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ORDINANCE NO. 2292

AN ORDINANCE AMENDING SECTION 202 "DEFINITIONS," SECTION 300 "ACTIVITIES GOVERNED BY THESE REGULATIONS," SECTION 302 "GENERAL REQUIREMENTS FOR ALL ZONING DISTRICTS," SECTION 303 "MISCELLANEOUS REQUIREMENTS," SECTION 600 "ACCESSORY USES AUTHORIZATION" AND SECTION 1101 "SPECIAL USES" OF THE ZONING REGULATIONS OF THE CITY OF DERBY, KANSAS AS FIRST ADOPTED BY ORDINANCE NO. 940 AND SUBSEQUENTLY AMENDED, MOST RECENTLY BY ORDINANCE NO. 2271; AND REPEALING THE ORIGINAL PROVISIONS THEREOF.

WHEREAS, a duly advertised public hearing, as required by Kansas law, was held on September 1, 2016 by the Derby City Planning Commission concerning amendments to Section 202 "Definitions," Section 300 "Activities Governed by These Regulations," Section 302 "General Requirements for All Zoning Districts," Section 303 "Miscellaneous Requirements," Section 600 "Accessory Uses Authorization" and Section 1101 "Special Uses," of the City's zoning regulations; and

WHEREAS, subsequent to the conclusion of said public hearing, the Derby City Planning Commission adopted the revised zoning regulations and recommended the adoption thereof by the Governing Body of the City of Derby, Kansas; and

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS;

Section 1. Article 2, Section 202 "Definitions" of the zoning regulations of the City of Derby, Kansas is hereby amended to read as follows:

202 DEFINITIONS.

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

ACCESSORY APARTMENT: A dwelling unit which is subordinate to and serves a principal single-family dwelling unit. An accessory apartment may be wholly within, or may be detached from, a principal single-family dwelling unit, but in any case, shall not exceed 50% of the area of the principal residential structure. (See Section 600 for Accessory Uses and Section 403A.G.4 for Use Limitations.)

ACCESSORY STRUCTURE OR USE: As defined in Article 6.

ACTIVE REPAIR: A term developed to differentiate between inoperable vehicles that are in the process of being made operable and those that are being stored without the benefit of ongoing repair or which are being stored for salvage purposes. For purposes of these regulations, the term active repair means vehicles or

equipment that are currently undergoing necessary repairs to make them operable within thirty (30) days from the date of the violation notice.

ADULT CARE CENTER: A facility in which care and activities are provided on an hourly or daily basis for adults of all ages. The latter arrangement is not construed to be a "nursing home." Such centers may or may not be licensed or registered under regulations established and administered by the Kansas Department of Health and Environment unless warranted by the particular services provided.

ADULT CARE HOME: A residential facility operated as a home occupation for not more than four adults wherein care and activities are provided on an hourly or daily basis or limited nursing care is provided on a 24-hour basis which may or may not be regulated and/or licensed by the Kansas Department of Health and Environment.

AGRICULTURE: The use of land for growing crops in the open, horticulture, nurseries, truck farms and accessory uses including structures not in a designated flood plain for carrying out agricultural operations; provided, however, such agricultural use shall not include the following uses: (See Section 300(E)(4) for Exemptions).

1. Retail sales as an accessory use, unless the same are permitted by these regulations;
2. The maintenance and operation of commercial greenhouses or hydroponic farms, except in zoning districts where permitted;
3. The feeding, grazing or sheltering of livestock or poultry such as horses, cows, swine, goats, chickens, rabbits or fur bearing animals; unless otherwise permitted by City laws or regulations;
4. The feeding of garbage to animals; or
5. The operation of a commercial feed lot or stockyard.

Farm residences are considered to be single-family dwellings. Sanitary conditions for all animals and pets shall comply with all applicable laws, rules and regulations and meet any health requirements of the City.

AICUZ STUDY: A document prepared by the United States Air Force entitled, Air Installation Compatible Use Zone (AICUZ) Study which identifies the location of runway clear zones, aircraft accident potential zones and noise contours for McConnell Air Force Base. The document recommends compatible land uses for areas in the vicinity of the Base. The purpose of the document is to help achieve compatible uses of public and private lands on land near to or impacted by Base operations through providing recommendations to local governments for controlling incompatible development and thereby protecting the operational effectiveness of the Base.

AIRCRAFT: Any device designed for navigation of and/or flight or use in the air.

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

ALL WEATHER SURFACE: A surface consisting of poured in place concrete, asphaltic concrete, asphalt, brick, crushed rock not less than one half inch in diameter and four inches thick or other comparable material, maintained in good condition and free from weeds, grass trash and other debris.

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

ALTERATION: See Structural Alteration.

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

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

APARTMENT: See Dwelling, Multiple-Family.

APZ II: An area of land that lies south of McConnell Air Force Base that, based on statistical analysis of past Department of Defense aircraft accidents, has been determined by the Air Force to be an area, which has a measurable potential for being the site of aircraft accidents. The chance of an aircraft accident within APZ II is not so high as to warrant Department of Defense acquisition of property, but significant aircraft accident potential exists resulting in a need for land use controls to promote the health and safety of the public.

ASSISTED CARE HOME: A residential use that is used or designed to be used by older persons, persons with disabilities or other persons needing or desiring assistance with day-to-day living matters, but not including nursing or convalescent homes or hospitals. Typical uses include retirement communities in which housekeeping services, common dining facilities and recreational and social activities are offered to residents. The terms assisted care or assisted living does not include Group Homes. Assisted Care Homes are sometimes referred to as an Assisted Living Residence.

AUTOMATED TELLER MACHINE (ATM): A mechanized consumer banking device operated by a financial institution for the convenience of its customers, whether outside or in an access-controlled facility. ATM's located within a building shall be considered accessory to the principal use unless the ATM is likely to be an independent traffic generator.

AUTOMOBILE SALES AND REPAIR: The sale and storage of new and/or used automobiles and other motor vehicles in operating condition, including trucks and buses, and the repair, servicing and rental of such vehicles; but not including body

work, painting, motor rebuilding or rental of equipment, unless specifically permitted by the applicable district regulations.

APPEAL: See Section 1002 of these regulations.

AUTOMOBILE SERVICE STATION: A structure and surrounding land used for the storage and sale of petroleum fuel, including self-service, primarily to passenger vehicles and for accessory uses such as the sale of lubricants, accessories or supplies, the incidental washing of motor vehicles and the performing of minor repairs, but not including tire recapping, body repairs, major vehicle overhaul, provision of rental equipment or open sales lots for new or used vehicles, unless specifically permitted by the applicable district regulations.

BASEMENT: See definition in the applicable Building Code adopted by the City.

BASIC INDUSTRY: An establishment engaging in the basic processing and manufacturing of products predominately from extracted or raw materials, or a use engaging in storage or manufacturing processes which involve or have the potential to involve commonly recognized offensive conditions. Typical uses include fat rendering plants; poultry and rabbit dressing; pulp processing and paper products manufacturing; stockyards; slaughter houses; commercial feed lots; primary smelting of base metals from ore; tanneries or the storage of rawhides or skins; acid manufacture; cement, lime, gypsum, or plaster of Paris manufacture; creosote or tar treatment; distillation of bones; fertilizer manufacture; garbage, offal or dead animal incineration or reduction; explosives or fireworks manufacture or storage; glue and soap manufacture and petroleum processing and refineries.

BED AND BREAKFAST HOME: A home occupation in an owner-occupied residential dwelling where up to four rooms are available for temporary lodging and where meals are provided to lodgers on a paying basis.

BED AND BREAKFAST INN: A business enterprise located in an owner-occupied or manager-occupied commercial or residential building where up to twelve rooms are available for temporary lodging and where meals are provided to lodgers on a paying basis. If permitted by the regulations of the zoning district in which the use is located, the bed and breakfast inn may include a dining area or public assembly area for use by individuals who are not residing at the bed and breakfast inn.

BLOCK: A tract of land, sometimes defined on a plat, that is bounded by streets or by a combination of streets, public parks, cemeteries, railroad rights-of-way, waterways and/or city limits.

BOARDING OR ROOMING HOUSE: A building other than a hotel where, for compensation and by pre-arrangement for definite periods, lodging only or with meals are provided for four or more boarders and/or roomers exclusive of the occupant's family. Individual cooking facilities are not provided. (See the definition of Family below and Section 602(B) of these regulations for home occupation limitations.)

BUILDING: Means any structure with a permanent roof, separated on any or all sides from adjacent open space by walls, built for the shelter or enclosure of persons, animals, chattels or property of any kind and which is permanently affixed to the land. Structures that are connected by way of a permanent breezeway or hallway, which has a solid roof that ties directly into either the roofs or walls of the structures being connected, are considered to be one building.

