The owner is responsible for all maintenance and upkeep of planted materials trees in perpetuity within his/her development. Failure by the developer and/or owner to comply with the applicable provisions of the article on landscape requirements shall cause the developer and/or owner to be ineligible for any additional building permits. No additional building permits shall issue until the developer and/or owner has complied with this article or made arrangements satisfactory to the planning director for compliance.

After all plantings are completed, the developer will schedule an inspection of the plantings with the planning department and landscaping installer. If all plantings are in good condition and properly meet the requirements of the landscape plan as required by this article, the planning department will issue a landscape certificate of completion to the developer and building official. No certificate of occupancy shall be issued if the landscape certificate of completion has not been issued. Notwithstanding the foregoing, if building construction is completed outside of the growing season, a temporary certificate of occupancy may be issued with the condition attached that the landscape certificate of completion must be issued prior to the end of the next growing season. Failure to obtain the landscape certificate of completion by the end of that growing season shall be sufficient grounds for revocation of the conditional certificate of occupancy.

If plantings are subsequently determined by the planning director to be damaged, in poor condition, diseased, or dead, the planning director may issue notice to the real property owner of record requiring maintenance and/or the replacement of plantings in order to bring the developed area into compliance with the approved landscape plan. If the required maintenance or replacement is not accomplished within one (1) growing season which is considered to begin March 1 and end November 15, the planning director on behalf of the city shall cause the required maintenance or replacement of plantings to be accomplished and cost thereof shall be assessed against the real property as a service assessment.

(Ord. No. 17846, § 10, 6-11-02; Ord. No. 18255, § 8, 6-1-04)

Sec. 48-38.10. General information.

(A) *Trees located within the public right-of-way:*

(1) The removal of significant trees within the public right-of-way is prohibited without written permission of the city forester.

- (2) Any significant tree located within a public right-of-way which abuts the developed area shall be shown on the landscape plan. Significant trees within the right-of-way which abuts the developed area may be used as existing tree credits with the approval of the planning director.
- (3) The developer must notify the City of Topeka Forester immediately if any significant tree located within a public right-of-way is damaged during construction of the development project. Upon inspection, the city forester may require that the damaged tree be removed and replaced by the developer. The replacement tree shall be a similar species with a minimum caliper of two and one-half inches. Care and maintenance of the replacement tree shall be the responsibility of the developer or property owner for a period of three years.

(Ord. No. 17846, § 11, 6-11-02)

Sec. 48-38.11. Size and quality requirements.

(1) Any large tree planted to meet minimum requirements of this article shall have at least a two (2) inch to two and one-half (2 1/2) inches diameter caliper. Any medium tree, understory tree, or coniferous tree planted to meet minimum requirements of this article shall have a diameter caliper of one and one-quarter (1.25) inches to one and one-half (1.5) inches, except that multi-stemmed understory trees shall be between six (6) and eight (8) feet in height. Deviations from the recommended tree list may be approved through a written request to the city forester.

(2) All trees planted to meet the minimum requirements of this article shall be in a healthy condition at the time of planting.

(3) Shrubs planted to meet the minimum requirements of this article shall be a minimum of an established two (2) gallon container.

(4) Grass shall be planted in such a manner as to completely cover all exposed soil after one (1) full growing season.

(5) No bare ground shall be left exposed. Grass or other groundcover or mulch, such as pine straw or tree bark, shall cover all bare ground.

(6) Irrigation is not required but is recommended.

(7) Any planting that dies shall be replaced within one (1) full growing season.

(Ord. No. 17846, § 12, 6-11-02; Ord. No. 18255, § 9, 6-1-04)

Sec. 48-38.12. Recommended species.

(A) The planning department with the advice of the city forester shall maintain a list of recommended trees, shrubs, perennials, ornamental grasses, and groundcover for fulfillment of the provisions of this article. Generally, these trees, shrubs, perennials, ornamental grasses, and groundcover are suitable for the City of Topeka's environment. The city forester shall determine the suitability of all species and cultivars thereof. Substitutions or additions to the list of recommended species shall only be made with the approval of the city forester. Additionally, the city forester shall determine the point values for plantings not listed.

(Ord. No. 17846, § 13, 6-11-02; Ord. No. 18255, § 10, 6-1-04)

ARTICLE XXXIX.

