

ZONING REGULATIONS

**OF THE
CITY OF DERBY, KANSAS**

**FIRST ADOPTED BY
ORDINANCE NO. 940**

AND SUBSEQUENTLY AMENDED

SEPTEMBER 27, 2016

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ZONING REGULATIONS

of the

CITY OF DERBY, KANSAS

ARTICLE 1. TITLE, PURPOSE, AUTHORITY AND JURISDICTION

100 TITLE.

These regulations, including the zoning district maps made a part thereof, shall be known and may be cited as the "ZONING REGULATIONS of the City of Derby, Kansas," and shall hereinafter be referred to as "these regulations."

101 PURPOSE.

These regulations are intended to serve the following purposes:

- A. To promote the public health, safety, morals, comfort and general welfare;
- B. To establish a variety of zoning district classifications according to the use of land and buildings with varying intensities of uses and standards whose interrelationships of boundary zones form a compatible pattern of land uses and buffer areas which enhance the value of each zone;
- C. To regulate and restrict the location, use and appearance of buildings, structures and land within each district and to zone for residential, commercial, industrial and other purposes including flood plains.
- D. To regulate and restrict the height, number of stories and size of buildings and structures including their distance from any street or highway; the percentage of each lot that may be occupied by buildings and other structures; and size of yards, courts and other open spaces;
- E. To protect property values and conserve energy and natural resources;
- F. To provide for adequate light and air and acceptable noise levels;
- G. To avoid the undue concentration of population and vehicular traffic and to prevent overcrowding the use of land and public facilities;
- H. To facilitate the adequate provision of transportation, water supply, sewage disposal, schools, parks and other public improvements;
- I. To provide adequate public notice on proposed changes in these regulations and zoning maps and an opportunity to be heard on such zoning matters as required by K.S.A. 12-741 *et seq.*;

- J. To establish and provide procedures for a Board of Zoning Appeals to consider appeals, variances and exceptions; and
- K. To implement the goals, policies and proposals of the Comprehensive Plan for the zoning jurisdiction.

102 AUTHORITY.

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

103 ZONING JURISDICTION.

These regulations shall apply to all structures and land within the corporate limits of the City of Derby, Kansas, as they presently exist or are hereafter established.

ARTICLE 2. INTERPRETATION, CONSTRUCTION AND DEFINITIONS

200 RULES OF INTERPRETATION.

- A. **Minimum Requirements.** In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, morals, comfort and general welfare.
- B. **Overlapping or Contradictory Regulations.** Where the conditions imposed by the provision of these regulations upon the use of land or structures are either more restrictive or less restrictive than comparable conditions imposed by any other provision of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- C. **Private Agreements.** The provisions of these regulations are not intended to abrogate any easement, deed restriction, covenant or other private agreement of legal relationship; provided, that where the requirements of these regulations are more restrictive or impose higher standards or regulations than such private agreements, the requirements of these regulations shall govern. The City does not have a responsibility to enforce such private agreements.
- D. **Unlawful Uses.** No use of land or structure which was not lawfully existing at the time of the adoption of these regulations shall become or be made lawful solely by reason of the adoption of these regulations; and to the extent that, and in any respect that, said unlawful use or structure is in conflict with the requirements of these regulations, said use or structure remains unlawful hereunder.
- E. **Not a Licensing Regulation.** Nothing contained in these regulations shall be deemed to be a consent, license or permit to use any property, to locate, construct or maintain any structure or facility or to carry on any trade, industry, occupation or activity.
- F. **Effect on Existing Permits.** Nothing in these regulations shall be deemed to require any change in plans, construction or designated use of any land or structure in the event that development rights are currently vested in accordance with K.S.A. 12-764, as the same may from time to time be amended.
- G. **Vesting of Development Rights.** Vesting and expiration of development rights created by or pursuant to these regulations shall be as provided in K.S.A. 12-764, as the same may from time to time be amended.

