g. Collective provisions: Off-street parking facilities for separate uses may be provided collectively if the total number of spaces so furnished is not less than the sum of the separate requirements for each such use; provided, that wherever there is a common plan of parking for land in single ownership that the amount of required parking shall consider the joint use of such space whenever large places of assembly are present which vary in their times of use and season of the year to the end that all parking is contained on the site or on accessory parking lots except for infrequent periods of peak use. The off-street parking spaces required by Section 5-101 may be increased; however, where it is anticipated that peak parking periods will be a consistently reoccurring problem. All regulations must be adhered to which cover the location of accessory parking spaces in relation to the use served.

h. Location: All parking spaces required to serve structures or uses shall be located on the same zoning lot as the structure or use served unless a conditional use permit is obtained under Section 5-102.

i. Employee parking: Parking spaces required on an employee basis shall be based on the maximum number of employees on duty or residing, or both, on the premises at any one time.

j. Handicapped parking: Parking spaces according to the number of spaces and their designated signage shall be provided for persons with a disability in conformance to the standards of the federal Americans with Disabilities Act of 1990 as incorporated into state statutes. (See K.S.A. 58-1311 and 42 USCA 12101 et seq.)

6. Plans and approval required: Plans showing the layout and design of all off-street parking spaces, whether required spaces or not, including driveway and loading areas shall be submitted to and approved by the Zoning Administrator prior to issuance of a zoning permit for the parking layout itself or as part of an application for a larger related project. Before approving any parking layout, the Administrator shall determine that the spaces provided are usable and meet City design standards as well as all parking requirements of these regulations. Parking spaces shall be clearly indicated or otherwise marked on the ground to designate the individual spaces. (See Section 5-100A 1-5 for design standards.)

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101 **Required Parking Spaces.** Off-street parking spaces accessory to the uses hereinafter designated shall be provided as follows, except no such spaces shall be required in the C-1 Central Business District unless for dwelling units permitted in conjunction with business uses:

A. Dwelling and Lodging Uses.

1. Single and two-family dwellings, earth-sheltered dwellings, residential-designed manufactured homes and manufactured and mobile homes: At least one parking space for each dwelling unit.

2. Multiple-family dwellings: At least one and one-half parking spaces per unit, except in housing for the elderly, one space per two units.

3. Boarding or rooming houses: One parking space for each two rooms.

4. Dormitories, fraternities, sororities and similar lodging facilities: At least two parking spaces for each three occupants.

5. Hotels, motels and bed and breakfast homes and inns: One parking space for each rental unit, plus such additional spaces as are required for restaurants, assembly rooms and affiliated facilities.

B. Business and Industrial Uses.

1. Automobile, truck, trailer and manufactured/mobile home sales and rental lots: One parking space for each 3,000 square feet of open sales lot area devoted to the sale, display and rental of such vehicles, plus one parking space for each service bay and employee.

2. Business and professional offices: One parking space for each 300 square feet of floor area, not including meeting rooms.

3. Bowling alleys: Four parking spaces for each lane.

4. Cartage, express, parcel delivery and freight terminal establishments: One parking space for each two employees.

5. Car washes: Two holding spaces for each car washing stall, plus one drying space for each car washing stall.

6. Funeral homes and mortuaries: One parking space for each four seats based upon the designed maximum capacity of the parlor, plus one additional parking space for each employee and each vehicle maintained on the property.

7. Furniture or appliance stores and service or repair shops: One parking space for each 400 square feet of floor area.

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8. Manufacturing, production, processing, assembly, disassembly, cleaning, servicing, testing, or repairing of goods, materials or products: One parking space per two employees.

9. Medical and dental clinics or offices: One and one-half parking spaces for each examining or treatment room, plus one for each doctor and employee.

10. Restaurants, clubs and taverns: One parking space for each 2.5 seats based on the maximum designed seating capacity; provided, however, that drive-in restaurants shall have a minimum of least 10 parking spaces.

11. Retail stores and financial institutions: One space per 250 square feet of floor area, not including meeting rooms. (See Section 5-101B13 for places of assembly.)

12. Service stations for motor vehicles: One parking space for each employee, plus two spaces for each service bay.

13. Theaters, auditoriums and places of assembly: One space for each four seats. (See Section 5-100A5g for collective provisions.)

14. Warehouses, storage and wholesale establishments: One parking space for each two employees.

C. Other Uses.

1. Child care centers and preschools: One parking space for each employee plus such temporary parking spaces as determined necessary by the Zoning Administrator for customer parking depending upon the number of children.

2. Churches: One parking space for each five seats based upon the maximum designed seating capacity in the main worship area, including choir lofts.

3. Elementary and junior high public schools and equivalent parochial and private schools: One space for each faculty and staff person plus places of assembly. Regular parking spaces must be provided off the street for all buses serving the school. (See Section 5-100A5g for collective provisions.)

4. Hospitals: One parking space for each two beds, plus one parking space for each resident or staff doctor and one space for each two employees.

5. Nursing and convalescent homes: One parking space per each five beds based on the maximum designed capacity of the building, plus one parking space for each employee.

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6. Private social and hobby clubs, associations and lodges: One parking space for each three seats based upon the maximum designed seating capacity.

7. Secondary public and private schools: One parking space for every four persons based on the maximum design capacity for pupils, faculty and staff, plus places of assembly. Regular parking spaces must be provided off the street for all buses serving the school. (See Section 5-100A5g for collective provisions.)

8. Trade and commercial schools: Two parking spaces for each three students, plus one for each employee based on full-time equivalency.

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

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

A. Location. The nearest access to the parking area provided under this section must be within 300 feet (along lines of public access) from the boundary of the nearest entrance to the structure for which the parking is provided.

B. Use. The parking area shall be used for passenger vehicles only, and in no case shall it be used for sales, repair work, storage, dismantling or servicing of any vehicles, equipment, materials or supplies. Only such signs as are necessary for the proper operation of the parking lot shall be permitted.

C. Improvements.

1. Parking spaces and driveways on private property providing ingress and egress to parking areas shall be surfaced with concrete, asphaltic concrete, asphalt or any other comparable surfacing which meets the approval of the Board and shall be maintained in good condition and free of weeds, dust, trash and other debris.

2. Parking areas shall have adequate guards to prevent extension or the overhanging of vehicles beyond property lines or parking spaces. Such areas shall have adequate markings for channelization and movement of vehicles.

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3. If lighting facilities are provided, they shall be so arranged as to deflect or direct light away from any adjacent dwelling or residential district.

4. A fence (such as solid-wall masonry, wood, metal, plastic or other similar materials) not less than six feet high, may be required to be erected along any property line adjacent to or adjoining any residential district to reduce noise, eliminate the passage of light from vehicles and prevent the blowing of debris. Whenever a fence shall be required along a front yard which includes a driveway area, such fence shall not be higher than four feet.

5. When located in a residential district, parking shall not be located within a front yard and the front yard shall remain unpaved and shall be landscaped, unless a waiver by the Board is warranted due to the nature and arrangement of the adjacent land use.

6. The Board shall determine the necessity of additional improvements in order to protect adjacent property owners and the public interest. Such improvements shall include, but not be limited to proper drainage, setbacks, screening, grass, shrubs, trees and the maintenance thereof, and the extent of access permitted to public streets and alleys.

103 **Off-Street Loading and Unloading.** In all zoning districts except the B-1 Central Business District, loading and unloading space shall be provided off-street and on the same premises with every building, structure or part thereof, hereafter erected, established, or enlarged and occupied which requires the receipt or distribution of materials or merchandise by motor vehicle. The loading and unloading space shall be so located as to avoid undue interference with public use of streets, alleys and walkways. Such vehicular access shall be maintained in good condition and surfaced in such manner as required in Section 5-100A5b for parking spaces. When off-street parking space is used to fulfill this loading and unloading requirement, the latter shall be scheduled so as not to interfere with meeting the parking needs.

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ARTICLE 6. ACCESSORY USES, TEMPORARY USES AND HOME OCCUPATIONS

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

A. Definitions. An accessory use is a structure or use which:

1. Is subordinate to and serves a principal structure or use;

2. Is subordinate in area, extent or purpose to the principal building or use served; however, this does not preclude recreational areas for tennis, swimming, racquetball, basketball and similar activities;

3. Contributes to the comfort, convenience or necessity of occupants, business or industry in the principal structure or use served; and

4. Is located on the same zoning lot as the principal structure or use served. (See Section 6-100D1 regarding beginning any accessory structure or use prior to the principal structure or use.)

B. Permitted Accessory Uses. Any structure or use that complies with the terms of Section 6-100A may be allowed as an accessory use or structure and may be included, but is not limited to the following list: *

1. Off-street parking and loading space as regulated by Article 5 of these regulations, including detached garages and carports. On lots which are not over 10,000 square feet in size for single and two-family dwelling units and all types of manufactured and mobile homes such structures may contain incidental space for storage and other uses and are limited to one each per zoning lot not over 720 square feet in gross floor area for a garage and 200 for a carport, unless a conditional use is approved by the Board of Zoning Appeals for a larger structure. Similarly, on lots over 10,000 square feet in size, detached garages shall not exceed 960 square feet and carports 500 square feet.

2. Signs, when permitted by Article 7 of these regulations.

3. Buildings for storage and other enclosed purposes; provided, that no such buildings on lots which are not over 10,000 square feet in size which is accessory to single and two-family dwelling units and all types of manufactured and mobile homes shall exceed 400 square feet in gross floor area, unless a conditional use is

* Zoning permits are required only for accessory structures which exceed 120 square feet of ground area; unless a permanent foundation is required by any applicable Building Code; however, permits are required for fences in the front yard setback and for satellite dish antennas which exceed one meter (39.37 inches) in diameter. (For other accessory zoning permits, see Section 6-101 for temporary uses, Section 6-102 for home occupations, Section 5-100 for parking spaces and loading areas and Article 7 for signs.)

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approved by the Board of Zoning Appeals for a larger building. Similarly, on lots over 10,000 square feet in size, such buildings shall not exceed 500 square feet.

No motorized vehicle of any type or any portion thereof such as a truck trailer may be used on a residential lot for storage or any purpose other than for periodic vehicular parking according to provisions of Article 5. Similarly, a railroad box car, construction trailer, dumster, shipping container or portable storage unit is not permitted permanently on a residential lot. Motorized vehicles and portions thereof, construction trailers, dumpsters, shipping containers or portable storage units; however, may be used only temporarily for refuse disposal or storage during a period of construction, reconstruction or moving including location on a driveway.

4. Storage of recreational vehicles; provided, that they shall not be utilized for living purposes, except for the convenience of temporary lodging only, for not more than 15 days at any one time, and when stored on the driveway or on a graveled or paved surface parallel and adjacent to the driveway of a residential lot by the occupant who is the vehicle owner, shall be located not less than five feet from the front lot line and not otherwise stored in a front yard setback. (See Section 2-102 for definitions of RECREATIONAL VEHICLE (RV) and YARD, FRONT.)

5. Storage outside both above or below ground level of petroleum products for heating and power purposes or for fueling vehicles related to the operation of the principal use on commercial and industrial lots only and for sale at automobile and truck service stations. (See also State Fire Marshal's regulations.)

6. Detached, rack mounted solar equipment; and satellite dish antennas; provided, that on lots with single-family and duplex dwelling units and all types of manufactured and mobile homes that the antenna structure shall not be located in any front yard setback nor in any portion of the area which is parallel to the front facade of the principle structure. Satellite antenna dishes exceeding one meter (39.37 inches) in diameter shall not be located on or attached to or mounted on masts (wireless cable) which are attached to dwelling units or manufactured or mobile homes nor their accessory garages or storage buildings. If an acceptable quality signal cannot be received under these restrictions to minimize visual impact and to provide safety, the Zoning Administrator may approve an alternative location suitable for reception. (See Section 2-102 for definition of HEIGHT, MAXIMUM for wireless cable antenna height.)

7. Communication structures, antennas and aerials. (See Section 2-102 for definition of HEIGHT, MAXIMUM and Section 6-100B6 above for satellite dish antennas.)

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8. Storm shelters, children's playhouses, statuary, arbors, trellises, barbecue stoves, flagpoles, fences, walls, bathhouses and permanent-type swimming pools; provided, the latter are enclosed by a security-type fence for the protection of young children in residential districts only as approved by the Zoning Administrator regardless of whether the pool is above or below ground.