BULK REGULATIONS: Regulations controlling the size of structures and the relationships of structures and uses to each other and to open areas and lot lines. Bulk regulations include, but are not limited to, regulations controlling: (1) maximum height, (2) maximum lot coverage and (3) minimum size of yards and setbacks.

BUSINESS AND PROFESSIONAL OFFICE: The office of an attorney, real estate or insurance agent, architect, engineer or other professional person, and any other office used primarily for accounting, correspondence, research, editing or administration, but not including medical service offices as defined herein.

CANOPY: Any structure, movable or stationary, open on three sides, which is attached to and projects from a wall of a building for the purpose of sheltering a drive-up facility, platform, stoop, entranceway or sidewalk from the elements; or an independent roof-like structure supported by posts with no sidewalls for the purpose of sheltering a gasoline service area, drive-in facility or motor vehicles. In any event, the sheltering of motor vehicles is for temporary parking and unloading only and not as a permanent parking space. [See Section 303(F) for Permitted Obstructions].

CAPACITY IN PERSONS: The maximum number of persons permitted by the City's current building and/or fire codes to occupy an establishment, at any one time.

CARPORT: A structure for the shelter and permanent parking space for motor vehicles attached to a building or independent thereof which is enclosed on at least two sides. Such carports are not permitted obstructions under Section 303(F).

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

CARRY-OUT RESTAURANT: An establishment which by design of physical facilities or by service or packaging procedures permits or encourages the purchase of prepared ready-to-eat foods intended primarily to be consumed off the establishment's premises, and where the consumption of food in motor vehicles on the premises is not permitted or not encouraged.

CHILD CARE FACILITIES: The following types of facilities which provide care for children qualify as Child Care Facilities when they are established and properly licensed and/or registered with the state of Kansas and operated in accordance with the standards and requirements found within applicable federal, state and local laws, rules and regulations:

1. Boarding Home for Children: A residential facility where one or more children under 16 years of age are in the control or custody of adult supervisors who provide them with food and/or lodging.

2. Child Care Center: A facility in which care and educational activities for 13 or more children two weeks to 16 years of age are provided for more than three, but less than 24 hours per day, including before and after school care for school age children.
3. Preschool: A facility such as a "nursery school" providing learning experiences for children of less than kindergarten age, but who are 30 months or older, where sessions do not exceed three hours per day.
4. Day Care Home: A home or facility in which care is provided for a maximum of 10 children less than 16 years of age.
5. Group Day Care Home: Similar to day care homes except that care is provided to a maximum of 12 children less than 16 years of age.
6. Family Day Care Home: A home in which care is provided for less than 24 hours per day for a maximum of six children who are less than 16 years of age, but of whom not more than three children are less than 18 months.

[See Section 600(B)(13) for child care facilities for employees and Sections 602(C) and (D) for home occupations permitted and prohibited].

COMMON OPEN SPACE: A parcel of land or an area of water, or combination of both land and water, within a site designated as a planned unit development district and designed and intended for the use and enjoyment of the residents of the development. Common open space does not include streets, alleys, parks, off-street parking or loading area, publicly owned open space or other facilities dedicated by the developer for public use. Common open space shall be substantially free of structures, but may contain such improvements as are approved as a part of the development plan and are appropriate for the recreation of residents of the planned unit development.

COMMUNICATION STRUCTURE: A structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. "Communication structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

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

CONVENIENCE CASH BUSINESS: Any business defined herein as a "payday loan business," "title loan business," "currency exchange business," (also known as "check cashing"), "pawnbroker," or any other business engaged in substantially similar activities.

CONVENIENCE STORE: An establishment serving a limited market area and engaged in the retail sales of food, beverages and other frequently needed merchandise for personal, household or automotive use.

CURRENCY EXCHANGE BUSINESS: A currency exchange business, also known as a check cashing business, is an establishment that provides to the customer an amount of money that is equal to the face of the check or the amount specified in the written authorization for an electronic transfer of money, less any fee charged for the transaction, and where there is an agreement not to cash the check or execute an electronic transfer of money for a specified period of time; such business also engaged in the cashing of checks, warrants, drafts, money orders or money transfers for a minimum flat fee as a service that is incidental to its main purpose or business. This definition excludes a state or federally chartered bank, savings and loan association, credit union and grocery store.

DECK: Except for railings, an unenclosed structure that is attached to and projects from a principal building. Decks are open to the sky and may be detached from the principal residential dwelling and constructed above the grade of the adjoining finished ground.

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

DETACHED: Means that a building or structure does not have a wall, roof or other structural member in common with or in permanent contact with another building or structure.

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

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

DOG KENNEL: Any place where four or more dogs are kept, maintained, boarded, and/or bred for a fee and/or offered for sale. A dog is defined as any canine species over six months of age. (Note: This definition includes dogs which are kept or maintained as pets.)

DNL: The Day-Night Average A-Weighted Sound Level metric used in the AICUZ Study to establish the aircraft noise exposure contours around McConnell Air Force Base. The DNL noise contours were arrived at by using a methodology that accounts for a wide number of factors that are described in the AICUZ Study.

DRINKING ESTABLISHMENT: An establishment which is: 1) engaged in the preparation and retail sale of cereal malt beverages and/or alcoholic liquor for consumption on the premises and 2) whose sale of cereal malt beverages and/or alcoholic liquor, for consumption on the premises, represents 50% or more of the total sales receipts of the establishment. Food is sometimes served or sold as an accessory use to the primary use of serving cereal malt beverages and/or alcoholic liquor for on-site consumption. For purposes of these regulations, "Class B Club" shall be defined as a drinking establishment.

DRIVE-IN OR DRIVE THROUGH ESTABLISHMENT: An enterprise which by design, physical features, service, existence of outdoor order boards and microphones or by packaging procedures encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.

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

DWELLING, ATTACHED: A residential building, which is joined to another dwelling at one or more sides by a party wall or walls above the ground level including walls on an attached garage. Such definition shall not preclude the joining together of two dwellings connected only by the corner or roof of a garage.

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

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

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

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

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

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

EASEMENT: A public dedication or private grant of a right, distinct from ownership, to use the land of another in some way without compensation. Limitations apply on what type of principal or accessory buildings or structures can be located on a public easement. [See Section 901(A) for Zoning Permits].

EQUIPMENT RENTAL AND SALES BUSINESS, LIMITED: A business whose trade is characterized by the renting or sales of the following types of equipment: 1) miscellaneous hand operated equipment and tools, 2) non-trailer mounted generators, air compressors, pumps, sweepers and similar non-trailer mounted equipment, 3) lawn mowers, 4) portable concrete mixers which do not exceed a maximum capacity of 9 cubic feet, 5) vertical lifts which do not exceed a 25-foot maximum working height, 6) lawn and garden tractors which do not exceed 30 horsepower, 7) miscellaneous utility or light construction equipment which does not exceed 30 horsepower, 8) trucks which do not exceed a gross vehicle weight of 14,000 pounds, 9) vehicles used for moving purposes that are equipped with a van or bed area that does not exceed 10 feet in length, 10) trailers which do not exceed 12 feet in length, 11) portable signs and 12) scaffolding. In addition, a business which is defined as a Limited Equipment Rental and Sales Business shall not store or display on site heavy construction or farm equipment such as, but not limited to, earth movers, graders, bulldozers, scrappers, dump trucks, combines, trenching shields, rollers that exceed 30 horsepower or any of the above-referenced equipment, identified as permitted, which exceeds established size, weight or horse power maximums. A business such as a hardware store, home improvement center or garden center that occasionally rents hand tools and equipment or lawn maintenance or gardening equipment shall not be construed to be a limited equipment rental and sales business. A business whose trade involves the rental of kitchen appliances such as stoves, refrigerators, washing machines and similar appliances or equipment shall also not be construed to be a limited equipment rental and sales business.

EXCEPTION: Formerly known as a "conditional use." A use of a structure or land which is not permitted outright within a zoning district because of visual and/or operating characteristics that may adversely affect nearby properties or future development within the district unless conditions are placed on the use which are designed to mitigate potential adverse impacts to nearby or adjoining properties and support the compatibility of the use with other uses permitted within said district. See Section 1004 of these regulations for more information.

FAMILY: Either 1) an individual or two or more persons related by blood, marriage or adoption, living together as a single non-profit housekeeping unit in a dwelling unit; or 2) a group of not more than five persons who need not be related by blood, marriage, or adoption, living together as a single housekeeping unit in a dwelling unit; plus in either case, domestic servants. A family may include any number of gratuitous guests or minor children not related by blood, marriage, or adoption. Not more than three boarders or roomers are permitted as part of a housekeeping unit (See Boarding or Rooming House).