201 RULES OF CONSTRUCTION.

- A. In the construction of these regulations, the provisions and rules of this Section shall be preserved and applied, except when the context clearly requires otherwise:
1. The present tense includes the past and future tenses and the future the present.
 2. The singular number includes the plural and the plural the singular.
 3. The word "shall" is mandatory while the word "may" is permissive.
 4. The phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for" and "occupied for".
 5. The word "person" includes individuals, firms, corporations, partnerships, associations, trusts, governmental bodies and agencies, and all other legal entities.
 6. The word "**City**" means the City of Derby, Kansas.
 7. The words "**Governing Body**" mean the Mayor and the Council members of the City which together constitute the governing body.
 8. The word "**Clerk**" means the City Clerk.
 9. The words "**Planning Commission**" mean the City Planning Commission.
 10. The word "**Board**" means the Board of Zoning Appeals of the City.
 11. The words "**Comprehensive Plan**" mean the adopted Comprehensive Development Plan for the City and surrounding Planning Area which includes, among other elements, a plan for land use.
 12. The words "**zoning jurisdiction**" mean the area as defined in Section 103 for which the jurisdiction of these regulations is applicable for zoning purposes.
 13. Unless otherwise specified, all distances shall be measured horizontally.
- B. Any word or phrase which is defined in this Article or elsewhere in these regulations shall have the meaning as so defined whenever used in these regulations, unless such definition is expressly limited in its meaning or scope.
- C. Words or terms not herein defined shall have their ordinary meaning in relation to the context as defined in a dictionary.

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, scrapers, 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 character which:

1. Is a structure or any part thereof, or a portable display, or is attached to, painted on, or in any other manner represented on a building or other structure or on the ground, 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 furthestmost 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].

ARTICLE 3.GENERAL PROVISIONS

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. Monopole structures 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.

301 DISTRICTS, ZONING MAPS AND BOUNDARIES.

- A. Establishment of Districts.** The zoning jurisdiction is hereby divided into the districts as described in Article 4 of these regulations and includes residential, non-residential and special purpose districts.
- B. Zoning Maps.**
1. The boundaries of the districts described in Article 4 are as indicated on the Official Zoning Map(s) which is on file in the office of the Zoning Administrator and identified on its face as part of these regulations. Each of the zoning map(s), with all notations, references and other matters shown thereon, is as much a part of these regulations as if specifically set forth herein. (See Section 900.A.9 for zoning map(s) certificate and revisions).
 2. These regulations are intended to provide that the entire area of the zoning jurisdiction, including all the land and water areas, rivers, creeks, streets, alleys and railroads and other rights-of-way, be included in the districts established herein. Any area not shown on the zoning map(s) as being included in any district shall be deemed to be in the most restrictive district pursuant to these regulations.
- C. Boundaries.** In the event that uncertainties exist with respect to the intended boundaries of the various districts as shown on the Official Zoning Map(s), the following rules shall apply:
1. Where boundary lines are indicated as approximately following streets, alleys, easements, railroads, rivers, streams or bodies of water, such boundaries shall be construed as following the centerlines thereof or otherwise be construed to coincide with lot or tract lines, unless otherwise indicated.
 2. Where the district boundaries do not coincide with the location of boundaries as stated in Section 301.C.1 above, the district boundaries shall be determined by the use of the scale shown on the zoning map, unless an exact distance is shown.
 3. When a lot held in one ownership on the effective date of these regulations is divided by a district boundary line, the entire lot shall be construed to be within the less restrictive district unless the application of this rule would increase the area of the less restrictive portion of the lot by more than 25%.
- D. Zoning of Rights-of-Way.** All streets, alleys, public ways, waterways and railroad right-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting them. Where the center line of a street, alley, public way, waterway or railroad right-of-way serves as a district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

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 exception¹ 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. 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. Bulk Regulations.** In these regulations, bulk requirements are expressed in terms of maximum structure height, maximum lot coverage, minimum setbacks and minimum front, side and rear yards.
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

¹ Exceptions were previously called “conditional uses” in prior versions of these regulations.

- 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.

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. Permitted Obstruction in Required Yards. 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
- i. 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.

304 SCREENING AND LANDSCAPING

Unless an exception is provided by this section, or a modification is made by the Planning Commission pursuant to subsections 304.I.1.e or 304.P of these regulations, all multiple-family and non-residential uses established shall provide screening, landscaping and limitations on exterior lighting which meet the standards of this section.