9. Guest houses without kitchen facilities or rooms for guests in an accessory building; provided, such facilities are used for the occasional housing of guests of the occupants of the principal building and not as rental units for permanent occupancy as housekeeping units.

10. Restaurants, pharmacies, gift shops, beauty parlors, barber shops and newsstands when located in a permitted hotel or motel.

11. For employees only, child care centers and restaurants when located in a permitted business or industrial building.

12. Recycling collection centers, large and small. (See Section 2-102 for definition of RECYCLING CENTER.)

13. Outdoor storage shall not be permitted as an accessory use, except as specifically permitted in the district regulations. (See Section 2-102 for definition of STORAGE, OUTDOOR and Section 3-103N3 for manufactured or mobile homes as storage structures.)

14. Private wind energy conversion systems may be permitted in all districts as an accessory use if granted as a conditional use by the Board of Zoning Appeals.

C. <u>Bulk Regulations</u>.

1. Accessory structures and uses shall maintain the same side and front yard setback as is required for the principal structure, unless they are a permitted obstruction within the provisions of Section 3-103F or of a temporary or emergency use during a period of construction, reconstruction or moving; (See Section 5-100A4 for parking spaces and Section 6-100B3 for storage buildings.)

2. Accessory buildings shall be set back at least five feet from the rear lot line, except that garages with entrances facing alleys shall be set back at least 15 feet; (See Section 9-101A for zoning permits on easements.)

3. No part of any accessory building shall be located closer than five feet to any principal structure; and (Note: Additions or attachments to principal structures are not considered accessory buildings and are regulated by the bulk regulations for the principal structure.)

4. Accessory structures and uses shall otherwise comply with the bulk regulations applicable in the district in which they are located,

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except that in residential districts no accessory building shall be more than one story high nor exceed 20 feet in height.

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

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

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

A. Temporary zoning permits for community celebrations, carnivals, circuses, musical festivals, religious revival services or similar outdoor events and Halloween or haunted houses may be approved with conditions by the Governing Body or their designated representative. Such uses need not comply with the bulk or lot size requirements; provided, that structures or equipment which might block the view of operators of motor vehicles on the public streets shall meet the requirements of the vision triangle. (See Section 2-102 for definition of VISION TRIANGLE.)

B. Christmas tree sales in any agricultural, business or industrial district for a period not to exceed 60 days. Display of Christmas trees need not comply with the yard and setback requirements of these regulations; provided, that no tree shall be displayed within the dimensions of a vision triangle. (See Section 2-102 for definition of VISION TRIANGLE.)

C. Contractors' offices, equipment sheds and open storage areas which are accessory to a construction project and remain on the site only during the duration of such project. Similarly, a model home or a portable structure may be used as a real estate sales office on the site of large scale residential developments.

D. Seasonal sale of farm produce grown on the premises in a single-family residential district to continue for not more than six months per year. Small, temporary structures on private property incidental to such sale need not comply with the applicable front yard requirements.

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* Temporary zoning permits are required for events provided for in Section 6-101A. A recycling center is also required to obtain such a permit, but no fee is charged.

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E. Promotional activities of retail merchants involving the temporary display of goods and merchandise may be conducted outside of enclosed buildings for a period of not more than two consecutive weeks in any six-month period in an area adjacent to the building subject to the following conditions:

1. No portion of the display shall be on publicly owned property, unless the applicant shall first have obtained approval for such use from the City.

2. These provisions shall in no way be deemed to authorize the outdoor display or the sale of used goods such as furniture, appliances, plumbing, housewares, building material or similar display or sale in any business or industrial districts, unless permitted otherwise by these regulations.

F. Periodic conduct of what is commonly called "garage or yard sales" which do not exceed a period of more than three days during any one sale and no more than two sales to be held at the same residence during any calendar year.

G. Recycling centers, small and large, periodically operated not for profit in business and industrial districts only for not more than 10 days in one period and for no more than three times during any 12-month period consistent with adequate provisions for public health and safety. (See Section 6-101 for temporary zoning permit.)

H. Fireworks. (See City ordinance.)

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

A. Definition. A business, profession, occupation, or trade conducted for gain or support entirely within a residential building or any type of manufactured or mobile home, or within a permitted structure that is accessory to such a building or home.

* Zoning permits are required only when a home occupation sign is displayed or an accessory structure is used.

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B. Use Limitations. In addition to all of the use limitations applicable to the district in which it is located, no home occupation shall be permitted unless it complies with the following restrictions:

1. The home occupation shall be conducted entirely within the principle residential structure or a garage, swimming pool or an accessory structure. (See Sections 6-100B 1 and 3 for limitations on detached accessory structures.)

2. No exterior alteration of the principal residential structure shall be made which changes the character thereof as a residence or causes goods to be displayed visibly from the residence or on the premises.

3. No more than 25% of the gross floor area of the residence shall be devoted to the home occupation; provided, that rooms let to boarders and roomers or used by child care facilities are not subject to this limitation. (See Section 2-102 for definition of BOARDING OR ROOMING HOUSE.)

4. Goods or stock for sale on or off the premises may be stored in enclosed areas, except articles which may constitute a hazard to the safety of adjacent property owners or tenants.

5. There shall be no outdoor display of goods for sale or the storage of equipment or materials used in the home occupation. No more than one commercial vehicle may be permanently or temporarily parked on a driveway or inside of a building and such a vehicle shall not exceed 12,000 pounds gross vehicle weight rating.

6. No equipment or process shall be used which shall create undue noise, smoke or particulate matter emission, vibrations or odors which are detectable to the normal senses off the lot. In case of electrical interference, no equipment or process shall be used which creates a visual effect or an audible interference off the premises in any radio or television receiver or transmitter or causes fluctuation in the voltage.

7. No more than one person other than a member of the immediate family occupying such residence shall be employed; provided, that no such person is employed in a two-family or multiple-family dwelling or in a manufactured/mobile home park. (Note: Independent contractors and/or employees of firms who only provide limited periodic service such as a bookkeeper, lawn maintenance service, maid, nurse and similar service personnel are not considered to be an employee of the home occupation.)

8. No sign shall be permitted other than that allowed by the applicable regulations in Article 7. (See Section 7-104A for home occupation sign.)

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C. Home Occupations Permitted. Customary home occupations include, but are not limited to, the following list of occupations; provided, that each listed occupation shall be subject to the requirements of Section 6-102A and B:

1. Adult care center for not more than four adults, adult care home, group boarding home, day care home and family and group day care home.

2. Artist, author, composer, photographer or sculptor.

3. Barber or beautician; provided, that only one operator shall be permitted.

4. Home crafts, such as cabinet making, model making, lapidary work, rug weaving and the like.

5. Minister, priest or rabbi.

6. Office for a route salesperson, sales representative or manufacturer's representative, where no exchange of tangible goods is made on a regular basis on the premises.

7. Professional office for an accountant, architect, attorney, building contractor, dentist, engineer, landscape architect, physician, real estate or insurance agent or a member of a similar profession.

8. Seamstress or tailor.

9. Teacher, including music and dance instructions; provided, that instructions shall be limited to two pupils at any time, except for occasional groups.

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

1. Animal kennels, or commercial stables.

2. Automobile and other vehicular repair shops or sales of such vehicles which exhibit a pattern of regular or continuous sales. A person holding a State Vehicle Dealer's License may not operate as a home occupation. This shall not prevent the periodic sale of a vehicle which is owned and operated for personal use.

3. Child care centers and preschools, unless specifically permitted by the district regulations.

4. Churches, chapels, temples or synagogues for regular public worship or religious services.

5. Dancing schools, except as provided for in Section 6-102C9.

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6. Excavating or heavy equipment operators or providing a trucking service.

7. Funeral homes, unless specifically permitted by the district regulations.

8. Grocery stores.

9. Private schools providing educational services for persons outside of the home other than tutoring.

10. Renting of equipment, furniture, motorcycles, tools or trailers.

11. Repair of diesel or gasoline engines.

12. Restaurants.

13. Sale of firearms or ammunition and gunsmithing, i.e., the repair of firearms.

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ARTICLE 7. SIGNS

100 **Sign Permits**. No sign, except for signs listed in Section 7-103, shall be constructed, erected, enlarged, relocated or structurally altered until a zoning permit for such sign has been obtained in accordance with the procedure set out in Article 9 of these regulations. No zoning permit for any sign shall be issued unless the sign complies with the regulations of this Article 7. All signs lawfully existing at the time of passage of these regulations may remain in use, including those in the status of legal nonconformance. The purpose of this article is to safeguard the public use of the streets and the sidewalk area and to equitably enhance the visual environment. (See Section 2-102 for definition of SIGN.) (See K.S.A. 68-2231, et seq. for state sign regulations.)

101 **Classification of Signs**.

A. Functional Types.

1. Advertising Sign: A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located or to which it is affixed. Such a sign may also be used to convey political and public service announcements. No such sign shall be attached to a stationary vehicle or a portion thereof which is intended for public display on a zoning lot. Advertising signs along state or federal highways must receive prior approval from the Kansas Department of Transportation before a local zoning permit can be issued.

2. Bulletin Board Sign: A sign that indicates the name of an institution or organization on whose premises it is located and which contains the name or names of persons connected with it, and announcements of persons, events or activities occurring at the institution. Such sign may also present a greeting or similar message.

3. Business Sign: A sign which directs attention to a business or profession conducted; or to a commodity or service sold, offered or manufactured; or an entertainment offered on the premises where the sign is located or to which it is affixed.

4. Construction Sign: A temporary sign indicating the names of designers and contractors involved in the construction of a project during the construction period and only on the premises on which the construction is taking place.

5. Identification Sign: A sign giving the name and address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily recognized symbol.

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6. Nameplate Sign: A sign giving the name and/or address of the owner or occupant of a building or premises on which it is located, and where applicable, their professional status.

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

B. Structural Types.

1. Awning, Canopy or Marquee Sign: A sign that is mounted or painted on, or attached to, an awning, canopy or marquee that is otherwise permitted by these regulations. No such sign shall project further below than seven feet from the ground level or beyond the physical dimensions of the awning, canopy or marquee.

2. Ground Sign: Any sign placed upon, or supported by, the ground independent of the principal or accessory buildings or structures on the property. Portable signs do not numerically count as ground signs for the district regulations.

3. Pole Sign: A sign that is mounted on a free-standing pole, the bottom edge of which sign is eight feet or more above ground level.

4. Projecting Sign: A sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building.

5. Roof Sign: A sign totally supported on the roof of a building which does not project more than 12 inches beyond the face of the structure.

6. Temporary Sign: A sign in the form of a banner, pennant, valance or advertising display constructed of fabric, cardboard, wall-board or other light weight materials, with or without a frame, intended for temporary display of not more than 30 days at a time.

7. Wall Sign: A sign fastened to or painted on a wall of a building or structure in such a manner that the wall becomes merely the supporting structure or forms the background surface, and which does not project more than 12 inches from such building.

102 General Standards.

A. Gross Surface Area of Sign. The entire area within a single continuous perimeter enclosing the extreme limits of such sign, and in no case passing through or between any adjacent elements of same. Such perimeter shall not include any structural elements lying outside the limits of such sign and which do not form an integral part of the display. When two or more signs are located on a zoning lot, the gross

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surface area of all signs on the lot shall not exceed the maximum gross surface per street frontage set by the applicable district regulations, except as is provided by Section 7-102B. As distinguished from corner lots, signs on interior lots which may be viewed from both directions of the adjacent street are considered to have a single gross surface area.

B. Corner and Through Lots. On corner and through lots, each lot line that abuts a street or highway shall be considered a separate street frontage. On corner and through lots, restrictions that are worded in terms of the number of signs per zoning lot shall be deemed to permit the allowable number of signs to face each street or highway that abuts the lot.

C. Height of Sign. The maximum height of signs shall be measured from ground level at the base of or below the sign to the highest element of the sign and shall be determined for purposes of Article 7 as independent from the maximum structure height for zoning districts.

D. Building and Electrical Codes Applicable. All signs must conform to the structural design standards of any applicable building code. Wiring of all electrical signs must conform to any applicable electrical code.

E. Illuminated Signs. Signs shall be shaded wherever necessary to avoid casting bright light upon property located in any residential district or upon any public street or park. Any brightly illuminated sign, located on a lot adjacent to or across the street from any residential district, which is not otherwise shaded and visible from such residential district, shall not be illuminated between the hours of 11 P.M. and 7 A.M.