FENCE: A free-standing artificially constructed structure of metal, masonry, or wood, or any combination thereof, resting on or partially buried in the ground, constructed to enclose or screen areas of land.

FLOOR AREA: For computing off-street parking requirements, floor area shall mean the gross floor area of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings and shall include all floors, except that space which is used for interior parking spaces, loading space for motor vehicles, or any space where the floor-to-ceiling height is less than six feet.

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

FRONTAGE: That side of a lot abutting on a street; including a structure's designated front lot line.

GARDEN CENTER: A retail or wholesale business which sells a wide variety of plants, seeds, bulbs, shrubs, trees, lawn maintenance equipment, lawn or patio furniture, fertilizers, pesticides and gardening and landscaping tools, implements and supplies. This use may involve the growing of plant materials either within greenhouses or within fenced and perhaps partially screened outdoor plant nurseries. Businesses whose trade is not characterized by the sale of the wide variety of merchandise described above shall not be defined as a Garden Center, e.g., plant stores, florist shops, pottery stores, etc.

GAZEBO: A free-standing roofed structure typically open on all sides.

GOLF COURSE: A tract of land for playing golf, improved with trees, greens, fairways, hazards, and which may include clubhouses, shelters, and areas for golf driving ranges and pitch and putt.

GREENHOUSE: A structure with a translucent roof and/or sides in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants, including hydroponic growing.

GROUP HOME: "Group home" means any dwelling occupied by not more than 10 persons, including eight or fewer persons with a disability who need not be related by blood or marriage and not to exceed two staff residents who need not be related by blood or marriage to each other or to the residents of the home, which dwelling is licensed by a regulatory agency of this state in accordance with K.S.A. 12-736. (See Dwelling, Single-Family.)

HARD AGGREGATE SURFACE: A surface for outdoor merchandise display that has at least a four-inch bed of river gravel, crushed river gravel or crushed limestone which meets the test requirements of the City's standard specification for concrete aggregate. Hard aggregate surface may not be used for those areas established for the display or parking of automobiles, trucks, trailers, motorcycles, recreational vehicles, boats and similar vehicles or for vehicular circulation aisles.

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

HEIGHT, MAXIMUM: The tallest vertical distance of a structure, measured from the average elevation of the finished grade within 20 feet of the structure to the highest point of the structure that is permitted by the bulk regulations of each zoning district regulations.

HOME IMPROVEMENT CENTER: A retail business with limited outside storage, whose trade is the sale of a complete line of building supplies, materials and tools, which are commonly needed to substantially complete all aspects of building construction. Businesses whose trade is not characterized by the sales of such a wide variety of building supplies, materials and tools shall not be defined as a home improvement center, e.g., hardware stores, swimming pool businesses, heating and cooling businesses, lighting and home decorating businesses, landscaping businesses, carpet and tile stores, etc.

HOME OCCUPATION: As defined in Section 602.

HOSPITAL: An institution with an organized medical staff of physicians and registered professional nurses, offering facilities and beds for patients with a variety of medical conditions requiring diagnosis, treatment or care beyond 24 hours and regularly makes available at least clinical laboratory services, diagnostic X-ray services, emergency room services and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent. Hospitals may include offices for medical and dental personnel, central service facilities, such as pharmacies and medical laboratories, outpatient facilities, training facilities and other related uses.

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

IMPERVIOUS SURFACE: For purposes of these regulations, that percentage of a lot that is covered with any manmade improvement which reduces and/or prevents

absorption of storm water into previously undeveloped land (i.e., buildings, paved areas, vehicle parking and circulation isles, etc.)

INCIDENTAL: For purposes of these regulations, an accessory use or activity which is subordinate to and/or performed in conjunction with a principal use.

INFRASTRUCTURE: Facilities and services needed to service industrial, residential and commercial activities at the urban scale of development. Facilities include such things as water and sewer lines, streets, utility lines and equipment, etc. Services include such things as police and fire protection, schools, parks, etc. Paved streets with curb and gutter and stormwater sewers, municipal wastewater collection and treatment and municipal water lines capable of providing water pressure to fight fires are all examples of urban scale infrastructure.

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

LOT: See Lot, Zoning.

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

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

LOT COVERAGE: For purposes of these regulations, the percentage of a lot that is covered by principal buildings or accessory structures, but not including open air sports courts, swimming pools, outside vehicle parking areas or driveways.

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

LOT INTERIOR: A lot other than a corner lot.

LOT LINE: The boundary line of a zoning lot (See Lot, Zoning).

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

LOT LINE, REAR: The lot line that is most distant from and is or is most nearly parallel to the front lot line. If a rear lot line is less than 15 feet long or if the lot comes to a point at the rear, the rear lot line shall be a line at least 15 feet long, lying wholly within the lot, parallel to the front line. If a zoning lot has two or more front lot lines, the owner or developer shall designate the yard which is to be the rear yard.

LOT LINE, SIDE: A lot line which is neither a front lot line nor a rear lot line.

LOT OF RECORD: A lot which is part of a subdivision, the plat of which has been recorded in the office of the County Recorder of Deeds, or a parcel of land described by metes and bounds of which the deed was recorded prior to March 21, 1975.

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

LOT, THROUGH: A lot which has a pair of opposite lot lines along two substantially parallel streets and which is not a corner lot. On a through lot, both street lines shall be deemed front lot lines. Sometimes referred to as a double frontage lot.

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

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

LUMBERYARD: A retail or wholesale business whose trade is characterized by the sale of building supplies, materials, tools and equipment to individuals or contractors. This use may involve the large-scale storage of items within a fenced outside storage yard.

MANUFACTURED/MOBILE HOME: A factory-built structure or structures equipped with the necessary service connections and made so as to be transportable as a unit or units on their own running gear and designed to be used as a dwelling unit with or without a permanent foundation. The transportation system is designed so that the home may be moved from time to time at the convenience of the owner. The term shall include two or more separately towed units, which are designed to be bolted or otherwise fastened together to form a complete living unit. Such homes are built on a chassis consisting of drawbar and coupling mechanism, frame (e.g., steel I-beams), running gear assembly and lights. Removal of any or all of these component parts does not change the definition. All such homes shall be either skirted according to the manufacturer's design and construction standards or placed on a permanent-type, enclosed perimeter foundation and, according to standards of the State of Kansas under K.S.A. 75-1226, et seq., as amended, shall be anchored to the ground or secured to a permanent-type foundation. Such homes may or may not meet the standards of the National Mobile Home Construction and Safety Standards Act of 1976. When such homes do not meet the standards of the Act, the industry refers to them as "mobile homes." It is the intent of this definition to use the term "mobile home" interchangeably with "manufactured home," but not a "residential-design manufactured home" unless otherwise specified in these regulations. Additions may be made to such homes for patios, porches, carports, garages, storage structures and living space provided such additions are designed and constructed by a manufactured home factory or meet applicable City building codes. Overhead structures which cover or enclose a home are not permitted; however, a protective roof covering which is used to remedy a deteriorating roof condition is permitted. Under no circumstances shall two or more single-wide manufactured homes be permitted to connect together in any manner on the same zoning lot. (See Residential-Design Manufactured Home).

MANUFACTURED/MOBILE HOME PARK: Any area, parcel or tract of ground equipped as required for support of manufactured/mobile homes and used or intended to be used by one or more occupied homes. Such parks shall be under singular ownership and control and under no circumstances shall the home space(s) within such a park be sold or offered for sale, individually or separately, from the entire area, parcel or tract of ground compromising the Manufactured/Mobile Home Park. The definition of a park does not include a sales area on which unoccupied homes, whether new or used, are parked for the purposes of storage, inspection or sale, unless specifically approved as an exception by the Board of Zoning Appeals in accordance with Article 10 of these regulations. A manufactured/mobile home may, however, remain on a space for purposes of sale by the resident owner.

MANUFACTURING, GENERAL: Means an establishment engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment and packaging of such products, but excluding "basic industry." Typical uses include apparel and garment factories, appliance manufacturing and assembly, bakeries engaged in large-scale production and wholesale distribution, beverage manufacturing and bottling (excluding breweries, but not excluding microbreweries), boat building and repair, electrical and electronic equipment manufacturing, food processing (excluding slaughter houses and rendering plants), furniture and fixtures manufacturing, jewelry manufacturing, laundry and dry cleaning plants, leather products manufacturing, meat cutting and wholesale storage, machine shops, musical instrument manufacturing, pharmaceutical and toiletries manufacturing, rubber and plastic products manufacturing, stone monument works, tobacco products manufacturing and toy manufacturing.