A. Statement of Intent.

The provisions of this section are intended to aid in the following:

1. To foster through the use of landscaping materials and techniques aesthetically pleasing developments which protect and preserve the appearance, character, health, safety and welfare of the Community;
2. To increase the compatibility of adjacent land uses by requiring landscaped buffer areas and/or screening between specified uses which minimize the harmful impacts of noise, dust, debris, motor vehicle headlight glare or other artificial light intrusions, and other objectionable activities or impacts created by an adjoining or nearby land use;
3. To provide greenery to visually soften the appearance of vehicular parking and use areas and to require screening of such areas from street rights-of-way;
4. To optimize environmental conditions within the community by providing shade, air purification, oxygen regeneration, groundwater recharge, retardation of stormwater and soil erosion, abatement of noise, glare and heat;
5. To set forth minimum standards that specify the amounts and types of landscape materials to be planted within required landscape buffer areas;
6. To establish a listing of preferred trees, shrubs and groundcovers to be used to meet landscaping requirements;
7. To provide for screening and/or landscaping between certain types of land uses in order to enhance land use compatibility,
8. To set forth types of materials that may be used for fences and walls that may be installed to satisfy screening requirements;
9. To screen certain unsightly equipment and materials from view of persons on public streets or adjoining properties and to avoid light intrusion.

The above-outlined intent of this section is based on a finding by the Governing Body that, if properly established and maintained, landscaping, screening and standards for exterior lighting will improve the livability of neighborhoods, enhance the appearance of non-residential areas, increase property values, improve relationships between uncomplimentary uses, block undesirable views, soften and enhance the appearance of vehicular parking and use areas, and contribute to a positive overall image of the community.

In order to achieve the above-identified benefits, requirements for a LANDSCAPED STREET YARD are established in subsections 304(G) and 304(H), requirements for SCREENING AND EXTERIOR LIGHTING are set forth by subsection 304(I), requirements for LANDSCAPING BUFFERS ALONG SIDE AND REAR LOT LINES are established by subsection 304(J) and requirements for the SCREENING AND LANDSCAPING OF VEHICULAR PARKING LOTS are set forth by subsection 304(K).

B. General Requirements.

All unpaved land areas and land areas not covered by buildings or structures shall be brought to finish grade and planted with sod, native grasses or other appropriate ground covers. In addition to the minimum number of trees required to be planted by this Section, an appropriate number and variety of shrubs, groundcovers and/or sodded areas shall be included within each project, which shall be determined by the design criteria for the project relating to visual safety, species and landscape function.

C. Definitions. For purposes of this section, the following terms are defined:

AUTOMATIC IRRIGATION SYSTEM - An underground system of piping which includes a timer that automatically activates the irrigation system. In order to promote xeriscape, the automatic irrigation system shall include moisture sensing devices or automatic rain shut-off devices which forestall scheduled watering cycles when adequate moisture is present to sustain healthy plant life.

AVERAGE LOT DEPTH - The horizontal distance between the front and rear lot lines measured along the median between the side lot lines.

DECIDUOUS - Trees and shrubs that annually shed their leaves.

EVERGREEN - Trees and shrubs that do not annually shed their leaves. An evergreen tree shall be considered a shade tree provided it is at least 5 feet tall when planted and will obtain a mature height of 20 feet or greater.

GROUND COVER - Living landscape materials or low-growing plants, other than turf grasses, installed in such a manner so as to provide a continuous cover of the ground surface, and which upon maturity normally reach the average maximum height of not greater than 24 inches.

MULCH - Non-living organic, inorganic or synthetic materials customarily used in landscape design and maintenance to retard soil erosion, retain moisture, insulate soil against temperature extremes, suppress weeds, deter soil compaction and provide visual interest.

PHOTOMETRIC LIGHT PATTERN - The outline or spread of light, on the ground surface of a zoning lot, which results from exterior lighting.

ORNAMENTAL TREE - A deciduous tree possessing qualities such as flowers or fruit, attractive foliage, bark or shape, with a mature height generally under 40 feet. An ornamental tree shall mean one of the trees listed as a small or medium deciduous tree in Appendix A of these regulations

PERMANENT WATER SUPPLY - One or more of the following: 1) an exterior faucet on a building within 100 feet of the farthest planting, 2) a quick-coupling system - in-ground water line with hose connections or 3) an automatic irrigation system.