F. Flashing or Moving Signs. No flashing signs, rotating or moving signs, animated signs, signs with moving lights or signs which create the illusion of movement shall be permitted in any residential district.

G. Signs Adjacent to Pedestrian Walkways. Signs projecting over or adjacent to a pedestrian walkway and any accessory electrical fixtures of a sign must maintain a minimum clearance of eight feet above the walking surface.

H. Access Way or Window. No sign shall block any access way or window required by any applicable building, housing, fire or other codes or regulations.

I. Signs on Trees or Utility Poles. No private sign shall be attached to a tree or utility pole whether on public or private property.

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J. Traffic Safety.

1. No sign shall be maintained at any location where by reason of its position, size, shape or color; it may obstruct, impair, obscure, interfere with the view of, or be confused with; any traffic control sign, signal or device; or where it may interfere with, mislead or confuse traffic.

2. No sign shall be located in any vision triangle as defined in Section 2-102, except official traffic signs and signs mounted eight feet or more above the ground whose supports, not exceeding two, do not exceed 12 inches at the widest dimension and, thus, do not constitute an obstruction.

K. Location. No sign or structure thereof shall be permitted **on** a public right of way or public easement, except temporary real estate and garage sale signs may be placed on the public right of way with the approval of the adjacent landowner to provide direction to the property; provided, that such signs do not obstruct traffic visibility. Such signs may only be displayed during an open house or a garage sale and must be removed at the conclusion of such open house or sale. No sign shall be permitted to **project over** a public right of way or public easement, except with the approval of the Board of Zoning Appeals as a conditional use, or as a permitted use in the B-1 Central Business District. (See Section 7-102G for pedestrian clearance, Section 7-102L2 for portable signs, Section 7-103A5 for garage sale signs and Section 7-103B5 for real estate signs.)

L. Portable Signs. Notwithstanding any other provisions of these regulations and, in particular, Article 7, the following provisions apply to the use of portable signs:

1. A portable sign is defined as a temporary on-site sign designed in such a manner as to be readily movable and not permanently attached to the premises, such as A-frames, trailer signs, signs placed on vehicles, beacon lights and other similar signs. Removal of any wheels shall not change the definition of being readily moveable. Any such sign shall not exceed a height of ten feet above grade level nor 60 square feet in gross surface area. Such signs shall not be used as advertising signs. (See Section 7-101A1 for advertising sign.)

2. All the general standards of Sections 7-102A through K are applicable to portable signs, except that in Section 7-102K such signs may project over or be located on public easements, but not the public street right of way . No such signs shall be placed on the roof of structures.

3. Whereas portable signs are not required to set back any minimum distance from lot lines in any zoning district, the Zoning Administrator shall, in his or her discretion, strictly enforce the traffic safety provisions of Section 7-102J1, especially at corner intersections and driveway entrances and exits.

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4. In all zoning districts, except residential districts, portable signs are permitted; however, any such sign shall not be located closer than 50 feet to another such sign when measured along the frontage whether the latter is located on the same or another zoning lot, except that each business firm shall be permitted at least one such sign notwithstanding the 50 foot minimum spacing standard.

5. In all residential districts only portable signs are permitted which limit their messages to the following subjects:

   a. Announcements of special occasions or activities of nonprofit organizations such as churches and fraternal and service clubs.

   b. Announcements related to personal or family events such as "Happy Birthday" and the like.

   The above signs are limited to a display period of not more than 20 days for any one announcement with the gross surface area not to exceed 32 square feet and only one sign at a time permitted on the premises of the party making the announcement.

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

7. A zoning permit for each portable sign shall be obtained for all or a portion of each calendar year when the sign remains on the zoning lot. Permits in residential districts are not required which meet the criteria of Section 7-102L5 above. All portable signs shall bear an identification marker to indicate the owner's name and some system of identifying the individual sign, e.g., by number.

8. Any unauthorized portable sign placed on public property, including the public street right of way , is declared to be a public nuisance and be the cause of its removal and impoundment without notice. If not redeemed within 30 days by the owner paying a service charge, the City may dispose of the sign in any manner deemed appropriate. The Zoning Administrator may revoke the permit for any sign deemed to be in violation of this Section, i.e., 7-102L, or of any condition on which the permit was based and order its removal within a reasonable period consistent with public safety.

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M. Damaged or Unsafe Signs. The Zoning Administrator shall require the immediate repair or removal of any conforming or nonconforming sign or sign structure which has been damaged or deteriorated so as to become a public hazard. Such a sign or sign structure may be restored to its original condition without obtaining a zoning permit, unless the sign is replaced and, thus, must conform to the current regulations.

103 Exemptions.

A. The following signs shall be exempt from the requirements of this Article:

1. Signs of a duly constituted governmental body including school districts such as traffic or similar regulatory devices, legal notices, warnings at railroad crossings, identification purposes and other instructional or regulatory signs having to do with health, safety, parking, swimming, dumping, etc.

2. Flags or emblems of a government or of a political, civic, philanthropic, educational or religious organization, when displayed on private property.

3. Small signs, not exceeding five square feet in gross surface area, displayed on private property for the convenience of the public, including signs to identify entrance and exit drives, parking areas, one-way drives, rest rooms, freight entrances and the like.

4. Address numerals and other signs required to be maintained by law, rule or regulation; provided, that the content and size of a sign does not exceed such requirements.

5. Garage sale signs not exceeding four square feet in gross surface area. (See Section 7-102K for location on right of way .)

6. Memorial signs which are displayed on private property.

7. Scoreboards in athletic fields or stadiums.

8. Political campaign signs, not exceeding six square feet in gross surface area, which are displayed on private property and not otherwise in the public right of way . Such signs must be removed 48 hours after a candidate is elected to office or is eliminated from further participation in the election as a candidate with similar provisions for bond issues and other ballot issues. Such signs may also be displayed as advertising signs where permitted by Section 7-104.

9. Ideological signs such as may pertain to religious or political expressions or personal beliefs when located on private property of the proponent and not otherwise in a public right of way , a sight obstruction in a vision triangle or on public property or structures such as utility poles.

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B. The following signs are exempt from the zoning permit requirements of Section 7-100, but shall comply with all of the other regulations imposed by this Article:

1. Nameplate signs not exceeding two square feet in gross surface area accessory to a residential building, including all types of manufactured and mobile homes.

2. Identification signs not exceeding 40 square feet in gross surface area accessory to a multiple-family dwelling or manufactured home park.

3. Bulletin board signs not exceeding 40 square feet in gross surface area accessory to a church, private school, or public or nonprofit institution.

4. Business signs when located on property used for agricultural purposes and pertaining to the sale of agricultural products produced on the premises.

5. Real estate signs not exceeding six square feet in gross surface area and which pertain to the sale or lease of the lot or tract or structure on which the sign is located, except for the provision of Section 7-102K. (See Section 7-101A7 for auction signs.)

6. Temporary signs which do not exceed 20 square feet in gross surface area and are displayed not more than four times per calendar year.

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104 District Regulations.

A. R-1 and R-2 Residential Districts.

1. Functional Types Permitted:

   a. Nameplate signs.
   b. Identification signs.
   c. Real estate signs.
   d. Construction signs.
   e. Bulletin board signs.
   f. Business signs, pertaining to a home occupation.

2. Structural Types Permitted:

   a. Ground signs.

   b. Pole signs.

   c. Wall signs.

   d. Business signs pertaining to home occupations shall be affixed flush to the wall of a building.

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

4. Maximum Gross Surface Area.

   a. Nameplate signs: Two square feet.

   b. Identification and bulletin board signs: 32 square feet in the R-1 District and 40 square feet permitted in the R-2 District.

   c. Real estate signs: Six square feet per lot; provided, that one sign not more than 100 square feet in area announcing the sale of lots and/or houses in a subdivision may be located on such development. Such sign shall be removed when 75% of the lots in the subdivision have been sold.

   d. Construction signs: 40 square feet.

   e. Business signs pertaining to a home occupation: Two square feet or the minimum required by state statutes.

5. Maximum Height: 15 feet; provided, that signs associated with one and two-family dwellings and mobile and modular homes shall not be located at a height greater than eight feet above ground floor elevation.

6. Required Setback: 10 feet from the front line.

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7. Illumination: No sign shall be illuminated, except that bulletin board signs may be indirectly illuminated with incandescent or fluorescent light.

B. B-1 Central Business District.

1. Functional Types Permitted: Any type listed in Section 7-101A, except advertising signs.

2. Structural Types Permitted: Any type listed in Section 7-101B.

3. Number of Signs Permitted: No limitation.

4. Maximum Gross Surface Area: Three square foot of sign area for each one foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 100 square feet.

5. Maximum Height: 25 feet, except that roof signs shall not exceed a height of five feet above the highest point of the roof.

6. Required Setback: No minimum required.

7. Illumination: Illuminated signs shall be permitted.

C. B-2 General Business District.

1. Functional Types Permitted: Any type listed in Section 7-101A, including advertising signs when approved as a conditional use by the Board of Zoning Appeals.

2. Structural Types Permitted: Any type listed in Section 7-101B.

3. Number of Signs Permitted:

   a. Ground and pole signs: One of each functional-type per zoning lot.

   b. Other structural types permitted: No limitation.

4. Maximum Gross Surface Area: Three square foot of sign area for each one foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 200 square feet other than advertising signs.

5. Maximum Height: 30 feet, provided no sign shall protrude above the roof line of the principal structure. A sign higher than the roof line of the structure, but not more than 35 feet, may be permitted for gasoline service stations by application to the Board of Zoning Appeals for a conditional use. The Board should consider the height, location and effect of such a sign in relation to any adjacent residential districts.

6. Required Setback: No minimum required.

7. Illumination: Illuminated signs shall be permitted.

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D. I-1 Industrial District.

1. Functional Types Permitted: Any types listed in Section 7-101A.

2. Structural Types Permitted: Any types listed in Section 7-101B.

3. Number of Signs Permitted:

   a. Ground and pole signs: One of each functional-type per zoning lot.

   b. Other structural types permitted: No limitation.

4. Maximum Gross Surface Area: Four square feet of sign area for each one foot lineal street frontage; provided, no single sign shall exceed a gross surface area of 300 square feet other than for advertising signs which do not exceed 600 square feet.

5. Maximum Height:

   a. Wall and roof signs: 10 feet above the highest point of the roof line on which such sign is located.

   b. All other signs: 30 feet.

6. Required Setback: No minimum requirement.

7. Illumination: Illuminated signs shall be permitted.

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ARTICLE 8. NONCONFORMING LOTS, STRUCTURES AND USES

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

A. Nonconforming Lot of Record. A zoning lot which is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations and such lot now neither complies with the lot area requirements or the width for any permitted uses in the zoning district in which it is located.

B. Nonconforming Structure. An existing building or structure which does not comply with the maximum lot coverage and height or the minimum yard requirements which are applicable to new structures in the zoning district in which it is located.

C. Nonconforming Use. An existing use of a structure or land which does not comply with the use regulations applicable to new uses in the zoning district in which it is located.

D. Nonconformity. A nonconforming lot, use or structure that does not comply with currently applicable regulations, but that complied with zoning regulations in effect at the time it was legally established. (See Sections 8-100 A, B and C above and Section 8-107 for Registration of Nonconformities and Exemptions.)

101 Nonconforming Lots of Record.

A. In Any Residential District.

1. Notwithstanding the regulations imposed by any other provision of these regulations, a single-family detached dwelling or any type of manufactured or mobile home which is a permitted use by the applicable district regulations and complies with the restrictions in Section 8-101A2 may be located on a lot(s) in the same ownership that is not less than 50 feet in width with public water and sewerage and that consists entirely of a tract of land that:

a. Has less than the prescribed minimum lot area, width or depth, or all three; and

b. Meets the definition in Section 8-100A for a nonconforming lot of record.

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2. Construction permitted by Section 8-101A1 shall comply with all of the regulations except lot area, width and depth applicable to a single-family detached dwelling or any type of manufactured or mobile home permitted in the zoning district in which the lot in question is located; provided, however, that the following side yard requirements shall apply in place of the side yard requirements otherwise applicable:

   a. The structure shall be placed on the lot so as to provide a yard on each side of the dwelling.

   b. The sum of the widths of the two side yards on each lot shall be not less than the smaller of:

      (1) 20% of the width of the lot, or

      (2) the minimum total for both side yards prescribed by the bulk regulations for the zoning district.

   c. In any case, neither side yard resulting from the methods permitted in Section 8-101A2b shall be less than five feet wide.

   d. When a yard is also considered to be a front yard on a corner lot, one of the front yards comprising part of the lot width may be reduced to 15 feet; provided, that a driveway to a parking space must maintain a length of at least 20 feet from the front lot line.