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

MECHANICAL EQUIPMENT: Equipment, devices, and accessories, the use of which relates to water supply, drainage, heating, ventilating, air conditioning, and similar purposes.

MEDICAL SERVICE: Any office providing therapeutic, preventive or corrective personal treatment services on an out-patient basis by physicians, dentists and other practitioners of the medical or healing arts, as well as the provision of medical testing and analysis services. Typical uses include but are not limited to medical, dental, optometric and chiropractic offices and clinics, blood banks and medical laboratories

MICROBREWERY: Means a facility which produces no more than 15,000 barrels of beer per year and is licensed by the director of alcoholic beverage control of the Kansas Department of Revenue to manufacture, store and sell beer. A microbrewery facility must operate within a completely enclosed building.

MICRODISTILLERY: Means a facility which produces no more than 50,000 gallons of spirits per year from any source or substance that is licensed by the director of alcoholic beverage control of the Kansas Department of Revenue, and is licensed by said director to manufacture, store and sell spirits. A microdistillery facility must operate within a completely enclosed building.

MINI-STORAGE WAREHOUSE: A structure containing separate storage spaces, which are individually accessible, are of varying sizes and are leased or rented on an individual basis.

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

MONOPOLE: A self-supporting structure [as opposed to a lattice or guy supported structure] intended to provide a less invasive means to support public utility infrastructure such as but not limited to telecommunications.

NONCONFORMING LOT OF RECORD: A zoning lot, which does not comply with the lot size requirements for any permitted use in the district in which it is located. [See Sections 800(A) and 801 for Nonconforming Lots of Record].

NONCONFORMING STRUCTURE OR USE: A lawfully existing structure or use at the time these regulations or any amendments thereto became effective which does not conform to the requirements of the zone in which it is located. [See Sections 800(B) and (C), 802 and 803 for Nonconforming Structures and Uses].

NURSERY, PLANT: Outdoor areas used to raise flowers, shrubs and trees for sale.

NURSING OR CONVALESCENT HOME: A residential health care facility licensed and regulated by the State of Kansas which provides lodging, bed care, in-patient services and supervision for children and/or the aged who need regular medical attention, or a place of rest for those suffering bodily disorders, but not including facilities for surgical care or emergency medical services or institutions for the care and treatment of mental illness, alcoholism or narcotics addictions.

OCCUPANCY CERTIFICATE: A certificate in which the Zoning Administrator certifies that upon completion of an applicant's proposed structure and/or commencement of an applicant's proposed use such structure/use complies with the provisions of these regulations. Structures may only be occupied and/or uses may only be commenced upon issuance of an occupancy certificate by the City. When applicable, such a certificate may be combined with the issuance of a certificate of occupancy as required by applicable building codes. [See Section 901(B) for Occupancy Certificates].

OFFICE: A building used primarily for conducting the affairs of a business, profession, service, industry or government, or like activity, that may include ancillary services for office workers such as dining areas, coffee shops, and newspaper or candy stands.

OPERABLE VEHICLE: For purposes of these regulations, a motor vehicle that is tagged with a valid license plate, is capable of movement under its own power and is street legal.

OUTDOOR STORAGE: The storage of goods and materials outside of any building or structure when specifically permitted by these regulations, but not including storage of a temporary or emergency nature or of new or used goods and materials on display for sale. [See Section 600(B)(15) for outdoor storage].

PATIO: A level surfaced area that typically is directly adjacent to a principal building. A patio typically has a grade that is slightly above the finished grade of adjoining ground and a patio may or may not be covered by a permanent roof.

PAWNBROKER: Any person who loans money on deposit or pledge of personal property or other valuable thing other than intangible personal property, who deals in the purchase of personal property on the condition of selling the same back again at a stipulated price, and any person providing convenience cash services as defined herein. The term pawn broker as used herein shall not include any person operating under the supervision of the State Banking Commissioner, Credit Union Administrator, or the Consumer Credit Commissioner of the State.

PAYDAY LOAN BUSINESS: Any business engaged in making loans for a period of 30 days or less in duration, intended to coincide with the period of one payday of the borrower to the next, all as regulated by K.S.A. 16a-2-404 as may be amended from time to time, but not including financial institutions defined by K.S.A. 16-117.

PERMITTED USE: A use of a structure or land, which is permitted outright within a zoning district because of its compatibility with the other uses so designated. The Zoning Administrator is authorized to issue zoning permits and occupancy certificates for such permitted uses when all other requirements of applicable federal, state and local laws, rules, ordinances and regulations have been met.

PHARMACY: An establishment where individuals trained in the science of pharmacy dispense pharmaceutical medications. Pharmacies may also conduct retail sales of medical equipment and supplies.

PORCH: A roofed structure projecting from a principal building that is separated from the principal building by the walls thereof and having no enclosing features except roof supports and a railing. Screen wire or lattice material meant to partially enclose a porch is not permitted on that portion of a porch that projects into a required front yard. The use of screen wire or lattice material to partially enclose a porch that projects into a required rear yard is permitted when installed in compliance with all other applicable provisions of these regulations.

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

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

PRINTING AND COPYING, LIMITED: An establishment engaged in retail photocopying, reproduction, photo developing and/or blueprinting services, but not the production of books, magazines, newspapers, engraving and/or photo engraving.

PRIVATE CLUB: An eating or drinking establishment operated for profit which requires persons who wish to avail themselves of the services or goods offered by the establishment to be a club member. (See Fraternal or Service Club.)

PUBLIC UTILITY USES: Telephone, electric and cable television lines, utility poles, equipment and structures; water and gas pipes, mains, valves or structures; sewer pipes, valves or structures; pumping stations or substations; telephone exchanges and repeater stations; communication structures and all other facilities, equipment and structures necessary for conducting a utility service by a government or a utility company regulated as to rates and charges by the Kansas Corporation Commission and/or which operates under a franchise agreement with the City of Derby.

RECREATIONAL VEHICLE: A vehicle, either motor powered or towed, equipped with living space normally including a kitchen, bathroom, bedroom and living room, used for leisure activities such as vacations or full time living.

RECYCLING CENTER: A location where clean, source-separated, recyclable materials are accepted or deposited by the public for transfer elsewhere. As distinguished from salvage yards, such materials consist only of aluminum and steel cans, glass, papers and plastic and reusable containers. A center must be maintained in a litter-free condition on a daily basis. The name and phone number of a responsible party must be clearly posted in case a problem occurs. Such a center may be further classified as follows: [See Sections 6-600(B)(12) and 601(G) for recycling centers].

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

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

RESIDENTIAL-DESIGN MANUFACTURED HOME: A structure manufactured to the standards embodied in the federal Manufactured Home Construction and Safety Standards of 1976 generally known as the "HUD Code" established pursuant to 42 U.S.C. Sec. 5403. (See applicable Use Limitations in applicable zoning districts)

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

RESIDENTIAL BUILDING: A building all or part of which contains one or more dwelling units, including single-family, two-family and multiple-family dwellings, lodging houses and modular homes.

RESTAURANT: An establishment where food and drink is prepared, served and consumed primarily within the principal building.

RETAIL, GENERAL: The sale or rental of commonly used goods and merchandise for personal or household use. Typical uses include grocery stores, department stores, furniture stores, clothing stores and establishment providing the following products or services; household electronic equipment, sporting goods, bicycles, office supplies, home furnishings, household appliances, wallpaper, carpeting and floor-covering, art supplies, kitchen utensils, jewelry, drugs, cosmetics, books, antiques or automotive parts and accessories.

SALVAGE YARD:

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

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

SETBACK, BUILDING: Means a line parallel to a respective lot line that is internal to a lot, which defines the minimum amount of yard (open space) that is required by the yard requirements of the district regulations, unless a greater or lesser setback has been platted.

1. "Front Yard Building Setback Line" shall be parallel to any lot line abutting a street and shall extend from side lot line to side lot line. When a corner lot is involved, the "front yard building setback line" shall extend from a side lot line to a front lot line and from a front lot line to a rear lot line.
2. "Rear Yard Building Setback Line" shall be parallel to all rear lot lines and shall extend from side lot line to side lot line. When a corner lot is involved, the "rear yard building setback line" shall extend from a side lot line to the front yard building setback line.
3. "Side Yard Building Setback Line" shall be parallel to any side lot line from the front yard building setback line to the rear yard building setback line.

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

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

SPECIAL USE: The permitting of certain uses which might have the potential of creating an adverse effect upon nearby properties or upon the character and future development of specific zoning districts when their proposed location is supplemented by conditions designed to promote compatibility of the use with the surrounding property, the neighborhood and the applicable zoning district. [See Sections 1101 and 303(G)].

STORAGE WAREHOUSE: A building used primarily for the storage of goods and materials, equipment or products for manufacturing use or for distribution to wholesalers or retailers but which does not involve storage areas that are individually accessible.