SHADE TREE - Usually a deciduous tree, planted primarily for its high crown of foliage or overhead canopy. A shade tree shall mean one of the trees listed as a large or very large deciduous tree or an evergreen tree in Appendix A of these regulations.

SHRUB - A deciduous or evergreen woody plant smaller than a tree and larger than ground cover, consisting of multiple stems or small branches near the ground, which attains a height of 24 inches or more.

SITE SPECIFIC - For purposes of this section, “site specific” shall mean that the plant material chosen to be used on a site is particularly well suited to withstand the physical growing conditions which are normal for the selected site.

STREET WALL - For purposes of this section, “street wall” shall mean any building wall facing a street.

STREET YARD - The area of a lot which lies between the property line abutting a street and the street wall of a building.

XERISCAPE - Water conservation through creative landscaping which applies the following seven principles:

1. Plan and design carefully.
2. Improve the soil water holding capacity through use of soil amendments.
3. Use efficient irrigation methods and equipment.
4. Select site-specific, hardy plant materials and then group all plants according to their sun and moisture needs.
5. Use turf grass appropriately in locations where it provides functional benefits.
6. Mulch.
7. Provide appropriate and timely maintenance.

D. Residential Zoning Districts that Abut Arterial Streets.

Where residential zoning districts abut arterial streets, screening and/or landscaping shall be provided in accordance with Section 700 of the Subdivision Regulation. If walls or fences are used to achieve required screening along arterial streets they shall not be constructed of wood, woven or welded wire or metal panels. Walls or fences shall avoid a blank and monotonous appearance by using such measures as architectural articulation and placement of vines, shrubs and/or trees to soften the appearance of the wall or fence.

E. Landscaping Plan Required.

Plans depicting compliance with the provisions of subsections 304(G and H) [Landscaped Street Yard], 304(I) [Screening and Lighting], 304(J) [Landscape Buffers] and 304(K) [Parking Lot Screening and Landscaping] of these regulations shall be prepared and approved as follows:

1. When Site Plan Review is required by Section 305 of this Ordinance, such plans shall be submitted to the Planning Commission for review and approval; or
2. When Site Plan Review by the Planning Commission is not required by Section 305, such plans shall be submitted with the Building Permit Application. Such plans shall be reviewed by the Zoning Administrator or their designated agent. If the specifics of the plans fulfill the requirements of subsections 304(G and H), 304(I), 304(J) and 304(K), then the Zoning Administrator or their designated agent shall approve such plans.

Screening, landscaping or lighting plans submitted for review and approval shall include the following minimum information:

1. North arrow, scale and public streets adjacent to the property;
2. Final grading information and the location of public easements on or adjacent to the property;
3. The location and contours, at one foot intervals, of all proposed berms;
4. The location and dimensions of all existing and proposed structures, parking lots, driveways, sidewalks, refuse disposal areas, fences, walls, signs, above the ground or underground utilities and storm water drainage systems, freestanding

- electrical equipment, recreational facilities, and other freestanding structural features as determined necessary by the Zoning Administrator or their designated agent;
5. The location, size, mature spread, type and quantity of all proposed landscaping materials, along with common and botanical names of all plant species. The size, grading and condition shall be specified according to American Association of Nurserymen standards;
 6. The location, size and common and botanical names of all existing plant materials to be retained on the site;
 7. Mature sizes of plant materials, drawn to scale;
 8. Location of hose connections, spigots and other watering sources;
 9. All screening planned to be provided to meet the requirements of subsections 304.I and 304.K of these regulations;
 10. The location and dimensions of areas where the use of non-living materials, such as bark, wood chips, rock, bricks, stone or similar materials, are proposed along with specifications for weed barriers for non-living landscaped areas;
 11. EXTERIOR LIGHTING PLANS shall depict the location, intensity and the photometric light pattern of all existing and proposed exterior lighting. The exterior lighting plan shall include the following note: "All exterior lighting shall be directed or shaded to prevent the intrusion of light or glare onto adjacent properties and street rights-of-way."

F. Preferred Plant Materials.

1. **Preferred Plant Materials.** The species of trees, shrubs and groundcovers listed in Appendix A of these regulations are preferred for use to meet the landscaping requirements of these regulations. Trees, shrubs and groundcovers not listed in the Appendix, but which are substantially equivalent may be used if first approved by the Zoning Administrator or Planning Commission.
2. **Prohibited Plant Materials.** The species of trees, shrubs, and groundcovers listed as prohibited in Appendix A to these regulations shall not be used to satisfy the landscaping requirements of these regulations.