B. <u>In Districts Other than Residential Districts</u>.

1. Notwithstanding the regulations imposed by any other provision of these regulations, a structure designed for any permitted use may be erected on a lot of the type described in Section 8-101A1.

2. Construction permitted by Section 8-101B1 shall comply with all of the regulations except minimum lot area, width and depth applicable in the zoning district in which the lot in question is located; provided, that the width of any side yard must not be less than that derived by applying the following formula (wherein the width of any side yard required = w):

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

102 Nonconforming Structures.

A. <u>Authority to Continue</u>. Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions in Section 8-102B through 8-102D.

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B. Enlargement, Repair or Alterations. Any such structure described in Section 8-102A may be enlarged, maintained, repaired or structurally altered; provided, however, that no such enlargement, maintenance, repair or alteration shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be determined by Section 8-101A2 or 8-101B2, whichever is applicable.

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

D. Moving. No structure described in Section 8-102A shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved. (See Section 3-103M for Moving Structures.)

103 Nonconforming Uses.

A. Authority to Continue. Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure or only involving a structure which is accessory to such use of land, may be continued, so long as otherwise lawful, subject to the regulations contained in Sections 8-103B through 8-103J.

B. Ordinary Repair and Maintenance.

1. Normal maintenance and incidental repair or replacement, installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use;

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provided, however, that this subsection shall not be deemed to authorize any violation of Sections 8-103C through I of these regulations.

2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition provided that such restoration will not be in violation of Section 8-103F of these regulations.

C. Structural Alteration. No structure that is devoted in whole or in part to a nonconforming use shall be structurally altered unless the entire structure and use thereof shall thereafter conform to all regulations of the zoning district in which it is located.

D. Extension.

1. Extension of a nonconforming use is permitted within a nonconforming structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of these regulations or on the effective date of the original City Zoning Regulations or a subsequent amendment heretofore that caused such use to become nonconforming; provided, however, that no structural alterations shall be made unless such changes, and the use thereof, conform to the regulations of the district in which the structure is located.

2. Extension of a nonconforming use of a part of a structure is not permitted if all or substantially all of the structure is designed or intended for a use which is permitted in the district in which the structure is located, nor shall the use be changed to any other nonconforming use.

3. Extension of a nonconforming use is not permitted to any structure or land area other than the one actually occupied or used by such nonconforming use on the effective date of these regulations or on the effective date of the original City Zoning Regulations or a subsequent amendment heretofore that caused such use to become nonconforming.

E. Enlargement. No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.

F. Damage. In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged, by any means except flooding, to the extent of more than 50% of its fair market value, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which

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it is located. When such damage is 50% or less of the fair market value, no repairs or restoration shall be made unless a zoning permit is obtained, and restoration is actually begun within one year after the date of such partial damage and is diligently pursued to completion. If the applicant is aggrieved by the decision of the Zoning Administrator in approving the percent of damage to the value of the structure based on data submitted by the applicant, an appeal may be made to the Board of Zoning Appeals for a determination. (See Section 8-105 for Nonconforming Nonresidential Structures and Uses and Appendix for Substantial-Damage and Substantial-Improvement in the Floodplain Management Regulations.)

G. Moving. No structure that is devoted in whole or in part to a nonconforming use shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. No nonconforming use of land shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. (See Section 3-103M for Moving Structures.)

H. Change in Use. If no structural alterations are made other than those necessary to repair or maintain the structure as described in Section 8-103B1, a nonconforming use of a structure may be changed to another nonconforming use of the same or of a similar type of use or more restrictive use. Similarly, a nonconforming use of land not involving a structure or involving only an accessory structure may also be changed. When a nonconforming use has been changed to a more restrictive use or to any permitted use, it shall not thereafter be changed back to a less restrictive use or to a nonconforming use. In determining whether a change in use is the same, similar or more restrictive, the Zoning Administrator shall consider the changes in environmental factors such as outdoor storage, loading, traffic, parking, noise, lighting, air pollution, hours of operation, screening and other factors, as well as the provisions available in Section 8-105. (See Section 9-101A for Zoning Permits and Section 9-101B for Occupancy Certificates.)

I. Abandonment.

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

2. When a nonconforming use of a part or all of a structure which was designed and intended for any use which is permitted in the zoning district in which such structure is located, is abandoned for a period of 12 consecutive months, such use shall not thereafter be

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reestablished or resumed, and any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such structure is located.

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

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

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

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

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

A. The following procedures are to be followed to determine the status of existing special and conditional uses after their reclassification as lawful, permitted, special or conditional uses in these regulations to avoid nonconformities and to provide equitable conversions of such uses:

1. Where a use existed prior to the effective date of these regulations and was previously permitted only as a special use or as a conditional use, i.e., an exception approved by the Board of Zoning Appeals, such uses shall not be deemed to be nonconforming, but shall, without further action, be deemed to be a lawful special or

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conditional use as now classified with the same conditions applicable as originally established, unless reclassified now as a permitted use.

2. Where a use existed prior to the effective date of these regulations and any prior regulations and was or is now classified as a special use or as a conditional use, it shall be considered to be a lawful, conforming special or conditional use. Enlargement, extension or alterations to existing structures or land improvements for expansion of such lawful uses may be made within the area of the zoning lot which was actually used for such uses on the effective date of these regulations and shall be subject to all requirements set forth in these regulations as a permitted use.

107 **Registration of Nonconformities and Exemptions.** (See Sections 8-100D for Nonconformities and 3-100E for Exemptions.)

A. Purpose. Registration of nonconformities and exemptions, among other purposes, is to provide a property owner with a record of their nonconformity or exemption which may be in effect for many years. Such a record is very desirable since most nonconformities or exemptions are established in the past and the availability of personal witnesses and written documentation to confirm their status becomes more difficult due to the passage of time. This is particularly important since the person claiming the nonconformity or exemption has the burden to prove their claim by the preponderance of the evidence. Registration can be especially useful to property owners who may have a nonconformity or exemption created by changing their zoning status from the unincorporated area of a county to the City regulations.

B. Rights Conditioned. A lawfully established nonconformity including exemptions is a vested right protected by due process which is sometimes referred to as being "grandfathered-in". In order to establish such a right, it is essential that it be created or commenced prior to the enactment of the regulations which restricted its establishment. A nonconformity or exemption which violated the zoning regulations at its inception has no lawful right to continue. Once the validity of the nonconformity or exemption has been determined, it has the right to be sold, inherited, transferred or assigned unless restricted by a condition attached to a special or conditional use. Certain limitations, however, may be placed on the expansion, repair, maintenance and continuance of such nonconformities or exemption as may be determined by the provisions of Article 8 in these regulations. For example, continuance may be subject to abandonment or limited amortization of certain uses.

C. Registration Process. The Zoning Administrator shall establish a process for registration of nonconformities and exemptions and a system for making determinations thereof and keeping records of the same. While there shall be no deadline for registration, property owners anticipating the need for registration should do so at their earliest convenience.

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D. Registration Determination. The Zoning Administrator shall determine the qualifications of the lot, use or structure for registration as to its legal, nonconforming status. Such determination in writing shall be based on the evidence submitted by the property owner requesting the registration.

E. Appeal. An aggrieved party may appeal the Zoning Administrator's determination whether to register or not register the nonconformity or exemption to the Board of Zoning Appeals. (See Section 10-106 pertaining to Appeals.)

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ARTICLE 9. ADMINISTRATION AND ENFORCEMENT

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

A. Duties of the Zoning Administrator. (See Section 9-102 for Enforcement and Liability.)

1. Approve and issue all zoning permits and occupancy certificates and make and maintain records thereof.

2. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of these regulations.

3. Maintain a set of administrative forms to assist applicants and to process the cases considered by the Planning Commission, Board of Zoning Appeals and Governing Body.

4. Receive, file and forward to the Planning Commission the applications and records for all amendments and special uses which are initially filed with the Zoning Administrator.

5. Receive, file and forward to the Board of Zoning Appeals the applications and records for all variances and conditional uses which are initially filed with the Zoning Administrator and forward all records of appeals to the Chairperson of the Board.

6. Maintain permanent and current public records of the zoning regulations, including but not limited to all Official Zoning Maps, amendments, special uses, appeals, variances, conditional uses and applications thereof and records of hearing thereon.

7. Provide such technical and clerical assistance as may be required by the Planning Commission, the Board of Zoning Appeals, the Governing Body and other agencies and officials in the exercise of their duties relating to these regulations.

8. Maintain for distribution to the public a supply of the current zoning regulations, zoning map(s) and any rules of the Planning Commission and the Board of Zoning Appeals. A fee may be charged to defray the cost of printing and distribution.

9. Maintain the official copy of the zoning map(s) showing the district boundaries. Such map(s) shall be marked "Official copy of zoning district map(s) incorporated into zoning regulations by adoption of Ordinance No. _____ by the Governing Body of the City of Andale on the _____ day of _____, 20___" and shall be open to inspection and available to the public at all reasonable business hours. Each map shall be signed by the Mayor and attested

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to by the Clerk. The effective date shall be noted on the map and periodic changes indicated by a revision date.

B. Duties of the Clerk. The Clerk shall maintain certain official records and carry out certain responsibilities in the administration of these regulations as follows:

1. That not less than three copies of these model regulations shall be marked by the Clerk as "Official Copy as Incorporated by Ordinance No. _____", (i.e., the ordinance approved by the Governing Body) and all sections or portions thereof intended to be omitted clearly marked to show any such omissions or showing the sections, articles, chapters, parts or portions that are incorporated and to which shall be appended a copy of the incorporating ordinance. Such copies maintained by the Clerk shall be open to inspection and available to the public at all reasonable business hours.

2. That the Clerk supply official copies of these regulations similarly marked as described in Section 9-100B1 to the applicable police department, court, Zoning Administrator, City Attorney and all administrative departments of the City charged with the enforcement of these regulations. Subsequent amendments to these regulations shall be appended to such copies.

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

101 Zoning Permits and Occupancy Certificates. *

A. Zoning Permits.

1. Unless a zoning permit shall first have been obtained from the Zoning Administrator, the construction, reconstruction, moving or structural alteration of any building or structure or the improvement of land prior to its use or the use of any land or structure being changed to any other use, shall not be commenced. For permits required on accessory uses, temporary uses, home occupations, plans for parking and loading space and signs, see Articles 5, 6 and 7. **Such permits shall not be issued by any other official, employee, department, board or agency of the City, except as provided for as a temporary permit in Section 6-101. Any zoning permit issued in conflict with the provisions of these regulations shall be null and void.** (See Section 8-103H for Change in Use.)

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

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2. Except for a continuation of an existing use or occupancy, accessory structures or uses, or additions to existing structures or uses, permits must also meet the requirements of the City Subdivision Regulations and, thus, shall not be issued on land which is not shown on a recorded plat or replat, or a lot split or exempted from the platting requirements. If platting or replatting is not required, all of the public improvements necessary to carry out the requested permit nevertheless may be required, including dedications in lieu of platting for easements and to widen rights of way.

3. No principal or accessory building or structure or use, or portion thereof, shall be permitted to locate on or project over any platted or recorded public easement or over any known utility installation, unless (1) as a sign permitted by Section 7-102K or (2) as an accessory structure or use which is moveable, relocatable or poses no significant problem to the maintenance of existing public improvement installations or to such future installations. Ground level extensions such as concrete slabs or other permanent-type materials are not permitted in or on a public easement except as extensions of parking spaces or driveways for which a zoning permit has been or is being issued. In any event, when such structures or uses are permitted to be located on or project over such easements, the property owner assumes the risk and liability for any reconstruction or replacement necessary including fences if any maintenance or other improvements are required by the City or a utility provider.

4. A zoning permit is not initially required for grading and/or excavating a proposed construction site, unless the site is located in a designated floodplain and would result in an increase in flood levels. (See Appendix for Floodplain Management Regulations.)