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

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

[See Section 300 (C) for Structural Alterations].

STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, but not including hard surfaced walks and terraces or public items such as utility poles, street light fixtures and street signs.

TEMPORARY STRUCTURE: A structure without any foundation or footings and which is removed when the designated time period, activity, or use for which the temporary structure was erected has ceased.

TEMPORARY SALES: The sale of merchandise, goods, or materials where the sale of such is at any location that is not owned or controlled by the person, group, firm, corporation, or business conducting the sales.

TEMPORARY USE: A use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period.

TERRACE: A level, landscaped and/or surfaced area directly adjacent to a principal building at or within four feet of the finished grade of adjoining ground and not covered by a permanent roof.

THEATER: A building or part of a building devoted to showing motion pictures, or for dramatic, musical or live performances.

THEATER, DRIVE-IN: An open lot with its appurtenant facilities devoted primarily to the showing of motion pictures or theatrical productions on a paid admission basis to patrons seated in motor vehicles.

TITLE LOAN BUSINESS: Any business lending money with the pledge of personal property as collateral, evidenced by a certificate of title issued by the State of Kansas, , but not including financial institutions, defined by K.S.A. 16-117.

TRUCK SERVICE STATION: A structure and surrounding land used for the storage and sale of petroleum fuel primarily for tractor-trailer vehicles and trucks with an axle weight capacity of two tons or greater. The operation of a truck service station involves the sale of lubricants, accessories or supplies commonly needed for truck operation and performing minor vehicle repairs. A truck service station may not include tire recapping, body and fender repair, major overhaul, providing rental equipment or open lots for sale of new or used vehicles; unless those uses are specifically permitted by district regulations.

TRUCK WASH: An establishment which has facilities that are typically outside of a completely enclosed building that are designed and used for the washing or cleaning of Tractor-Trailer vehicles, recreational vehicles and trucks which have an axle weight capacity of two tons or greater.

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

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

UTILITY POLE: A freestanding structure owned or operated by a public utility that is designed specifically for and used to carry lines, cables, or wires for telecommunications, cable, electricity or to provide lighting.

VARIANCE: See Section 1003 for description.

VISION TRIANGLE: A triangular area on a lot that is located adjacent to the area where two streets intersect. Within such area nothing shall be erected or placed, including but not limited to automobiles, trucks and large vehicles or trailers or planted or allowed to grow in such a manner as to materially impede the vision of a motorist and, therefore, the safety of the motorist and pedestrians. Within the vision triangle nothing shall be placed or planted or grown which has a height of between 33 inches and eight feet above the grades of the bottom of the curb of the intersecting streets, which will obstruct the view of motorists. The vision triangle area on a lot has two sides measured from the point of the lot line intersection, at the intersection of two streets, and a third side across the lot which connects the ends of the two sides that are measured from the lot corner at the street intersection. For lots that have rounded corners at the intersection of streets, the lot lines shall be extended in a straight line to the point where the lot lines would then intersect. In all residential districts, the two lot lines establishing the vision triangle shall be a minimum distance of 30 feet. In all other zoning districts the distance shall be 20 feet, except that in the B-4 District the distance shall be 10 feet. At street intersections, which are provided automatic traffic signalization, the Planning Commission may modify or waive, as part of Site Plan Review Request file pursuant to Section 305 of these regulations, the vision triangle restriction.

WELDING OR MACHINE SHOP: A workshop where machine, machine parts, or other metal products are fabricated.

WHOLESALE: An establishment primarily engaged in the display, storage and sales of goods to other firms for resale.

WIND ENERGY CONVERSION SYSTEM (WECS): A Wind Energy Conversion System is a device such as a wind generator, wind charger, windmill or wind turbine which converts wind energy to another form of usable energy.

YARD: Refers to the unobstructed, unoccupied open space between the furthermost projection of a structure and the property line of the lot on which the structure is located, except as modified by the standards of Section 303(F). See Setback, Building.

YARD, REQUIRED FRONT: A yard extending along a full length of a front lot line and back to a line drawn parallel to the front lot line at a distance equal to the depth of the required yard. On a corner lot, each yard that abuts a street shall be considered a front yard.

YARD, REQUIRED REAR: A yard extending along the full length of the rear lot line and back to a line drawn parallel to the rear lot line at a distance equal to the depth of the required rear yard. When a corner lot is involved, the required rear yard shall extend from a side lot line to the required front yard line.

YARD, SIDE: A yard extending along a side lot line and back to a line drawn parallel to the side lot line at a distance equal to the width of a required minimum side yard, but excluding any area encompassed within a required front yard or rear yard.

ZONING ADMINISTRATOR: The person appointed and authorized by the Governing Body to administer and enforce the requirements of these regulations [See Section 900 for Office of the Zoning Administrator].

ZONING PERMIT: A certificate by which the Zoning Administrator certifies to an applicant that their proposed structure and/or use is in conformance with these regulations. When applicable, such a certificate may be combined with the issuance of a building permit as required by a building code. [See Section 901(A) for Zoning Permits].

Section 2. Article 3, Section 300 "Activities Governed by These Regulations" of the zoning regulations of the City of Derby, Kansas is hereby amended to read as follows:

300 ACTIVITIES GOVERNED BY THESE REGULATIONS.

A. New Structures. These regulations shall apply to all structures built hereafter. For the purposes of these regulations, any structure hereafter moved from one site to another site shall be considered to be a structure built hereafter. Except as specifically provided in Article 8 of these regulations concerning rebuilt or restored structures, any structure rebuilt or restored after damage by any means shall be considered to be a structure built hereafter.

B. New Uses of Old Structures. A change in use of any structure requires that the new use must comply with the use regulations found in these regulations, unless otherwise permitted by provisions in Article 8. The mere establishment of the new use does not require the existing structure to conform to the lot size requirements or the bulk regulations.

C. Structural Alterations. If any structure is hereafter structurally altered as defined in Section 202:

1. The entire structure as altered shall comply with the use regulations of these regulations.
2. Any alterations, enlargements or additions to the structure shall comply with the bulk regulations of these regulations, except as permitted by Section 802(B) for nonconforming structures.
3. The off-street parking facilities shall not be reduced below or, if already less than, shall not be further reduced below the requirements applicable to a similar new structure or use.

D. Uses of Open Land. If any use of open land is hereafter established or if any use of open land is hereafter changed to another use, such new use shall comply

with all the provisions of these regulations, unless permitted by Sections 803 and 806.

E. **Exemptions**. The following structures and uses shall be exempt from the provisions of these regulations:

1. Utility poles less than 60 feet in height and less than 24 inches in diameter, wires, cables, conduits, vaults, laterals, pipes, mains, valves or other similar equipment for the distribution to consumers of telephones or other communications, electricity, gas or water, or the collection of sewage or surface water, but not including communication structures or utility substations located on or above the surface of the ground.
2. Monopoles less than 60 feet in height when located within the public right-of-way adjacent to B-3, B-4, B-5 or M-1 zoning districts, subject to approval pursuant to the City's ordinance and/or regulations providing for management of the public right-of-way.
3. Railroad tracks, signals, bridges and similar facilities and equipment located on a railroad right-of-way and maintenance and repair work on such facilities and equipment.
4. Use of land for agricultural purposes as defined in Section 202, including accessory buildings and structures thereon not in a designated flood plain. When any land or accessory building or structures ceases to be used only for agriculture, then it shall be subject to the applicable provisions of these regulations.
5. Drilling and operation of oil and gas wells.
6. Buildings, structures or land used, but not just leased, by the federal government.

Section 3. Article 3, Section 302 "General Requirements for All Zoning Districts" of the zoning regulations of the City of Derby, Kansas is hereby amended to read as follows:

302 GENERAL REQUIREMENTS FOR ALL ZONING DISTRICTS.

A. **Permitted Uses**. Unless otherwise provided by these regulations, no structure shall hereafter be built, moved or structurally altered and no structure or land shall hereafter be used, occupied or designed for use or occupancy except for the uses permitted within the zoning district in which the structure or land is located.

B. **Special Uses**. No use of a structure or land that is designated as a special use in a district shall hereafter be established, and no existing special use shall hereafter be changed to another special use in such district, unless such special use is approved in accordance with Section 1101 of these regulations.

C. **Exceptions**. No use of a structure or land that is designated as an exception in any zoning district shall hereafter be established, and no existing exception[1] shall hereafter be changed to another exception in such district, unless approval of the new exception is secured from the Board of Zoning Appeals as provided for in Section 1008 of these regulations.

D. **Lot Sizes**.

[1] Exceptions were previously called "conditional uses" in prior versions of these regulations.