SITE PLANS REGULATIONS*

* **Editors Note:** Ord. No. 17913, §§ 1--6, adopted Nov. 5, 2002, a joint Shawnee County Resolution and City of Topeka Ordinance, provided for the inclusion of site plan regulations to the Topeka Comprehensive Zoning Regulations. Inasmuch as the provisions of said ordinance were not specifically amendatory of the Zoning Regulations they have been included as art. XXXIX, §§ 48-39.01--48-39.06, at the editors discretion.

Sec. 48-39.01. General provisions.

Site plan review shall be required, and an approved site plan is required before building permits or certificates of occupancy may be issued. The following regulations shall apply generally to all uses contained within the Comprehensive Zoning Regulations which require site plan review.

(Ord. No. 17913, § 1, 11-5-02)

Sec. 48-39.02. Intent; purpose.

(a) *Intent.* The intent of these site plan regulations is to promote orderly growth and development in the City of Topeka and unincorporated Shawnee County; to ensure that development is done in a manner harmonious with surrounding properties, consistent with the general public welfare and with the policies in the Comprehensive Metropolitan Plan; and the requirements of the Comprehensive Zoning Regulations.

The site plan should address the following community goals; reduction in crime; promotion of architectural compatibility; neighborhood stabilization; blight prevention; conservation of historic and landmark properties; encourage economic development and conservation of value of property; secure safety from fire and other dangers; avoid undue concentration of population; improve the appearance of the metropolitan area; facilitate the provisions of transportation, water, sewers, schools, parks and open space, and other community and public improvements.

(b) *Purpose.* The purpose of these site plan regulations is to provide for a review of individual project site plans addressing;

- (1) The project's compatibility with its environment and with other land uses and buildings in the surrounding area, including historic structures and landmarks and the character of proposed open space and landscape improvements.
- (2) The project's proposed traffic circulation and parking system to provide for the convenient and safe internal and external movement of vehicles and pedestrians.
- (3) The character and type of the project's proposed community facilities where required.
- (4) The location and adequacy of the project's provision for drainage and utilities.

- (5) The appropriate design and effective use of construction in order to reduce incidence of crime, and an improvement in the quality of life.

(Ord. No. 17913, § 2, 11-5-02)

Sec. 48-39.03. Applicability.

An approved site plan shall be required prior to the issuance of a building permit, in the following instances:

- (a) *New construction.* For any new construction of a principal structure which requires a building permit in any zoning district except single-family, two-family, and tri-plex units which are expressly exempted; or,
- (b) *Alteration.* For any building alteration over 15,000 square feet to an existing structure on improved real estate as set forth in subsection (a) above; or
- (c) *Accessory uses and structures.* Site plan review shall not be required for accessory uses and accessory structures. However, such accessory uses and/or structures uses may be reviewed in conjunction with the review of principal structures when such accessory structures are shown on the site plan; or,
- (d) *General provisions.* A site plan is required whenever a specific reference is made to these regulations in any other part of the Code of the City of Topeka or in the regulations of Shawnee County.

(Ord. No. 17913, § 3, 11-5-02)

Sec. 48-39.04. Procedures for site plan review; applications.

(1) *Plans required.* The applicant shall submit ten copies of legible and complete site plans. The review period for a site plan shall be no greater than 21 calendar days from the date of submission. Deadlines set by the planning department shall not be altered, reduced or varied except under unusual circumstances. If a decision regarding the site plan is not rendered by the planning director within the 21 day review period, the site plan shall be deemed approved. Revised site plans shall be received from the applicant within 14 calendar days of receiving review comments or the site plan shall be considered withdrawn. Based upon the extent of revisions, a longer period may be granted by the planning director for the submission of revised plans.

(2) *Fees.* Every site plan submitted for review shall be accompanied by a filing fee as established in the Comprehensive Zoning Regulations. If a site plan is withdrawn or denied, the review fee is not refundable.

(3) *Review and appeals.* After the site plan, related materials, and fees have been submitted, they shall be reviewed by the planning department which shall coordinate the review with other affected city/county departments and divisions for conformity to these regulations and other applicable regulations. Based upon the recommendations of the reviewing agencies, the planning director may approve a site plan, and if approved, shall state the conditions of such approval, if any. If the site plan is disapproved, the reasons therefore shall be communicated in writing to the applicant. The planning director's approval or disapproval of a site plan may be appealed to the zoning and platting committee. The appeal shall be filed with the planning department within

ten calendar days of such action. Such appeal will be considered at the next regularly scheduled meeting of the committee.