5. Application. Every application for a zoning permit shall be accompanied by the following:

   a. A drawing or copy of the recorded plat, in duplicate, of the piece or parcel of land, lot(s), block(s), parts or portions thereof, drawn to scale showing the actual dimensions of the zoning lot(s), including any easements thereon.

   b. A drawing, in duplicate, drawn to scale and in such form as may, from time to time, be prescribed by the Zoning Administrator, showing the location, ground area, height and bulk of (1) all present and proposed structures, (2) driveways, parking spaces and loading areas, (3) building setback lines in relation to lot lines, (4) waste disposal areas, (5) use to be made of such present and proposed structures on the land, and (6) such other information as may be required for the proper enforcement of these regulations.

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

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6. Issuance. A zoning permit shall be either issued or disapproved by the Zoning Administrator within 10 days after the receipt of an application thereof or within such further period as may be agreed to by the applicant. When the Administrator refuses to issue a zoning permit, the applicant shall be advised in writing of the reasons for the disapproval.

7. Period of Validity. A zoning permit shall become null and void 180 days after the date on which it is issued, unless within said period construction, reconstruction, moving or structural alteration of a structure is commenced or a use is commenced. If the construction or work is abandoned or suspended for any 180-day period after such a permit is issued, then application must be made to the Zoning Administrator for an extension of time to continue the project. The Administrator may grant reasonable extensions of time provided no changes have been made in any applicable regulations. If such changes have occurred, application must be made for a new permit based on the provisions of the new or amended regulations in order to continue the project, unless Section 2-100G applies pertaining to vesting of single-family residential developments. (See Section 2-100F for Effect of Existing Permits.)

B. Occupancy Certificates. No structure or addition thereto constructed, reconstructed, moved or altered after the effective date of these regulations shall be occupied or used for any purpose; and no land vacant on the effective date of these regulations shall be used for any purpose; and no use of any land or structure shall be changed to any other use, unless an occupancy certificate shall first have been obtained from the Zoning Administrator certifying that the proposed use or occupancy complies with all the provisions of these regulations. (See Section 8-103H for Change in Use.)

1. Application. Every application for a zoning permit shall be deemed to be an application for an occupancy certificate. Every occupancy certificate shall be in such form and contain such information as the Administrator shall provide by general rule.

2. Issuance.

   a. No occupancy certificate for a structure or addition thereto constructed, reconstructed, moved or structurally altered or for the new or changed use of any structure or land shall be issued after the effective date of these regulations until such work has been completed and the premises inspected and certified by the Zoning Administrator to be in full and complete compliance with the plans and specifications upon which the zoning permit was issued including the requirements for utilities, streets and other public improvements in the City Subdivision Regulations which must either be installed or guaranteed. Direct access must be available from the frontage of each zoning lot to an opened public street or otherwise the improvement of the street must be guaranteed by such methods as stated in the Subdivision Regulations.

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b. An occupancy certificate shall be issued or written notice shall be given to the applicant stating the reasons why a certificate cannot be issued within 10 days after the Zoning Administrator is notified that the structures or premises are ready for occupancy or use. Pending the issuance of a permanent occupancy certificate, a temporary occupancy certificate may be issued to be valid for a period not to exceed six months from its date pending the completion of any addition or improvement(s) or during partial occupancy of the premises; provided, satisfactory guarantees are submitted including the possible use of performance bonds or escrow accounts.

102 <u>Enforcement and Liability</u>.

A. It shall be the duty of the Zoning Administrator or any deputies working under his or her direction to enforce the provisions of these regulations in consultation with the City Attorney in the following manner:

1. To refuse to issue any zoning permit or occupancy certificate for any building or structure or use of any premises which would violate any of the provisions herein.

2. To revoke a zoning permit and issue a stop order at any time for a building or structure or use for which the same was issued when it shall appear (1) that there is a departure from the plans, specifications or conditions as required under terms of the permit; (2) that the same was procured by false representation; (3) that it was issued by mistake, or (4) that it violates any provisions of the zoning regulations.

3. To cause any building, structure, place or premises to be inspected and examined as required by these regulations and to order in writing the remedying of any condition found to exist therein or threat in violation of any provisions herein.

4. To institute any appropriate action or proceedings to prevent such unlawful action or use or to restrain, correct or abate such violation on or about the premises of any building or structure which is constructed, built, moved, structurally altered or reconstructed or land is used in violation of any provisions herein.

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

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and any judgment resulting therefrom shall be assumed by the City. (See K.S.A. 75-6101 et seq. in general and K.S.A. 75-6109 specifically.)

103 **Violations.**

A. Penalties. Pursuant to K.S.A. 12-761, as amended, any violations of these regulations shall be deemed to be a misdemeanor. The owner or agent of a building, structure or premises in or upon which a violation of any provision of these regulations has been committed or shall exist or the lessee or tenant of an entire building or entire premises in or upon which a violation has been committed or shall exist; or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building, structure or premises in or upon which a violation has been committed or shall exist, shall be punished by a fine not to exceed $500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each day's violation shall constitute a separate offense.

B. Remedies. In case any building or structure is erected, constructed, reconstructed, structurally altered, converted or maintained; or any building, structure or land is used or is proposed to be used in violation of these regulations, the appropriate authorities of the City of Andale, in addition to using other remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or to correct or abate such violation, or to prevent the occupancy of such building, structure or land. In addition to the City, any person, the value or use of whose property is or may be affected by such violation, shall have the authority to maintain suits or actions in any court of competent jurisdiction to enforce these regulations and to abate nuisances in violation thereof.

C. Floodplain Violations. Any person, company, corporation, institution, municipality or agency of the state who violates any provision of the floodplain provisions of these regulations shall be subject to the penalties and remedies as provided in Sections 9-103A and B above. Such remedies may also be instituted by the Attorney General and the Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture.

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

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

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ARTICLE 10. BOARD OF ZONING APPEALS

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

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

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

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

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

B. To hear and decide on variances from specific terms of these regulations subject to the procedure and standards set out in Section 10-107.

C. To hear and decide on conditional uses as exceptions subject to the procedure and standards set out in Section 10-108.

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

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

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

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

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

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

A. Time for Appeals. Appeals shall be made within 30 days after a decision has been made by the Zoning Administrator by filing an application for appeal. Upon the Chairperson's receipt of an application for appeal and notification to the Zoning Administrator, the Administrator shall forthwith transmit to the Chairperson all of the papers constituting the record upon which the decision being appealed was based.

B. Application. An application for an appeal shall (1) be filed with the Chairperson, (2) specify the grounds for such an appeal, (3) include the legal description of any property involved with the appeal, (4) be accompanied by an ownership list as required by Section 10-103 and the filing fee, and (5) provide such additional information as may be prescribed by rule of the Board.

C. Stay of Proceedings. An appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board, after the application for appeal has been filed, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a court of record on petition with notice to the Zoning Administrator and on the basis of due cause shown.

D. Hearing and Notice. A hearing on the application for such an appeal shall be held and notice thereof given as specified under Sections 10-103 and 104 and which are consistent with the general procedures and records required by Section 10-101.

E. Decision. The Board may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the

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Zoning Administrator, and may issue or direct the issuance of a zoning permit and/or occupancy certificate. No conditions may be attached to such a decision that could not otherwise have been available to the Zoning Administrator in making the initial decision. The Board shall render a written decision in the form of a resolution on the appeal without unreasonable delay after the close of a hearing and, in all cases, within 45 days after the close of the hearing.

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

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

1. The particular requirements of these regulations which prevent the proposed use or construction;

2. The characteristics of the subject property which prevent compliance with the requirements of these regulations;

3. The reduction of the minimum requirements of these regulations which would be necessary to permit the proposed use or construction;

4. The particular hardship which would result if the particular requirements of these regulations were applied to the subject property; and

5. Submit a sketch drawn to scale showing the lot(s) included in the application, the structures existing thereon and the structures proposed that necessitate the request.

B. Hearing and Notice. A hearing on the application for such a variance shall be held and notice thereof given as specified under Sections 10-103 and 104 and which are consistent with the general procedures and records required by Section 10-101.

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C. Authorized. Variances from the provisions of these regulations shall be granted by the Board only in accordance with the standards set out in Section 10-107D, and may be granted only in the following instances and in no others:

1. To vary the applicable minimum lot area, lot width and lot depth requirements.

2. To vary the applicable bulk regulations, including maximum height and lot coverage and minimum yard requirements.

3. To vary the dimensional provisions for permitted obstructions in required yards including fences in Section 3-103F.

4. To vary the applicable number of required off-street parking spaces and the amount of off-street loading requirements of Article 5.

5. To vary the applicable dimensional sign provisions of Section 7-102 regarding general standards and Section 7-104 regarding district regulations.

6. To vary the applicable requirements in Sections 10-107 C1 through 5 above in conjunction with conditional use applications for nonconforming, nonresidential structures and uses under provisions of Section 8-105.

7. To vary the applicable provisions permitted by the Floodplain Management Regulations. (See Appendix for Floodplain Management Regulations.)

D. Standards.

1. The Board may grant a variance upon specific written findings of fact based upon the particular evidence presented to it at the hearing that **all** the conditions required by K.S.A. 12-759(e) have been met which are listed below:

   a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant;

   b. That granting of the variance will not adversely affect the rights of adjacent property owners or residents;

   c. That strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

   d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare; and

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e. That granting the variance desired will not be opposed to the general spirit and intent of these regulations.

2. In determining whether the evidence supports the conclusions required by Section 10-107D1, the Board shall consider the extent to which the evidence demonstrates that:

   a. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a practical difficulty or unnecessary hardship upon or for the owner, lessee or occupant, as distinguished from a mere inconvenience, if the provisions of these regulations were literally enforced;

   b. The request for a variance is not based exclusively upon a desire of the owner, lessee, occupant or applicant to make more money out of the property;

   c. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located; and

   d. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets or roads, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood.

E. Conditions. In granting a variance, the Board may impose such conditions upon the premises benefitted by the variance as may be necessary to comply with the standards set out in Section 10-107D which would reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood and to carry out the general purpose and intent of these regulations, including methods for guaranteeing performance such as are provided for in Section 10-108D. Failure to comply with any of the conditions for a variance which are later attached to a zoning permit shall constitute a violation of these regulations. If an applicant desires to make a change in a condition at a later date, it is necessary to apply for a rehearing and a decision be made in the same manner as the original variance; however, only the requested condition is to be reconsidered at the hearing.

F. Decisions and Records. The Board shall render a written decision containing specific findings of fact in the form of a resolution on an application for a variance without unreasonable delay after the close of a hearing, but in all cases within 45 days after the close of the hearing. The Zoning Administrator shall maintain complete records of all actions of the Board with respect to applications for variances in order to properly issue permits.

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G. Period of Validity. No variance granted by the Board shall be valid for a period longer than 180 days from the date on which the Board grants the variance, unless within such 180-day period a zoning permit is obtained and the variance requested is started. The Board may grant extensions not exceeding 180 days each, upon written application, without further notice or hearing.

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

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

1. A statement or diagram showing compliance with any special conditions or requirements imposed upon the particular conditional use by the applicable district regulations or Section 10-108D if applicable;

2. A statement as to why the proposed conditional use will not cause substantial injury to the value of other property in the neighborhood;

3. A statement as to how the proposed conditional use is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable district regulations; and

4. Present data in support of the standards specified in Section 10-108C.

B. Hearing and Notice. A hearing on the application for such a conditional use as an exception shall be held and notice thereof given as specified under Sections 10-103 and 104 and which are consistent with the general procedures and records required by Section 10-101.

C. Standards. The Board may grant a conditional use when it makes specific written findings of fact based upon the particular evidence presented to it at the hearing which support conclusions that:

1. The proposed conditional use complies with all applicable regulations, including lot size requirements, bulk regulations, use limitations and performance standards; unless a concurrent application is in process for a variance.

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2. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood.

3. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:

   a. The location, nature, size and height of buildings, structures, walls and fences on the site; and

   b. The nature and extent of landscaping and screening on the site.

4. Off-street parking and loading areas will be provided in accordance with the standards set forth in Article 5 of these regulations. Such areas will be screened from adjoining residential uses and located so as to protect such residential uses from injurious effects.

5. Adequate utility, drainage and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees.

6. Adequate access roads, entrance and exit drives and/or access control is available or will be provided by platting, dedications and/or guarantees and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and roads.