1. No structure, or part thereof, shall hereafter be built, structurally altered or moved and no structure or land shall hereafter be used, occupied or arranged or designed for use of occupancy on a zoning lot, unless otherwise provided for in these regulations, which in its district is:

    a. Smaller in area than the minimum area or minimum lot area per dwelling unit required;
    b. Narrower than the minimum lot width required; or
    c. Shallower than the minimum lot depth required.

2. Where independent dwelling units are to be sold as condominiums, minimum lot size requirements shall not apply to each individual ownership, but shall be applied collectively to the common open space surrounding the surrounding structures such that the total open space is an aggregate of the minimum lot area required for each dwelling unit; however, the minimum lot width and depth for the district shall be applied to the entire zoning lot.

E. <u>Bulk Regulations</u>. In these regulations, bulk requirements are expressed in terms of maximum structure height, maximum lot coverage, minimum setbacks and minimum front, side and rear yards.

1. No structure, or part thereof, shall hereafter be built, structurally altered or moved and no structure or land shall hereafter be used, occupied or designed for use or occupancy that would:

    a. Exceed the maximum lot coverage percentage specified for the zoning district in which the structure is located, or
    b. Exceed the maximum structure height specified for the zoning district in which the structure is located, except:
        1. Chimneys, flues, stacks, fire escapes, gas holders, elevator enclosures, ventilators, skylights, solar panels, water tanks, and similar roof structures needed to operate and maintain the building on which they are located; and roof signs as permitted by Article 7 of these regulations;
        2. Flag poles, water towers and tanks, steeples and bell towers, carillons, monuments, cupolas, electrical transmission line towers and wind energy conversion systems;
        3. Communication structures, antennas or towers accessory to residential uses when used for the sole and personal use of the resident on which the accessory use is located if first approved as an exception in accordance with Section 1004 of these regulations;
        4. Public utility substations when first approved as a special use in accordance with Section 1101 of the regulations; and
        5. Communication structures when first approved as a special use within certain districts in accordance with Section 1101 of these regulations.
    c. Provide any setback of front, side or rear yard that is less than that specified for the zoning district in which such structure or use of land is located or maintained, except as front yard setbacks may be applied in Sections 303.B and 303.C and except side yard setbacks for nonconforming structures and uses in Article 8.

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

F. **Use Limitations.** No permitted, special use or exception hereafter established, altered, extended, enlarged or moved shall be operated or designed so as to conflict with the use limitations for the zoning district in which such use is or will be located. No permitted, special use or exception (formerly identified as a "conditional use") already established on the effective date of these regulations shall be altered, extended or enlarged so as to conflict, or further conflict with, the use limitations for the zoning district in which such use is located. (See Sections 802, 803 and 806.)

G. **Off-Street Parking and Loading.** No structure shall hereafter be built or moved and no structure or land shall hereafter be used, occupied or designed for use or occupancies, unless the minimum off-street parking and off-street loading spaces required by Article 5 are provided. No structure or use already established on the effective date of these regulations shall be enlarged unless the minimum off-street parking and loading spaces required by Article 5 are provided.

H. **Accessory Structures or Uses.** No accessory structure or use, as defined in Article 6, shall hereafter be built, altered, extended, enlarged or moved, unless permitted by Article 6.

I. **Temporary Structures and Uses.** No temporary structure or use shall hereafter be built, altered, extended, enlarged or moved, unless permitted by Article 6.

J. **Home Occupations.** No home occupation, as defined by Article 6, shall hereafter be established, altered, extended or enlarged in any residential district unless it complies with the permitted uses, conditions and use limitations as provided for in Article 6.

K. **Signs.** No sign shall hereafter be built, and no existing sign shall be altered, enlarged or moved, unless it complies, or will thereafter comply, with the provisions of Article 7.

Section 4. Article 3, Section 303 "Miscellaneous Requirements" of the zoning regulations of the City of Derby, Kansas is hereby amended to read as follows:

303 MISCELLANEOUS REQUIREMENTS.

A. Number of Structures and Uses on the Zoning Lot.

1. Whenever a zoning lot is used for a single-family detached or attached dwelling or two-family dwelling, only one principal structure and use may be located on the lot provided that the structure and use conform to all requirements of the district in which the lot is located. Multiple units of such dwellings, however, may be located on the same zoning lot when located in a PUD Planned Unit Development District.
2. Whenever a zoning lot is used for other than a single-family detached or attached dwelling or two-family dwelling, more than one principal structure and use may be located on the lot in common ownership provided that the structures and uses conform to all requirements of the district in which the lot is located.
3. Whenever any structures are developed as condominiums, more than one principal structure may be located on the lot provided the definition of

a condominium in Section 202 is met as well as the requirements of Sections 302(D)(2)and (E)(2).

B. Platted Building Setback Lines.

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

C. Average Setback in Existing Residential Districts.

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

D. Yard Requirements for Open Land.

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

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

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

reduced below, or further reduced if already less than, the minimum requirements of these regulations for the equivalent new construction.

F. <u>Permitted Obstruction in Required Yards</u>. The following are defined as permitted obstructions in a required yard:

1. In specific yards:

    a. open terraces or decks not over four feet above the average level of the adjoining ground may project into a required rear yard not more than five feet provided that this provision shall not apply to open terraces or decks where a permanent roof is installed over said terrace or deck;
    b. awnings or canopies may project into a required front or rear yard not more than five feet and may project into a required side yard not more than 30 inches;
    c. steps four feet or less above grade which are necessary for access to a permanent structure or for access to a lot or to a lot from a street or alley are permitted in any required yard;
    d. one-story bay windows, chimneys and overhanging eaves and gutters may project 30 inches or less into any required yard;
    e. window wells projecting 36 inches or less (not including concrete thickness); arbors and trellises; flagpoles, and basketball goals are permitted in any required yard;
    f. ornamental light and gas fixtures are permitted in any required yard;
    g. vehicle parking when permitted by Article 5 is permitted in any required yard;
    h. accessory and temporary uses when permitted by Article 6 are permitted in any required yard;
    i. signs when permitted by Article 7 are permitted in any required yard;
    j. those structures or uses specifically permitted in required yards by the district regulations, but not including garages, carports, fuel pumps and wing walls;
    k. for dwellings constructed prior to January 1, 1980, open unenclosed porches or patios may project into a required front yard or rear yard for a distance not exceeding eight feet. The open unenclosed porch or patio may include a permanent roof provided that, when located in a required front yard, the permanent roof is of an architectural style and constructed of building materials that substantially match the principal structure's roof design and appearance (See definition of porch); and
    l. detached unenclosed canopy structures over gasoline/fuel pumps or motor vehicle drive-in / drive-through facilities may be placed in any required yard, provided the supports for the canopy are not located within a required yard; and provided further the canopy projection does not extend more than 10 feet into a required yard.

2. In any yard except a front yard:

a. Accessory uses permitted by Article 6;
b. children's recreational equipment and laundry drying lines; and
c. open and closed fences not exceeding eight feet in industrial districts and six feet in height in all other districts; provided such fences located in residential districts do not extend beyond the corner of a principal structure into any open area fronting on a street for which the facade has been designated for the property address number, except that such fences may extend to the building setback line of a corner lot for which the facade has not been designated.

3. In front yards only:

a. For single-family, duplex and multiple-family uses only, wooden split-rail fences not to exceed two rails nor a height of 36 inches; and temporary wooden picket or wrought iron fences not to exceed a height of 48 inches as an accessory use to model homes and related sales offices only; provided, such fences block access into the driveway and remain in place only as long as the model home is open for sales, but not longer than six months. Permits for additional six-month periods may be approved upon reapplication; however, no further fee, if any, will be required. On corner lots, the Zoning Administrator may modify the fence design if the spacing of the pickets or railings would obstruct, impair, obscure or interfere with the vision triangle as defined in Section 202.
b. In addition to Section 303(F)(3)(a) above for single-family, duplex and multiple-family uses only, open and closed fences not exceeding six feet in height in front yard setbacks may extend to the property line of a corner lot; provided that the facade for which the household address has been designated is 180 degrees from the adjacent opposing lot and subject to the restriction that the fence shall not be located in or over any area of a vision triangle or extend beyond the corner of a principal structure into any front yard for which the facade has been designated for the property address number.
c. In all business and institutional districts, but not industrial, and for all multiple-family and nonresidential uses in residential districts, an exceptions may be approved for fences which do not exceed eight feet in height not including security measures nor have less than 90% open space in the fence design; provided, that such a design and location do not pose a threat to public safety or health. Notwithstanding the above provision for an exception, all cemeteries, churches and public and private schools may construct such fences as described without obtaining an exception provided they meet the design and location standards.
d. In industrial districts only, fences not exceeding eight feet in height, not including security measures, nor which have less than 90% open space in fence design. Security measures shall not include concertina wiring or designs which would pose an undue risk of harm to the public safety and health.