G. Minimum Width of Landscaped Street Yard, Use Restrictions, Permanent Water Supply and Effect of Easements.

1. **WIDTH OF LANDSCAPED STREET YARD.** Except for the "B-4" CENTRAL SHOPPING DISTRICT, all properties developed for multiple-family, institutional, office, business or industrial purposes shall provide a landscaped street yard which meets the following width standards:
 - a. A landscaped street yard as measured from the street right-of-way line shall be provided adjacent to the lot's street frontage according to the following:

<u>Lot Depth</u>	<u>Minimum Required Street Yard Width</u>
Less than 250 feet	10 ft. landscaped street yard
251 - 400 feet	15 ft. landscaped street yard
401 feet and Greater	20 ft. landscaped street yard

2. **USE OF THE REQUIRED LANDSCAPED STREET YARD** shall be restricted as follows:
 - a. Business signs, including permanent directional signs, that meet the requirements of Article 7 of these regulations may be permitted within a landscaped street yard provided the location(s) are first approved by the Planning Commission during Site Plan Review or by the Zoning Administrator or designated agent as part of the sign permitting process;
 - b. Driveways at approved locations may cross the landscaped street yard. The landscaped street yard shall however not be used for vehicle parking, loading, outdoor storage, displays, work areas, or similar uses;
3. **PERMANENT WATER SUPPLY.** A permanent water supply shall be provided in order to provide for the perpetual maintenance of landscape materials within the landscaped street yard (See definition of permanent water supply).
4. **EFFECT OF EXISTING EASEMENTS.** If a portion of the required landscaped street yard is occupied by public or private utilities, care shall be exercised during the planting of landscaped materials so as to not damage, obstruct or interfere with existing or planned utility lines. If utilities located within the landscaped street yard do not permit the planting of the minimum number of trees set forth by subsection 304.H of these regulations, required trees may be placed outside of the landscaped street yard required by this section, but shall not be placed within adjacent street rights-of-way.

H. Minimum Number and Minimum Size of Trees within Landscaped Street Yard and Option for use of Shrubs.

1. Except for the “B-4” CENTRAL SHOPPING DISTRICT, all properties developed for multiple-family, institutional, office, business or industrial purposes shall provide AT LEAST ONE SHADE TREE OR TWO ORNAMENTAL TREES FOR EVERY 500 SQUARE FEET OR FRACTION THEREOF of the required minimum landscaped street yard.
2. **MINIMUM SIZE OF REQUIRED TREES:** At the time of planting, the minimum size of required trees shall be as follows: SHADE TREES --- 2-inch or greater caliper measured at a height of six inches above the ground; ORNAMENTAL TREES --- 1 1/2-inch or greater caliper measured at a height of six inches above the ground; EVERGREEN TREES --- 5 feet or more in height.
3. **SHRUBBERY** may be substituted for up to ONE-THIRD of the required shade trees at a rate of 10 SHRUBS PER ONE SHADE TREE. Substitute shrubbery shall be of a site-specific type that attains a mature height of at least two feet and shall be no less than two gallon container size at the time of planting.
4. **LANDSCAPING PLAN.** Landscaping installed to satisfy the requirements of this subsection shall be per a plan approved in accordance with subsection 304(E) of these regulations.

I. Screening and Lighting.

The screening and lighting standards of this subsection are intended to protect single and two-family residential developments from potential impacts associated with multiple-family residential and non-residential development. In addition, the standards of this subsection are intended to protect multiple-family residential developments from potential impacts associated with adjacent non-residential development. Screening shall be provided on all properties developed for multiple-family residential purposes, offices or institutional, business or industrial uses when such uses are established on property adjacent to either single or two-family residential zoning districts and on all non-residential developments when such uses are established on property adjacent to multiple-family residential zoning districts or as specified below.