D. Conditions. In granting a conditional use, the Board may attach such conditions upon the premises and/or the applicant benefitted by the conditional use as may be necessary to comply with the standards set out in Section 10-108C in order to reduce or minimize any potentially injurious affect upon other property in the neighborhood and to carry out the general purpose and intent of these regulations. Such conditions may include, but not be limited to, further restrictions on bulk regulations; time of operation and ownership limitations; screening, landscaping and fencing; provision of utilities, drainage and other public improvements; additional access or access control; off-street parking and loading requirements; and platting, dedications and/or guarantees. In addition to the guarantees referred to below for parking and/or screening, covenants which run with the land or the property to guarantee that conditions will be carried out at a future date may be filed with the County Register of Deeds. Failure to comply with any of the conditions for a conditional use which are later attached to a zoning permit shall constitute a violation of these regulations. If an applicant desires to make a change in a condition at a later date, it is necessary to apply for a rehearing and a decision made in the

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same manner as the original conditional use; however, only the condition requested is to be reconsidered at the hearing.

In lieu of actual construction of required off-street parking or the initial provisions for screening, the Board may accept, in the name of the City, a corporate surety bond, cashier's check, escrow account or other like security in an amount to be fixed by the Board and conditioned upon actual completion of such improvement within a specified time. Such securities shall be filed with the Clerk. The Governing Body may enforce such securities by all equitable means.

E. Decisions and Records. The Board shall render a written decision containing specific findings of fact in the form of a resolution on an application for a conditional use without unreasonable delay after the close of a hearing, but in all cases within 45 days after the close of the hearing. The Zoning Administrator shall maintain complete records of all actions of the Board with respect to applications for conditional uses in order to properly issue permits.

F. Period of Validity. No conditional use granted by the Board shall be valid for a period longer than 180 days from the date on which the Board grants the conditional use, unless within such period a zoning permit is obtained and the conditional use requested is started. The Board may grant extensions not exceeding 180 days each, upon written application, without further notice of a hearing.

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ARTICLE 11. AMENDMENTS

100 General Provisions for Amendments and Special Uses. These regulations and the districts created under the authority of these regulations may be amended from time to time by the Planning Commission following a public hearing and the approval by the Governing Body. No such amendment shall be adopted except in accordance with the procedures of this Article 11. **Special use applications are not amendments, but are processed for the notice and hearing and for protest petitions in the same manner; however, the Official Zoning Map(s) is not amended.** (See Section 11-101 for special uses.)

A. Proposal. Amendments or special uses may be proposed: (1) by the Governing Body, (2) by the Planning Commission or (3) upon application by, or on behalf of the owner of the property affected, but only in accordance with the procedure set forth in Section 11-100B. When the Governing Body proposes an amendment or special use, it shall transmit its proposal to the Planning Commission for a public hearing and recommendation thereon. (See Section 11-100D3 for special notice of hearing procedure for Governing Body and Planning Commission applications.)

B. Application. When the owner of the property affected proposes an amendment to any zoning district or applies for a special use, an application shall (1) be filed with the Zoning Administrator who refers it to the Planning Commission for a hearing, (2) be in such form and contain such information as shall be prescribed from time to time by the Commission and (3) in all instances contain the following information:

1. In the event that the proposed amendment would change the zoning district classification or add a special use to any specific property:

   a. The name, address and telephone number of the owner of the property and, if any, the agent representing the owner;

   b. The legal description of the property and a general description such as a street address sufficient to identify the property;

   c. The present and proposed zoning district classifications and existing uses of the property and structures thereon;

   d. The dimensions of the property and the zoning lot area stated in square feet or acres or fractions thereof; and

   e. For land inside the city limits, an ownership list of the names, addresses and zip codes of the owners of record of real property located within 200 feet of the exterior boundary of

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the area described in the application both within the city limits and extending outside the city limits when necessary. If such area is located adjacent to but within the city limits, the ownership list, in addition to the 200 feet inside the city limits, shall provide similar information extending to 1,000 feet into the unincorporated area. If such area is located outside the city limits, the ownership list shall extend for 1,000 feet in the unincorporated area and, if the latter extends into the city limits, then such owners for 200 feet inside the city must also be included on the list.

C. Public Hearing. The Planning Commission shall hold a public hearing on each proposed amendment that is filed with, referred to, or initiated by the Commission. The Commission shall select a reasonable time and place for such public hearing, and it shall hold such hearing within 45 days from the date on which the proposed amendment is received or initiated. An applicant for an amendment may waive the requirement that such hearing be held within 45 days.

D. Notice of Hearing. One of the following three procedures shall be selected to provide proper notice for a public hearing for any zoning amendment application:

1. Public notice of a hearing by the Planning Commission on a proposed amendment shall be published once in the official newspaper by the Zoning Administrator. At least **20 days shall elapse** between the date of such publication and the date set for such hearing. Such notice shall state the date, time and place of the hearing and shall contain a statement regarding the proposed changes in regulations or the zoning classification or zoning district boundaries of any property. If the proposed amendment would change the zoning classification of any specific property or the boundaries of any zoning district, such notice shall contain the legal description or a general description sufficient to identify the property under consideration. If a general description is used, the notice shall include a statement that a complete legal description is available for public inspection and where such description is available.

   In addition to such publication notice, the Zoning Administrator shall mail a written notice of the hearing containing information similar to the published notice thereof to the applicant and to the owners of record of all real property within the area to be altered or changed and to all owners of record of real property located within 200 feet of the exterior boundary of the area described in the amendment application both within the city limits and extending outside the city limits when necessary. If such area is located adjacent to but within the city limits, the area of notification shall, in addition to the 200 feet inside the city limits, be extended to 1,000 feet in the unincorporated area. If such area is located outside the city limits, the area of notification shall extend for 1,000 feet and, if such notification extends into the

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city limits, then 200 feet inside the city limits must also be included. The notice to property owners including the applicant shall be mailed so that **20 days shall elapse** between the mailing date and the hearing date. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Commission or the Governing Body.

2. Whenever five or more owners of record of real property owning 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification initiate a rezoning of their property from a less restrictive to a more restrictive zoning classification, such amendment shall require notice by publication only and hearing in like manner as required by Section 11-100C. Such zoning amendment **shall not** require written notice and **shall not** be subject to the protest petition provision of Section 11-103.

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

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

E. Conduct of Hearing.

1. All hearings that these regulations require the Planning Commission to conduct for amendments to changes or revisions in the regulations or the zoning classifications or in district boundaries shall be open public meetings according to K.S.A. 75-4317 et seq., the Open Meetings Act. Legislative hearings are required by the Commission's Bylaws for changes or revisions in the regulations of the Zoning Regulations. When a proposed amendment will affect the zoning classification or district boundary of specific property; however, the Commission acts in a quasi-judicial capacity for the hearing and may upon proper motion proceed to deliberate in closed session according to K.S.A. 75-4318(a). No binding action can be taken in such a session and all voting must be conducted in an open meeting.

2. Any interested person or party may appear and be heard at the hearing in person, by agent or by attorney.

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3. The hearing shall be conducted and a record of the proceedings shall be preserved in such a manner and according to such procedures as the Commission may from time to time prescribe by rule or bylaws which are not in conflict with these regulations or applicable state statutes.

4. The Commission shall keep minutes of the proceedings showing evidence presented at hearings, findings of fact by the Commission, motions made and the vote of each member upon any question or recommendation. If a member is absent, abstains or disqualified, such fact shall be indicated.

5. The Commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm or corporation. If such a report is made, a copy thereof shall be made available to the applicant and any other interested person prior to or at the public hearing.

6. The Commission may make recommendations on proposed amendments to specific properties which affect only a portion of the land described in the hearing notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation for a zoning classification of lesser change than that set forth in the notice shall not be valid, however, without republication and, where necessary, remailing of notices, unless the Commission shall have previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning classifications. (See Appendix, page A-1, for Table of Comparability for Zoning Districts.)

7. For action on zoning amendments, a quorum of the Commission must be more than one-half of the membership as established by ordinance. A majority vote of the members of the Commission present and voting at the hearing shall be required to recommend approval or disapproval of the amendment to the Governing Body. If the Commission fails to make a recommendation on a rezoning request, the Commission shall be deemed to have made a recommendation of disapproval.

8. A hearing may be adjourned from time to time upon a motion to continue in the future at some stated date, time and place. At the conclusion of a hearing, the Commission shall prepare its findings and the factors on which to base its recommendation and vote.

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

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F. Report by Planning Commission. Within 14 days after the close of the public portion of the hearing and voting on a proposed amendment or special use, the Planning Commission shall submit a report to the Governing Body. A copy of this report shall also be filed with the Clerk and the Zoning Administrator and such copies shall be kept available for public inspection. A copy of the report shall also be mailed to the applicant. Such report shall contain a recommendation as to whether the proposed amendment or special use should be approved or disapproved and specific written determinations on the items listed in Sections 11-100G or 11-100H and on such other items as the Commission may consider relevant. The report submitted to the Governing Body shall be accompanied by a summary of the hearing as required by K.S.A. 12-756(b). In lieu of a report, the above information may be contained in the minutes of the meeting and submitted to the Governing Body.

G. Amendments to Regulations. When a proposed amendment by the Governing Body or Planning Commission would result in a change or revision in the text of these regulations, but would not result in a change of zoning classification of any specific property, a legislative hearing shall be held by the Commission and the report shall contain a statement as to the nature and effect of such proposed amendment and determinations as to the following items: (See Section 11-100E for Conduct of Hearing.)

1. Whether such change is consistent with the intent and purposes of these regulations; and

2. Whether the proposed amendment is made necessary because of changed or changing conditions in the zoning districts affected and, if so, the nature of such changed or changing conditions.

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

1. What are the existing uses and their character and condition on the subject property and in the surrounding neighborhood?

2. What is the current zoning of the subject property and that of the surrounding neighborhood in relation to the request?

3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

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

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4. Would the request correct an error in the application of these regulations?

5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?

7. Would the subject property need to be platted or replatted or in lieu of dedications made for rights of way, easements, access control or building setback lines?

8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

9. Is suitable vacant land or buildings available or not available for development that currently has the same zoning as is requested?

10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

11. Is the subject property suitable for the uses in the current zoning to which it has been restricted?

12. To what extent would the removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

15. What is the nature of the support or opposition to the request?

16. Is there information or are there recommendations on this request available from knowledgeable persons or experts which would be helpful in its evaluation?

17. By comparison, does the relative gain to the public health, safety or general welfare outweigh the loss in property value or the hardship imposed upon the applicant by **not** approving the request?

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

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

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

Although the Official Zoning Map is not amended, the procedure for approval of a special use shall otherwise be the same as for an amendment to change a zoning district classification or boundary which is set forth in Section 11-100 of this Article including the provisions for filing protest petitions in Section 11-103; provided, that any conditions which are attached to the special use shall be made a part of the effectuating ordinance. Applications for special uses shall be accompanied by a site plan of the proposed development. Concurrent applications may be processed for changing zoning district classifications as amendments and approving special uses on the same property.

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

102 **Project Review.** In the event that certain public improvements, facilities or utilities of a type embraced within the recommendations of the Comprehensive Plan are classified as special uses or are the subject of a change in zoning district classification or boundary, the consideration of such uses by the Planning Commission in conjunction with a zoning application may also constitute their project review of such proposed use if concurrently processed under procedures required by K.S.A. 12-748, as amended;

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provided, that a statement of findings is included in the Commission's approval or disapproval as to whether such proposed use is or is not in conformance with the Comprehensive Plan. In case the Commission finds that the proposed use is not in conformance to the Plan and states in writing the manner in which it is not in conformance, then the Governing Body shall not proceed with construction of such a proposed use unless the Governing Body by a majority vote overrides the disapproval of the Commission and the Plan shall be deemed to have been amended and the Commission shall make the necessary changes in the Plan to reflect the vote of the Governing Body.

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

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

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

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inaction on the part of the Commission as a resubmission of the original recommendation and proceed accordingly.

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

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

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

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

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

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ARTICLE 12. SEVERABILITY AND EFFECTIVE DATE

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

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

ADOPTED by the Andale City Planning Commission on July 15, 2009.

Larry J. Gorges, Chairperson

ATTEST:

Virginia Edwards, Secretary

APPROVED and ADOPTED by the City Council of the City of Andale, Kansas on July 27, 2009.

(S E A L)

Gerard N. Martin, Mayor

ATTEST:

Virginia Edwards, City Clerk

(Adopted by Ordinance No. 09-06 by the City Council of the City of Andale, Kansas on July 27, 2009, officially published in The Mount Hope Clarion on July 30, 2009 and effective on July 30, 2009.)