G. Lot Size Requirements and Bulk Regulations for Public Utility Uses.

Notwithstanding any other provision of these regulations, none of the following public utility uses shall be required to comply fully with the lot size requirements and bulk regulations of the zoning district in which they are located, except as necessary to comply with maximum structure heights specified for the zoning district in which the structure is located unless exempted by Section 300.E or as may be required as a condition of approval for an exception or special use permit in certain districts:

1. Electric and telephone substations and distribution centers.
2. Gas regulator stations.
3. Pumping stations.
4. Communication structures, radio, television and micro-wave transmitting or relay stations and towers.
5. Water towers or standpipes.

H. Access to Business and Industrial Districts.

No land which is located in a residential district shall be used for a driveway, walkway or access purpose to any land which is located in any business or industrial district.

I. Annexed Land.

All land hereafter annexed shall automatically be classified as R-1 "Single-family Residential District" until such time as the property owner, Planning Commission or Governing Body files an application initiating a request for a change in zoning classification. Such changes may be considered during the process of annexation. While the Planning Commission may hold the required public hearing on a rezoning change or special use application prior to annexation, the effectuating ordinance for the zone change or special use cannot be published until the land is first annexed into the City. While a zone change or special use ordinance and annexation ordinance may be published on the same day, the annexation ordinance must be published first if they are published on separate days.

J. Sewer and Water Facilities.

All principal structures built hereafter shall be served by and connected to the public sewer and water system of the City or a private utility company with comparable service, if such facilities can be feasibly provided as may be determined by the Governing Body.

K. Dedication of Rights-of-Way and Easements.

As a condition related to a rezoning amendment, a special use or an exception, the dedication of additional street rights-of-way; easements for utilities, drainage, access control, fire lanes, building setback lines and other purposes; and the construction, removal or replacement of public improvements necessary to the proper development of the property, may be required either by platting or replatting or in some cases by means of a separate legal instrument effectuating such dedications and improvements. Such condition may be required whether the property is being divided or held in single ownership. A stated time limit not exceeding 18 months shall be established to ensure compliance with the above conditions during which time the effectuation of the zoning amendment, special

use or exception having been approved with such conditions shall be withheld from publication by the Clerk. Failure to comply with the conditions during the stated period of time shall result in making the zoning amendment, special use, or exception null and void. No extension of the time period may be granted without reapplication.

L. Flood Plain Requirements.

Within any flood plain area as delineated by the Federal Insurance Administration of the Federal Emergency Management Agency, no use of land shall commence and no structure shall hereafter be constructed, structurally altered, extended, enlarged or moved, under these regulations, unless it also complies with the provisions of the F-P Flood Plain District. (See Section 416 for flood plain district.)

M. Moving Structures.

No structure shall be moved into the City, nor from one location to another location within the City, unless such structure shall, when relocated, be made to conform fully with these regulations. No zoning permit shall be issued, unless in the opinion of the Zoning Administrator the height, age, architectural style, materials, and outward appearance of such structure reasonably conform to other buildings in the block to which it is to be moved and in the block opposite, to such an extent that its relocation shall have a detrimental effect on the appearance or property values of adjacent properties.

N. Status of Moving Manufactured/Mobile Homes.

Notwithstanding other provisions of these regulations, the Zoning Administrator is authorized to issue a zoning permit for a manufactured/mobile home under the following provisions; except, that all such homes must meet the flood plain district requirements and none may be replaced in a floodway overlay boundary:

1. Wherever a manufactured/mobile home is moved from a zoning lot within a district in which it is a permitted use, another manufactured/mobile home meeting the requirements of the district may be moved onto the lot at any time.
2. In the case of a lawful, nonconforming manufactured/mobile home use, such a move must take place within six months from the date that the previous manufactured/mobile home was moved off the lot, otherwise such use shall not thereafter be reestablished. If within six (6) months, said use is reestablished, the manufactured/mobile homes shall comply with all applicable building codes within 60 days. In reestablishing such a home use, any existing nonconforming lot size requirements or bulk regulations shall not be increased in nonconformity.
3. No manufactured/mobile home, or portion thereof, shall be moved onto any lot or parcel for storage purposes in any district and no such home shall be temporarily located in any district not otherwise permitting such homes. These provisions do not preclude the use of prefabricated mobile structures for offices in business or industrial districts, but do not permit the use of manufactured/mobile homes unless specifically permitted.

O. Vision Triangles.

On all corner lots in all districts, no use shall commence and/or no structure shall hereafter be constructed, structurally altered, extended, enlarged or moved after the effective date of these regulations, unless it also conforms to the requirements of the vision triangle found in Section 202.

Section 5. Article 6, Section 600 "Accessory Uses Authorization" of the zoning regulations of the City of Derby, Kansas is hereby amended to read as follows:

600 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 building or use;

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

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

4. Is located on the same zoning lot as the principal building or use served.

B. Permitted Accessory Uses. Any structure or use that complies with the terms of Section 600.A may be allowed as an accessory use or structure, including but not limited to the following list of examples:

1. Off-street parking and loading space as regulated by Article 5 of these regulations, including detached garages, which may also contain incidental storage, and carports.

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

3. Structures exclusively for storage; provided, no preassembled or prefabricated structure accessory to a residential building shall exceed 300 square feet in gross floor area. For purposes of this article, prefabricated shall not be interpreted to apply to garage kits which provide pre-cut lumber, factory built roof trusses or other construction items packaged for on-site assembly.

4. Parking and storage of motorized or non motorized recreational equipment and vehicles such as but not limited to; boats, campers, camping trailers, boat trailers or recreational vehicles is permitted provided all of the following conditions are met:

a. The recreational equipment or vehicle is not used for living purposes, except for temporary guest lodging not to exceed three days in any given two week period.

b. When parked or stored on residential zoned property or on property used for residential purposes, the recreational equipment or vehicle shall be the personal property of the occupant or shall be the personal property of the occupant's visiting guest.

c. When within a required front yard of a residential district or within a required front yard of property used for residential purposes, the recreational equipment or vehicle is parked on a surface paved with poured in place concrete, asphalt, asphaltic concrete, brick or similar paving material and is parked parallel to the dwelling's driveway and does not obstruct egress from the dwelling as is required by the Uniform Building Code. Graveled parking surfaces existing prior to December 1, 1994, may be used for recreational equipment or vehicle parking. In the R-1C District only, graveled or all weather surfaced parking areas may be used for recreational equipment or vehicular parking.

d. All recreational equipment and vehicles shall be maintained in operable condition including any required vehicle registrations and tags.

e. No recreational equipment or vehicle shall be connected to utilities except when such equipment or vehicle is being serviced or when being used for temporary living purposes as provided for by subsection (a) above.

f. The stored or parked recreational equipment or vehicle shall not overhang into any street right-of-way or across any public sidewalk. It is the responsibility of the property owner who wishes to utilize their property for storage or parking of motorized or non motorized recreational equipment and vehicles to ascertain the location of their front property line (street right-of-way line); however, in no case shall the distance between the back of the street curb and the vehicle or equipment be less than 14.5 feet.

5. Storage outside both above or below ground level of petroleum products 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.

6. Detached, rack-mounted solar equipment, and satellite dish antennas; provided, that on lots with single-family and duplex dwelling units, the maximum height of the antenna structure shall not exceed 15 feet and is located in the rear of the dwelling unit, but not in a side yard. Such antennas shall not be located on or attached to dwelling units, garages or storage buildings. If a signal cannot be received under these restrictions, application may be made to the Board of Zoning Appeals for an exception.

7. Communication structures, antennas and aerials, [See Section 302.E for exception to maximum structure height and Section 600.B.6 above for satellite dish antennas].

8. Storm shelters, children's playhouses, statuary, arbors, trellises, barbecue stoves, flagpoles, fences, walls, bathhouses, and swimming pools which are enclosed by security-type fence as approved by the Zoning Administrator regardless of whether the pool is above or below the ground.

9. Guest houses or rooms for guests in an accessory building; provided that 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. Accessory Apartments in the R-1C "Suburban Single-Family Residential District" only; provided that such facilities are approved as an exception by the Board of Zoning Appeals, the facility is constructed in accordance with any and all conditions required in granting the exception, and the facility adheres to all of the applicable use limitations of the district regulations and applicable adopted building codes.

11. Agricultural uses in the R-1C "Suburban Single-Family Residential District" only shall include accessory uses and activities customarily associated with agricultural operations as approved by the Zoning Administrator or granted as an exception by the Board of Zoning Appeals.