(4) *Revised plans.* If approved, the applicant shall make the necessary revisions, if any, and submit a final set of ten site plans.

(5) *Building permits.* A copy of the approved site plan shall be retained in the records of the planning department and all regulatory and occupancy permits shall conform to the provisions of said site plans.

(6) *Amendments.* Amendments or modifications to approved site plans shall be submitted to the planning department. Such amendments shall be required only when the amendment substantially changes the character and impact of the originally approved site plan. Such modifications shall be submitted in accordance with the procedures and requirements of these regulations and shall be distributed to the appropriate department for review.

(7) *Time limitation.* An approved site plan shall become void unless a regulatory permit has been issued or use of the land has commenced within one year from the date of approval of this site plan. Upon request, revalidation of the site plan may be granted for an additional six months if all factors of the original site plan review are the same; provided, however, a written request for revalidation must be received by the planning director prior to expiration of the original one year period.

(8) *Penalties for non-compliance.* A stop work order shall be issued if any of the improvements required by the approved site plan are not constructed or installed during the development of the project. Certificates of occupancy will not be issued until the development is in full compliance with the approved site plan. A temporary certificate of occupancy may be issued where due to weather conditions required improvements cannot be constructed or installed. A temporary certificate of occupancy shall be issued for a period not to exceed six months.

(9) *Pre-submittal meeting.* Before filing an application for approval of a site plan, the developer is encouraged to confer with the planning department. Such action does not require formal application fees, or filing of a site plan or landscape plan, and is not to be construed as an application for formal approval. (Ord. No. 17913, § 4, 11-5-02)

Sec. 48-39.05. Contents of site plan.

- (a) A site plan shall:
 - (1) Be prepared by an architect, engineer, landscape architect, or other qualified professional at a scale appropriate to the magnitude of the project which will permit notation of all required data. A signature block of the person preparing the site plan shall be included along with the person's address and phone number;
 - (2) Contain a project title centered across the top of the plan sheet;
 - (3) Be prepared on plan sheets measuring at least 24 inch by 36 inch in size;

- (4) Be arranged so that the top of the plan represents north, or if otherwise oriented, is clearly and distinctly marked along with the date of preparation and a vicinity map identifying the location of the subject property;
- (5) Be accompanied by an electronic submittal of the site plan;
- (6) Show boundaries and dimensions graphically, and contain a written legal description of the property; and show a written and graphic scale;
- (7) Show the present and proposed topography of the area by contour lines at an interval of not more than two feet; and spot elevations of completed improvements;
- (8) Show the location, type and size of existing utilities, culverts, and easements or adjacent to the site;
- (9) Show, by use of directional arrow, the proposed flow of storm drainage from the site including drainage/retention ponds. Provide the supplemental stormwater information as required by city/county regulations, and provide on the site plan a site summary table which indicates: the area and percentage of the site proposed for development as buildings; development as a paved surface, undeveloped and planted with grass, ground cover, or other similar vegetative surface;
- (10) Show the location and setback of existing and proposed structures indicating the number of stories, gross floor area, and location of all entrances to all structures. If the site is to be razed, the existing structures may be omitted;
- (11) Show the location and dimension of existing and proposed curb cuts, curb-radii, access aisles, off-street parking (including signage and parking spaces designated for the disabled), loading zones and walkways (including wheelchair ramps);
- (12) Indicate the location, heights, and material for screening walls and fences;
- (13) List the type of surfacing and base course proposed for all parking, loading, and walkway areas;
- (14) Identify names and dimensions of all existing and proposed streets, including rights-of-way extending through or adjacent to the site;
- (15) Show the location and size, and provide a landscape schedule for all perimeter and interior landscaping including grass, ground cover, trees and shrubs;
- (16) Identify location, type, height, square footage and illumination of existing and proposed signage;
- (17) Show and dimension the required number of off-street parking spaces, aisles, medians, and drives;
- (18) Show the proposed type, location, height, directions, and intensity of illumination of proposed exterior lighting;

- (19) Show the location, size and method of screening of trash storage areas;
- (20) Identify any restrictions as shown on a recorded plat of subdivision;
- (21) Identify boundary of the 100 year flood plain and base flood elevation;
- (22) Identify location, type, and area of on-site sewage disposal systems;
- (23) Identify location, dimension, and size of proposed recreations areas, open spaces, and other required amenities and improvements; and
- (24) Include a drainage report as required by the applicable department of public works.
- (25) Architectural elevations, including a description of the exterior types of building materials and finishes;
- (26) Other information, as may be required by the planning director, in order to ensure the intent and purpose of this article are met.