1. Screening Standards.

Screening may be provided through the use of walls, fencing, evergreen vegetation or landscaped earth berms, or a combination thereof. Walls and fences constructed to meet the screening requirements of this subsection shall be six feet in height, except that within 20 feet of a street right-of-way line the height of the wall or fence shall be reduced to three feet. Screening shall be provided in accordance with the following standards:

- a. **SCREENING ALONG SIDE OR REAR LOT LINES.** Screening shall be provided along all side or rear lot lines of non-residential uses when adjacent to any residential zoning district and along all side or rear lot lines of multiple-family uses (a use with three or more dwelling units in one building) when adjacent to any single or two-family zoning district. Screening may be omitted, for property zoned as either “I-1” or “B-1” zoning district, along any side or rear lot line or portion thereof, only when the development of permitted uses within such zoning districts provides at least a 25-foot wide landscaped yard adjacent to such lot line or portion thereof. Such landscaped yards shall not be used for driveways, vehicular parking, loading areas, recreational areas, signs or similar uses, but shall be counted as the buffer area required by subsection 304.J.2 of these regulations. If a minimum 25-foot wide landscaped yard is proposed, the installation of plant materials shall be per a landscape plan approved in accordance with subsection 304.E of this Ordinance.
- b. **SCREENING OF MECHANICAL EQUIPMENT, LOADING DOCKS AND TRASH RECEPTACLES.** Screening shall be provided to reasonably hide from ground level view all ground level heating, air conditioning and other mechanical equipment, loading docks, trash receptacles or similar uses. Roof-mounted heating, air conditioning and mechanical equipment on buildings shall be screened by a parapet wall of sufficient height to conceal it from view on all sides of the building or an alternative screening method approved by the Planning Commission during Site Plan Review. If a parapet wall is used, it must be constructed of material which is compatible with the building architecture. Screening installed to meet the requirements of this subsection shall be per a plan approved in accordance with subsection 304.E of these regulations.

- c. **SCREENING IN THE B-2A “BUCKNER BUSINESS DISTRICT.”** Screening in the B-2A zoning district shall be provided along the side and rear lot lines and must be accomplished with the placement of a fence six feet in height in compliance with subsection 304.E.1.e of these regulations.
 - d. **SCREENING IN THE R-1C “SUBBURBAN SINGLE-FAMILY RESIDENTIAL DISTRICT.”** Screening requirements for exceptions approved by the Board of Zoning Appeals in the R-1C zoning district shall be determined as part of the exception review process.
 - e. **MATERIALS USED FOR SCREENING WALLS AND FENCES.** Walls or fences erected to satisfy the screening requirements of this subsection shall be constructed of brick, stone, masonry, architectural tile, concrete or wood or a combination of those materials, but may not include the use of woven wire, welded wire or metal panels. Walls or fences erected to satisfy the screening requirements of this subsection shall be per a plan approved in accordance with subsection 304(E) of these regulations.
 - f. **EVERGREEN VEGETATION AND LANDSCAPED EARTH BERMS USED FOR SCREENING.** Evergreen vegetation and landscaped earth berms installed to satisfy the screening requirements of this subsection shall be per a plan approved in accordance with subsection 304(E) of these regulations.
 - g. **DEFERRAL OF SCREENING REQUIREMENTS.** If screening exists adjacent to developing property which meets or exceeds the standards of this subsection the Planning Commission, at the time of Site Plan Review, or the Zoning Administrator, at the time of building plan review for projects not requiring Planning Commission Site Plan Review, may determine that additional screening is not necessary. However, if at any time the existing screening on adjacent property fails to meet the requirements of this subsection, as determined by the Planning Commission or Zoning Administrator, screening shall be installed as per the requirements of this subsection.
2. **Requirements for Screening and Landscaping of Vehicular Parking Lots.**
In addition to the requirements of this subsection, vehicular parking lots shall be provided screening and/or landscaping pursuant to the requirements of subsection 304(K) of these regulations.
3. **Requirements for Screening Established by District Regulations.**
In addition to the requirements of this subsection, the screening and/or landscaping requirements, if any, required as part of the USE LIMITATIONS subsection of the specific district regulations shall be met. Screening or landscaping installed to meet the USE LIMITATIONS of a specific zoning district shall be per a plan approved in accordance with subsection 304(E) of these regulations.
4. **Lighting Standards.**
Outdoor lighting sources shall be arranged, located, screened or shielded to direct light away from adjoining properties or any street right-of-way. The

installation of exterior lighting shall be per a plan approved in accordance with subsection 304(E) of these regulations.