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

13. For employee only child care centers and restaurants when located in a permitted business or industrial building.

14. Recycling collection centers, large and small. (See Section 202 for the definition of recycling center.)

15. Outdoor storage shall not be permitted as an accessory use, except as specifically permitted in the district regulations. [See Section 202 for definition of outdoor storage and Section 303.N.3 for manufactured/mobile homes as storage structures].

* A zoning permit for an accessory structure is required only when such structure is also required to have a building permit. Accessory structures, including fences, which cost $300 or more or contain 120 square feet or more on the ground require a building permit and a zoning permit. For other accessory zoning permits, see Section 601 for temporary uses, Section 602 for home occupations, Article 5 for parking spaces and loading areas and Article 7 for signs.

C. Bulk Regulations.

1. Accessory structures and uses shall maintain the same side and front yard setback as is required for the principal structure, unless they are permitted obstructions within the provisions of Section 303(F).

2. Accessory structures shall be set back five feet from the rear lot line, except that garages with entrances facing alleys shall be set back at least 10 feet. [See Section 901(A) for zoning permits on easements].

3. No part of any accessory building shall be located closer than 10 feet from any principal structure.

4. Accessory structures and uses shall otherwise comply with the bulk regulations applicable in the district in which they are located, except that in residential districts, no accessory building shall be more than one story high nor exceed 20 feet in height.

D. Use Limitations. All accessory structures and uses shall comply with the use regulations applicable in the district in which they are located with the following use limitation; provided, that no accessory structure shall be constructed and occupied on any zoning lot prior to the time the construction begins on the principal structure to which it is accessory (See Section 600.A.4).

Section 6. Article 11, Section 1101 "Special Uses" of the zoning regulations of the City of Derby, Kansas is hereby amended to read as follows:

1101 SPECIAL USES.

Certain uses which might have the potential of creating an adverse effect upon nearby properties or upon the character and future development of specific zoning districts are permitted as "special uses" within such zoning districts when their proposed location is supplemented by conditions designed to promote compatibility of the use with the surrounding property, the neighborhood and the applicable zoning district.

A. Procedure:

Although the Official Zoning Map of the City is not amended, the procedure for approval of a special use permit shall otherwise be the same as for an amendment to change a zoning district classification or boundary in accordance with the terms, conditions and procedures established in K.S.A. 12-757, as amended, and Section 1100 of these regulations; provided, that any additional requirements which are further imposed upon the special use shall be made a part of the effectuating ordinance. Concurrent applications may be processed for amending a property's zoning district classification and approving a special use on the same property.

B. Fees.

The required fees shall be paid in advance by the owner of any property at the time of making application for a special use permit in accordance with the established fee resolution approved by the Governing Body.

C. Eligible Special Uses:

The special uses designated in the following table are eligible to be applied for within the identified zoning district(s) for each special use:

	Zoning Districts																
Special Use	R-1	R-1A	R-1B	R-1C	R-2	R-3	R-4	MH-1	I-1	B-1	B-2	B-2A	B-3	B-4	B-5	M-1	**Notes**
Any retail, medical, office or service business permitted within the applicable zoning district where such business includes a drive-up or drive-through window												S					
Bed and breakfast homes	S				S	S*	S										* with or without tea rooms
Bed and breakfast inns			S			S*	S					S					* with or without tea rooms
Bulk storage for wholesale or retail sale, outside storage or storage inside an accessory structure of materials used as part of a principal manufacturing process of such items as anhydrous ammonia, petroleum products and other products which may be considered by the Governing Body to be potentially highly explosive, combustible or of a volatile nature																S	
Cemeteries, private or public, including any accessory structures	S		S	S	S				S								
Communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers which are not mounted on the roof or directly secured to a wall of a principal building													S	S	S	S	
Medical Services that include emergency or 24-hour services										S							
Physical fitness services												S					
Public buildings erected or land used by any agency of the City, County or State government	S		S	S	S	S	S		S	S	S		S	S	S	S	
Public and private hazardous waste facilities																S	
Public and private sanitary landfills including the operation of incineration plants, large recycling collection and processing centers and transfer stations																S	
Public utility uses as follows: Electric and telephone substations and distribution centers, Gas regulator stations; Pumping stations; Water towers and standpipes			S	S						S	S	S	S	S	S	S	**See individual zoning districts for applicable restrictions and/or use limitations**; In M-1 Zoning District, may be permitted without special use permit up to designated height restriction.
Recreational Vehicle Parking								S									
Rehabilitation Homes									S					S			
Wind Energy Conversion Systems	S		S	S				S	S				S	S	S	S	See Use Limitations Below
Other uses not specifically listed as a special use, but which, in the opinion of the Governing Body, are in keeping with the intent of and compatible with the uses listed in the applicable zoning district and the other special uses for the applicable zoning district listed in this section																S	

In granting a special use permit, the minimum requirements of approval for all similar types of permitted uses in the same district must be met, unless otherwise reduced by a variance under these regulations. Additional conditions may be attached upon the property and/or the applicant benefited by the special use if deemed necessary to address issues raised during the application and hearing process. The special use permit is subject to ongoing compliance with these conditions and shall lapse and become ineffective if such conditions are not continually complied with. Such conditions may include, but not be limited to, further restrictions on bulk regulations; height restrictions, length and time of operation and ownership limitations; screening, landscaping and fencing; provision of utilities, drainage, sidewalks and other public improvements; additional access or access control; off-street parking and loading requirements; and platting, dedications and/or guarantees.

D. Use Limitations for Wind Energy Conversion Systems:

Wind Energy Conversion Systems must comply with the following requirements:

1. Any wind energy conversion system (WECS) shall be located a minimum of fifty (50) feet from any property line, and a minimum of one hundred (100) percent of the tower height plus one hundred percent (100) percent of the rotor diameter from any overhead power lines.
2. The WECS shall not cause interference to microwave communications or radio and television reception in the area. Noise levels measured at the lot line shall not exceed sixty (60) DBA in a residential zone.
3. To limit climbing access to WECS tower, or other support structure, a six (6) foot fence with locking portal shall be placed around the WECS support or, if a tower is utilized, the tower climbing apparatus shall be limited to no lower than twelve (12) feet from the ground. The WECS support may be mounted on a rooftop.
4. All blades of the WECS shall be constructed of non-metallic substances. If the applicant can prove, in written form, that no electromagnetic interference will result, a metal content of up to twenty-five (25) percent may be acceptable.
5. The WECS shall be located in compliance with the Federal Aviation Regulations with regard to airport approach and clearance around VOR and DVOR stations.
6. Height of the WECS shall not exceed, beyond those restrictions already set out above with regard to overhead power lines, the maximum height restriction in the zone where it is located by more than twenty (20) feet. The height of the WECS shall be measured at the center of the blade diameter. Notwithstanding any other provision of these regulations, the maximum height of the WECS shall not under any circumstance exceed 60 feet.
7. Data pertaining to the WECS's safety and structural integrity shall be certified by a licensed engineer and filed with the building permit application. The tower or support and top adaptor shall meet the restrictions specified by the City's building code.
8. The WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operation as set forth in the electric utility's current service regulations applicable to the WECS.
9. A plot plan shall be submitted with the application for building permit showing the proposed location and height of the WECS, fencing and all existing buildings within two hundred (200) feet of the exterior of lot lines.
10. The owner/operator shall provide covenants, easements or similar documentation to assure sufficient wind to operate the WECS unless adequate accessibility to the wind is provided by the site.
11. The owner/operator shall certify that the WECS does not violate any covenants of record.
12. The applicant shall provide the City with a certificate of general liability insurance, including product liability coverage, in limits to be determined at the time of approval of the Special Use and subject to annual review and adjustment of said limits by the Zoning Administrator, naming the City of Derby as an additional insured. Any Special Use approved in accordance with this Section shall be conditioned upon the owner/operator of the approved WECS annually presenting evidence to the City's Zoning Administrator that the above-referenced insurance is still in effect.
13. WECS are not permitted in APZ I or APZ II.

Section 7. Severability. Should any section, clause sentence or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

Section 8. Repeal. Original Sections 202, 300, 302, 303, 600, and 1101 of the Derby Zoning Regulations are repealed. All other provisions of the zoning regulations of the City of Derby, Kansas shall remain in full force and effect except as specifically amended herein. All other ordinances or parts of other ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

Section 9. Effective Date. This ordinance shall take effect and be in force from and after its passage and publication of the ordinance, or a summary thereof, once in the City's official newspaper as provided by State law.

PASSED by the City Council this 27th day of September, 2016, and **SIGNED** by the Mayor.

Randy White, Mayor

ATTEST:

Karen Friend, City Clerk

Approved as to form:

Jacqueline R. Butler, City Attorney