(b) The planning director may waive any of the above-listed requirements if the requirements are determined to be unnecessary due to the scope and nature of the proposed development.
(Ord. No. 17913, § 5, 11-5-02; Ord. No. 18229, § 1, 4-27-04)

Sec. 48-39.06. General performance guidelines.

In considering and acting upon site plans, the planning director shall take into consideration the public health, safety, and welfare, the comfort and convenience of the public in general and the immediate neighborhood in particular. The following guidelines shall be considered in the evaluation of site plans:

- (a) *General plan conformity.* The planning director shall review all site plans in accordance with the adopted Comprehensive Metropolitan Plan and/or Neighborhood Plans for conformity with the adopted plans' objectives, policies, and/or design guidelines.
- (b) *Circulation: driveways, sidewalks, off-street parking, loading, curbs and gutters.* The planning director shall review all site plans for access and circulation features to provide mobility for people and goods to reach the site and circulate through it in a safe and efficient manner. All modes of transportation (pedestrian and automobile) must be considered in the site plan review.
- (c) *Landscaping and buffers.* All site plans shall provide for the landscaping and buffering of all building sites and parking areas. Review of landscaping and buffering is intended to protect and promote the public health, safety, and general welfare by preventing soil erosion; providing shade; protecting from excessive noise, glare, and heat; conserving natural resources of air and water; enhancing the overall appearance of development sites; and facilitating a convenient, attractive, and harmonious streetscape and community. All site plans shall comply with adopted landscape ordinances.

- (d) *Lighting.* All site plans shall provide adequate lighting so as to assure safety and security. Lighting installations shall not have an adverse impact on traffic safety or on the surrounding area. Light sources shall be shielded, and there shall be no spillover onto adjacent properties.
- (e) *Public health and safety.* Applicable emergency service agencies shall review all site plans to determine adequacy of access and other aspects of public safety, including crime prevention through environmental design (CPTED) concepts such as natural surveillance, natural access control, and territorial reinforcement.
- (f) *Signs.* The site plan shall conform to adopted sign ordinances and address the following considerations:
 - (1) *Traffic signals.* No sign shall be maintained at any location which obstructs, impairs, obscures, interferes with the view of, or is confused with, any traffic control sign or devices regardless of whether or not it meets other size, location, and setback requirements of adopted sign codes. Nor shall any sign interfere with, mislead or confuse traffic flow. A sign's position, size, shape, content, color and illumination shall be considered when making such a determination.
 - (2) *Sight distance triangles.* No sign, or any part of a sign other than a supporting pole or brace no greater than 18 inches in width or diameter shall be located lower than nine feet from grade within the area of any sight distance triangle.
 - (3) *Landscaping.* Signs proposed to be located within a landscaped area shall be located so as not to be obstructed from full-growth of landscaping. All sign base landscaping shall be of the nature and quality so as not to obstruct a motorist's view of other vehicles moving within a parking lot or entering and exiting a driveway.
 - (4) *Site comprehension.* Signs shall be designed and located to strengthen overall site comprehension through the use of comprehensive sign packages, where applicable, and the location of signs to clearly define points of access.
- (g) *Utilities.* Ground mounted transformers and air conditioning units shall be screened if visible from the street or when adjacent to a structure on adjoining lot(s). All such units shall be located behind the front yard and side street yard setback lines.
- (h) *Floodway.* Any development within floodways as identified on flood insurance rate maps (FIRM) shall comply with applicable city and county standards. General development guidelines include: anchorage to prevent flotation, construction with materials resistant to flood damage, flood proof all utility and sanitary facilities, and designed so as to not increase surface elevation of the 100 year flood.
- (i) *Aviation.* Any development located within prescribed aviation zones shall comply with applicable city ordinances and county standards. General development guidelines include the evaluation of height, dust, and lighting.

- (j) *Stormwater drainage, erosion, and sedimentation control.* Measures taken for erosion and sedimentation control shall conform to applicable city and county standards. Where an erosion and sedimentation control permit is required, the necessary plans and data shall be submitted, reviewed, and approved concurrently with the site plan.

(Ord. No. 17913, § 6, 11-5-02; Ord. No. 18229, § 2, 4-27-04)