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APPENDIX

TABLE OF COMPARABILITY FOR ZONING DISTRICTS

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

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

MOST RESTRICTIVE:	R-1	Single-Family Residential District
	R-2	Multiple-Family Residential District
	B-1	Central Business District
	B-2	General Business District
LEAST RESTRICTIVE:	I-1	Industrial District

Because of the uniqueness and special purpose for which the P-O Protective Overlay District and the overlay zone established by the Floodplain Management Regulations serve, these districts are excluded from the Table of Comparability.

Although the notification for a "Special Use" is processed in the same manner as a zoning district amendment, it is not an actual change in zoning

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districts and, therefore, the Table of Comparability does not apply and reapplication is necessary for consideration of a different "Use" even if in the same zone. Part of the property considered for a Special Use, however, may be withdrawn by the applicant or a lesser amount recommended for approval without renotification.

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

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

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SELECTED INDEX BY SUBJECT AND SECTION

A

Accessory Use or Structure - definition of, 6-100A; general requirements, 3-102H; permitted uses, zoning permit, 6-100B; bulk regulations, 6-100C; use limitations, 6-101D

Access to Business and Industrial District - residential limitation, 3-103H

Adult Care Center - definition of, 2-102

Adult Care Home - definition of, 2-102; See also nursing or convalescent home, 2-102

Agreements, Private - rules of interpretation for, 2-100C

Agriculture - definition of, 2-102

Alley - definition of, 2-102

Alteration, Structural - definition of, 2-102; See structural alteration

Amateur Radio Operator - See height, maximum for exemption, 2-102

Amendments - general requirements, 11-100; proposed by, 11-100A; application, 11-100B; notice, 11-100D; hearing, conduct thereof, 11-100C and E; minutes, 11-100E4, 11-100F; table of comparability, 11-100E6, Appendix; voting, quorum, 11-100E4 and 7; hearing continued, 11-100E8 and 9; no quorum, 11-100E9; report on, 11-100F; change in text, 11-100G; review criteria, 11-100H; protest petition, 11-103; adoption by governing body, 11-104; judicial review, 11-106; See also project review, 11-102

Amusement Center - definition of, video games, 2-102

Animal Hospital or Clinic - definition of, 2-102

Animal or Fowl - definition of agriculture, 2-102

Annexed Land - zoning procedure, 3-103 I

Annual Review - regulations, zoning administrator's master copy, 11-105

Antenna, Television and Radio - See definition of height, maximum for exemptions, 2-102; accessory uses, 6-100B7

Apartment - definition of, See dwelling, multiple-family, 2-102

Appeal from Decision of Zoning Administrator - general requirements, 10-106; time for, 10-106A; application, 10-106B; stay of proceedings, 10-106C; notice, 10-103; hearing, 10-106D; decision, 10-106E; See also board of zoning appeals

Assisted Living Facility - definition of, 2-102

Auction Sign - See real estate sign, 7-101A7

Automobile Service Station - definition of, 2-102

Awning - definition of, 2-102; permitted obstruction, 3-103F1

B

Basement - definition of, 2-102

Bay Window - permitted obstruction, 3-103F1

Bed and Breakfast Home - definition of, home occupation, 2-102

Bed and Breakfast Inn - definition of, 2-102

Billboard Sign - state sign regulations, 7-100; advertising, 7-101A1

Board of Zoning Appeals - meaning of, 2-101A11; planning commission designation, 10-100; general procedures, voting, 10-101; jurisdiction, 10-102; judicial review, 10-105

Boarding or Rooming House - definition of, 2-102; home occupation, 6-102B3

Building - definition of, 2-102

Building Setback - definition of, See setback, building, proposed rights-of-way, 2-102; platted, 3-103B

Bulk Regulations - definition of, 2-102; general requirements, 3-102E; utility and communication facilities exemption, 3-103G; accessory uses, 6-100C

Business and Professional Office - definition of, 2-102

C

Canopy - definition of, 2-102; permitted obstruction, 3-103F1

Capacity in Persons - definition of, 2-102

Carport - definition of, 2-102; not permitted obstruction, 3-103F1; See also garage

Car Wash - definition of, 2-102

Change in Ownership or Operator - right to continue, 8-100

Change in Use - nonconforming, 8-103H; zoning permits, 9-101A; occupancy certificates, 9-101B

Child Care Center - definition of, See child care facilities, 2-102; home occupation prohibted, 6-102D3

Child Care Facilities - definition of, 2-102

Chimney - permitted obstruction, 3-103F1

Citizen Band Operator - See height, maximum for exemption, 2-102

City Clerk - duties, 9-100B

Club - definition of, 2-102; See also fraternal or service club

Common Lot Line Housing - See dwelling, attached

Communication Structure - See definition of height, maximum for exemptions, 2-102; lot size and bulk regulations exemption, 3-103G; accessory uses, 6-100B7

Community Event - temporary permit, 6-101; annual celebration, carnival, circus, musical festival, 6-101A

Conditional Use - definition of, 2-102; general requirements, 3-102C; See also individual zoning districts for list of conditional uses, Article 4; status of existing or reclassified, 8-106; application, 10-108A; notice, 10-103; hearing, 10-108B; standards, 10-108C; conditions, 10-108D; decision, record, 10-108E; validity period, 10-108F; See also board of zoning appeals

Condominium - definition of, 2-102; See also dwelling; lot size requirements, 3-102D2; bulk regulations, 3-102E2

Construction Project - contractor's office and storage, 6-101C

Contradictory Regulations - rules of interpretation for, 2-100B

Corner Lot - definition of, See lot, corner, 2-102

D

Damaged Structure or Use - nonconforming, 8-102C, 8-103F

Day Care Home - definition of, See child care facilities, 2-102; home occupation permitted, 6-102C1

Daylight Window - permitted obstruction, 3-103F1

Deck - not permitted obstruction, 3-103F1

Deed Restriction - rules of interpretation for, See private agreements, 2-100C

Density - definition of, 2-102

Dental Clinic - definition of, See medical, dental or health clinic, 2-102

Developer - definition of, 2-102

District - definition of, 2-102; See also zoning districts

Dog Kennel - definition of, 2-102

Drive-in Establishment - definition of, 2-102

Dwelling - definition of, 2-102

Dwelling, Attached - definition of, common lot line housing, 2-102

Dwelling, Detached - definition of, 2-102

Dwelling, Multiple-Family - definition of, 2-102

Dwelling, Single-Family - definition of, 2-102; See also dwelling, detached

Dwelling, Two-Family - definition of, 2-102; See also dwelling, attached

Dwelling Unit - definition of, 2-102

E

Earth-Sheltered Dwelling - definition of, 2-102; See also dwelling

Easement - definition of, 2-102; dedication thereof, 3-103K, 9-101A2; construction on or over, 9-101A3

Eaves and Gutters - permitted obstruction, 3-103F1

Effective Date - amendments, 11-104; regulations, 12-101

Electric Transmission Line Tower - See height, maximum for exemption, 2-102

Enforcement - zoning administrator, city attorney, 9-102A; See also violations

Exception - See conditional use

Exemptions from Regulations - list of use exemptions, 3-100E

Existing or Reclassified Special or Conditional Uses - status of, 8-106

F

Family - definition of, 2-102

Family Day Care Home - definition of, See child care facilities, 2-102

Fees - fee schedule, 9-104

Fence - definition of, 2-102; permitted obstruction, 3-103F 2 through 5; screening requirements, 3-104; zoning permit, 6-100B; See also wall

Fire Escapes - permitted obstruction, 3-103F1

Fireworks - zoning permit, 6-101; temporary use, 6-101H

Flagpole - See definition of height, maximum for exemption, 2-102; permitted obstruction, 3-103F1

Floodplain Regulations - overlay zone, 3-101A; general requirements, 3-103L; excavating, 9-101A4; (See Appendix)

Floor Area - definition of, 2-102; required parking spaces, 5-101

Fraternal and Service Club - definition of, 2-102

Frontage - definition of, 2-102

Front Lot Line - definition of, See lot line, front, 2-102

Front Yard - definition of, See yard, front, corner lot, 2-102; average setback in existing residential, 3-103C

G

Garage, Private - definition of, 2-102; not permitted obstruction, 3-103F1; setback requirements for attached and detached, 5-100A4; zoning permit, 6-100B; accessory use, 6-100B1; bulk regulations, 6-100C; use limitations, 6-100D1; home occupation, 6-102B1

Garage, Repair - definition of, 2-102

Garage Sale Sign - right-of-way location, 7-102K; exemption, 7-103A5

Garage Sales - frequency, 6-101F

Garden Store - definition of, 2-102

Governing Body - meaning of, 2-101A7; adoption of amendments, 11-104; adoption of regulations, 12-101; ordinance, Appendix

"Grandfather Clause" - general, Article 8

Group Boarding Home - definition of, See child care facilities, 2-102

Group Day Care Home - definition of, See child care facilities, 2-102

Group Home - definition of, 2-102; See also dwelling, single-family

H

Hazardous Waste Facility - definition of, 2-102

Health Clinic - definition of, See medical, dental or health clinic, 2-102

Height, Maximum - definition of, grade, exemptions for, 2-102

Home Occupation - general requirements, 3-102J; authorization, zoning permit, 6-102; definition of, 6-102A; use limitations, 6-102B; permitted, 6-102C; prohibited, 6-102D; sign, 7-104A

Hotel - definition of, 2-102

I

Interior Lot - definition of, See lot, interior, 2-102

J-K

Judicial Review - court action, time limit, 11-106

Jurisdiction, Zoning - See zoning jurisdiction, 1-103

L

Landscaping - definition of, 2-102; screening and landscaping requirements, 3-104

Liability - zoning administrator, 9-102B

Licensing Regulation - rules of interpretation, 2-100E

Loading and Unloading - See off-street loading and unloading

Lot - definition of, See lot, zoning, 2-102

Lot Area - definition of, 2-102

Lot Coverage - definition of, 2-102

Lot Depth - definition of, 2-102

Lot Line - definition of, 2-102

Lot of Record - definition of, 2-102; nonconforming, 8-100, 8-101

Lot, Reverse Frontage - definition of, 2-102

Lot Size Requirements - definition of, 2-102; general requirements, 3-102D; utility and communication facilities exemption, 3-103G

Lot Width - definition of, 2-102

M

Manufactured Home - definition of, 2-102; See also dwelling; replacement of, 3-103N 1 and 2; as storage or office, 3-103N3; See also residential-design manufactured home

Measurements - measuring distances, 2-101A13

Medical Clinic - definition of, See medical, dental or health clinic, 2-102

Microwave Transmitting and Relay Tower - See definition of height, maximum, 2-102

Mini-Storage Facility - definition of, 2-102

Mobile Home - definition of, 2-102; See also dwelling; replacement of, 3-103N 1 and 2; as storage or office, 3-103N3; See also residential-design manufactured home

Model Home - sales office, 6-101C

Modular Home - definition of, 2-102; See also dwelling

Motel - definition of, See hotel, 2-102

Moving Structure - See structure

N

Nonconforming Lot of Record - definition of, 2-102, 8-100A; residential districts, 8-101A; other districts, 8-101B

Nonconforming Structure - definition of, 2-102, 8-100B; continuation, 8-103A; enlargement, repair or alteration, 8-102B; damage, 8-102C; moving, 8-102D; residential, 8-104; nonresidential, 8-105

Nonconforming Use - definition of, 2-102, 8-100C; continuation, 8-103A; repair, 8-103B; alteration, 8-103C; extension, 8-103D; enlargement, 8-103E; damage, 8-103F; moving, 8-103G; change in use, 8-103H; abandonment, 8-103 I; residential, 8-104; nonresidential, 8-105; registration of, 8-107

Nursing or Convalescent Home - definition of, 2-102; See also assisted living facility, 2-102

O

Obstructions Permitted in Yards - permitted obstructions, 3-103F

Occupancy Certificate - definition of, 2-102; compliance requirements, 9-101B; application, 9-101B1; completion and inspection, subdivision regulations requirements, 9-101B2a; issuance period, temporary, 9-101B2b

Off-Street Loading and Unloading - requirements, 5-103

Off-Street Parking - general requirements, 3-102G; general provisions for design, maintenance and plan approval, zoning permit, 5-100; handicapped parking, 5-100A5j; required spaces, 5-101; off-premises parking areas, 5-102

Open Land, Uses of - compliance of, 3-100D

Ordinance - effectuating, 11-104; incorporating regulations, Appendix

P-Q

Parking Space - See off-street parking

Patio - permitted obstruction, See also patio cover, 3-103F1

Penalties - See violations

Permit, Existing Zoning - effect on, 2-100F

Permitted Use - definition of, 2-102; general requirements, 3-102A; See also individual zoning districts for list of permitted uses, Article 4

Person - legal entities included, 2-101A5

Planning Commission - meaning of, 2-101A9; adoption of regulations, 12-101

Political Sign - exemption, 7-103A8; See also ideological signs, 7-103A9

Porch - not permitted obstruction, 3-103F1

Portable Sign - regulations, 7-102L

Premises - definition of, 2-102

Preschool - definition of, See child care facilities, 2-102

Principal Structure - definition of, 2-102

Principal Use - definition of, 2-102

Professional Office - definition of, 2-102

Project Review - public improvements, facilities, utilities, 11-102

Protest Petition - filing, procedure, 11-103

Purpose of Zoning District - See introductory paragraph for each district, Article 4

Purpose of Regulations - purpose generally, 1-101

R

Real Estate Sign - right-of-way location, 7-102K; exemption, 7-103B5

Rear Lot Line - definition of, See lot line, rear, 2-102

Rear Yard - definition of, See yard, rear, 2-102

Recreational Vehicle - definition of, 2-102; storage of boats, camping trailers, motor homes, 6-100B4

Recycling Center - definition of small, large or processing, 2-102; accessory uses, 6-100B12; zoning permit, 6-101; temporary uses, 6-101G

Rehabilitation Home - definition of, 2-102

Repair or Maintenance of Structure - See definition of structural alteration, 2-102; alterations regulated, 3-100C; nonconforming, 8-102B, 8-103B

Residential Building - definition of, 2-102

Residential Center - definition of, 2-102

Residential-Design Manufactured Home - definition of, restrictive covenants, 2-102; See also dwelling and manufactured and mobile home

Restaurant - definition of, 2-102

Restrictive Covenant - rules of interpretation for, See private agreements, 2-100C

Retail - definition of, 2-102

Rezoning - See amendments

Right-of-Way, Proposed - See definition of setback, building, 2-102; dedication thereof, 3-103K, 9-101A2

Roof Structures - See definition of height, maximum for exemptions, 2-102

Rooming House - See boarding or rooming house

Rules of Word Construction - definition of selected words, 2-101; undefined words and terms, 2-101C

S

Salvage Yard - definition of, unlicensed or inoperative motor vehicles, 2-102

Satellite Dish Antenna - requirements for, 6-100B6

Screening - definition of, 2-102; requirements, 3-104

Seasonal Sales - Christmas trees, 6-101B; farm produce, 6-101D; retail goods, 6-101E

Service Station - definition of, See automobile service station, 2-102

Severability - unconstitutionality, invalidity, 12-100

Sewer Facilities - general requirement, 3-103J

Side Lot Line - definition of, See lot line, side, 2-102

Side Yard - definition of, See yard, side, 2-102

Sign - definition of, 2-102; general requirements, 3-102K; functional classifications, 7-101A; structural types, 7-101B; general standards, 7-102; location on or over right-of-way or easement, 7-102K; damaged or unsafe, 7-102M; exemptions, 7-103; district regulations, 7-104; home occupation, 7-104A

Sign of Governmental Body - general exemption, also exempts school board, 7-103A1

Site Plan - definition of, 2-102; approval procedure, 3-105

Solar Equipment - See definition of height, maximum for exemption, 2-102; accessory use, 6-100B6

Special Use - definition of, 2-102; general requirements, 3-102B; See also individual zoning districts for list of special uses, Article 4; status of existing or reclassified, 8-106; general requirements, conditions, approval procedure, protest petition, 11-101; review criteria, 11-100H; See also amendments and protest petitions

Statutory Authority - applicable state statutes, 1-102

Storage, Outdoor - definition of, 2-102, accessory use, 6-100B13; manufactured or mobile home as storage structure, 3-103N3; See also individual zoning districts for use limitations

Storage Structure - zoning permit, 6-100B; accessory use, 6-100B3; bulk regulations, 6-100C; use limitations, 6-100D1; home occupation, 6-102B1

Structure - definition of, 2-102; moving, 3-100A, 3-103M; new, 3-100A; new uses, 3-100B, 8-103H; number of on a zoning lot, 3-103A; See also nonconforming structure and nonconforming use

Structural Alteration - definition of, 2-102; compliance requirements, 3-100C

Swimming Pool - accessory use, fencing, 6-100B8

T

Table of Comparability - lesser changes, republication, renotification, special uses, 11-100E6, Appendix

Tavern and Drinking Establishment - definition of, 2-102

Temporary Use or Structure - general requirements, 3-102I; temporary uses permitted, zoning permit, 6-101

Through Lot - definition of, See lot, through, 2-102

U

Unlawful Uses - status of, 2-100D

Unlicensed or Inoperative Motor Vehicles - See definition of salvage yard, 2-102

Use Regulations - definition of, 2-102; use limitation, 3-102F; See also individual zoning districts for use limitations, Article 4

Uses - open land, 3-100D; number of on a zoning lot, 3-103A

Utility - exemptions, 3-100E1; lot size and bulk regulations,3-103G

V

Variance - notice, 10-103; general requirements, use variance, 10-107; application, 10-107A; hearing, 10-107B; authorized, 10-107C; statutory findings of fact, 10-107D1; conclusions from evidence; 10-107D2; conditions, 10-107E; decision, record, 10-107F; validity period, 10-107G; See also board of zoning appeals

Vesting of Development Rights - status of single-family residential development, 2-100G

Veterinarian Clinic - definition of, See animal hospital or clinic, 2-102

Video Games - See amusement centers, 2-102

Violations - penalties, 9-103A; remedies, 9-103B; floodplain, 9-103C

Vision Triangle - definition of, central business district exception, 2-102; general requirements, 3-103 O

W-X

Wall - definition of fence, 2-102; permitted obstruction, 3-103F 2 through 5; decorative perimeter boundary and entryway to subdivision, 3-103F3; See also fence

Water Tower - See definition of height, maximum for exemption, 2-102

Water Facilities - general requirement, 3-103J

Wind Energy Conversion System, Private - See definition of height, maximum, 2-102; accessory use, 6-100B14

Window Well - permitted obstruction, 3-103F1; See also daylight window

Wing Wall - permitted obstruction, 3-103F1

Y

Yard - definition of,2-102; general restrictions, 3-102E; open land, 3-103D; permitted obstructions, 3-103F

Yard Sales - frequency, 6-101F

Z

Zoning Administrator - definition of, 2-102; duties, 9-100A; enforcement, 9-102A; liability, 9-102B; reports, 9-105

Zoning Districts - establishment of, 3-101A; districts listed below contain the related provisions for permitted, special and conditional uses; lot size requirements; bulk regulations and use limitations: R-1 Single-Family Residential, 4-101; R-2 Multiple-Family Residential, 4-102; B-1 Central Business, 4-103; B-2 General Business; 4-104; I-1 Industrial, 4-105; 4-106, P-O Protective Overlay District

Zoning Jurisdiction - regulations applicable to, area covered, 1-103

Zoning Lot - definition of, See lot, zoning, 2-102; number of structures or uses on, 3-103A

Zoning Maps - boundaries, 3-101B2, 3-101C, 3-101D; certificate, revision, 9-100A9; incorporation by reference, ordinance, Appendix

Zoning Permit - effect on existing, 2-100F; definition of, 2-102; screening, 3-104; accessory uses, 6-100B; temporary uses, 6-101; home occupations, 6-102; null and void, 9-101A1; subdivision regulations requirements, 9-101A2; construction on or over easement, 9-101A3; grading, 9-101A4, application, 9-101A5; period to issue, 9-101A6; validity, 9-101A7

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(NOTE: The City of Andale, Kansas is a regular participant in the National Flood Insurance Program and property owners are eligible for flood insurance; however, no Special Flood Hazard Area has been identified at this time. When such a flood hazard area is designated inside the City by the Federal Emergency Management Agency, Floodplain Management Regulations will be adopted and incorporated as part of this Model Code in this Appendix.)

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CITY OF ANDALE ORDINANCE NO. 09-06

Published in The Clarion on July 30, 2009

AN ORDINANCE ENACTED APPROVING AND INCORPORATING BY REFERENCE CERTAIN MODEL ZONING REGULATIONS GOVERNING THE USE OF LAND AND THE LOCATION OF BUILDINGS WITHIN THE CITY OF ANDALE, KANSAS, AS PREPARED AND PUBLISHED IN BOOK FORM BY THE ANDALE CITY PLANNING COMMISSION PURSUANT TO K.S.A. 12-741, AS AMENDED, 12-736, 12-742, 12-753 TO 12-761 INCLUSIVE, 12-763, 12-764, 12-766, 12-3009 TO 12-3012 INCLUSIVE, 12-3301 AND 12-3302; ESTABLISHING ZONING DISTRICT BOUNDARIES AND THE CLASSIFICATIONS OF SUCH DISTRICTS; ADOPTING BY REFERENCE AN OFFICIAL MAP OF ZONING DISTRICTS; DEFINING CERTAIN TERMS USED IN SAID REGULATIONS; REGULATING THE MAXIMUM DIMENSIONS OF BUILDINGS AND OTHER STRUCTURES THROUGH BULK REGULATIONS AND LOT AREAS; REGULATING THE LOCATION AND SIZE OF SIGNS; PROVIDING FOR AND REGULATING VEHICULAR PARKING SPACE; REESTABLISHING THE BOARD OF ZONING APPEALS AND PRESCRIBING ITS DUTIES; PROVIDING FOR THE APPOINTMENT OF A ZONING ADMINISTRATOR AND PRESCRIBING HIS OR HER DUTIES; PROVIDING FOR FEES TO BE CHARGED FOR AMENDMENTS, APPEALS AND PERMITS; ESTABLISHING A MEANS FOR AMENDING SAID REGULATIONS, MAP AND ORDINANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF ITS PROVISIONS AND A MEANS OF ENFORCEMENT; AND REPEALING ALL OTHER ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANDALE, KANSAS:

Section 1. Adoption: Zoning regulations are hereby approved and adopted by the Governing Body of the City of Andale, Kansas, as prepared and published in book form as model regulations by the Andale City Planning Commission with the technical assistance of Foster & Associates, Planning Consultants of Wichita, Kansas, and the City Zoning Administrator under the date of July 15, 2009 and entitled "Zoning Regulations of the City of Andale, Kansas" and the same are hereby incorporated by reference as fully as if set out herein.

Section 2. Official Map: There are further herein incorporated by reference and adopted an Official Zoning Map delineating the boundaries of zoning districts and the classification of such districts, which map shall be marked "Official copy of zoning district map incorporated into zoning regulations by adoption of Ordinance No. 09-06 by the Governing Body of the City of Andale on the 27th day of July, 2009" and filed with the Zoning Administrator to be open for inspection and available to the public at all reasonable business hours.

Section 3. Public Hearing: The advertised public hearing required by Kansas law was duly held on June 17 and July 15, 2009 by the Andale City Planning Commission, and a discussion of said Zoning Regulations and map was had at the hearing; and the Zoning Regulations and map in model code form herein adopted are a true and correct copy of those regulations as adopted by the Planning Commission.

Section 4. Jurisdiction: From the effective date of this Ordinance, the Zoning Regulations and Official Zoning Map herein incorporated by reference shall govern all use of the land and the location of buildings and other structures placed within the City of Andale, Kansas.

Section 5. Official Copies: Not less than three copies of the Zoning Regulations in book form marked "Official Copy as incorporated by Ordinance No. 09-06" and to which there shall be a published copy of this Ordinance attached, shall be filed with the City Clerk to be open for inspection and available to the public at all reasonable business hours.

Section 6. Invalidity of a Part: Any provisions of this Ordinance which shall be declared by a competent court to be unconstitutional or invalid shall not affect the validity and authority of any other sections of said Ordinance.

Section 7. Repeal: Ordinance No. 76-1 is hereby repealed and any other ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 8. Effective Date: This Ordinance shall take effect from and after its passage, approval and publication once in the official city newspaper.

PASSED BY THE CITY COUNCIL this 27th day of July, 2009.

APPROVED BY THE MAYOR this 27th day of July, 2009.

(S E A L) /s/_____
Gerard N. Martin, Mayor

ATTEST:

/s/_____
Virginia Edwards, City Clerk

APPROVED AS TO FORM ONLY:

/s/_____
Gary Jones, City Attorney