J. Required Landscaped Buffers.

Except for the “B-4” CENTRAL SHOPPING DISTRICT, and the “B-2A” BUCKER BUSINESS DISTRICT, the landscape buffer area standards of this subsection are intended to provide visual enhancement between single/two family residential developments and multiple-family residential projects by requiring a minimum number of trees to be planted along the side and rear lot lines common to those uses. In addition, except for the “B-4” CENTRAL SHOPPING DISTRICT, and the “B-2A” BUCKER BUSINESS DISTRICT, the provisions of this subsection are intended to provide visual enhancement along the side or rear lot lines common to any residential zoning district and any non-residential development. Landscaping installed to satisfy the requirements of this subsection shall be per a plan approved in accordance with subsection 304(E) of these regulations. Landscaped buffers along side and rear lot lines shall be provided in accordance with the following standards:

1. **Landscape Buffers Between Multiple-Family Residential Projects** (a project with three or more dwelling units in one building) **and Single/Two-Family Residential Zoning Districts.**
 - a. **DEPTH OF LANDSCAPED BUFFER.** The required buffer shall be a minimum of 15 feet in width and shall be continuous in nature.
 - b. **MINIMUM AMOUNT OF LANDSCAPE MATERIALS TO BE INSTALLED WITHIN LANDSCAPE BUFFER.** There shall be a minimum of five shrubs and one shade tree or two ornamental trees for each 50 feet of the length of the continuous buffer. A minimum of one-third of the trees and shrubs shall be evergreen. The minimum size of required trees, at the time of planting, shall be as follows: SHADE TREES --- 2-inch or greater caliper measured at a height of six inches above the ground; ORNAMENTAL TREES --- 1 1/2-inch or greater caliper measured at a height of six inches above the ground; EVERGREEN TREES --- 5 feet or more in height. The minimum size of SHRUBS shall be two-gallon containers.
 - c. **EFFECT ON SCREENING REQUIREMENTS AND USE OF LANDSCAPE BUFFER AREA.** Landscaping installed to meet the requirements of this subsection is in addition to any screening/landscaping required by subsection 304(H). Required screening may be located within the continuous landscape buffer area. Vehicular parking, loading areas and trash receptacles shall not be located within the buffer area.
2. **Landscape Buffers Between Non-Residential Projects and any Residential Zoning District.**
 - a. **DESIGN STANDARDS.** There shall be a minimum of one shade tree or two ornamental trees for each 40 feet, or fraction thereof, along the lot line abutting any residential district. The trees may be irregularly spaced but shall be within 15 feet of the property line common to the residential district. If utility and/or drainage easements occupy the 15-foot wide perimeter area, the trees may be located outside any such easements. Each tree shall be in a planting area having a minimum

permeable ground surface of at least 49 square feet. The minimum size of required trees, at the time of planting, shall be as follows: SHADE TREES --- 2-inch or greater caliper measured at a height of six inches above the ground; ORNAMENTAL TREES --- 1 1/2-inch or greater caliper measured at a height of six inches above the ground; EVERGREEN TREES --- 5 feet or more in height.

- b. **EFFECT ON SCREENING REQUIREMENTS AND USE OF AREA FOR VEHICULAR PARKING.** Landscaping installed to meet the requirements of this subsection is in addition to the screening required by subsection 304(I). Required screening and vehicular parking may be located within 15 feet of a property line that abuts a residential zoning district provided such uses do not interfere with trees required by these regulations. If vehicular parking is to be provided within 15 feet of a property line that abuts a residential zoning district, required trees shall be protected from vehicular encroachment through the use of appropriately located vertical curbs or wheel stops.

K. Parking Lot Screening and Landscaping.

Except for vehicular parking areas which serve single and two-family residential uses, all vehicular parking areas shall be provided continuous street frontage planting strips for the installation of screening features that are in accordance with the standards set forth below. In addition, vehicular parking areas with 50 or more parking spaces shall provide internal planting islands for the installation of trees that meet the standards of this subsection. Screening and landscaping installed to satisfy the requirements of this subsection shall be per a plan approved in accordance with subsection 304(E) of these regulations.

1. Screening from Adjacent Street Rights-of-Way.

- a. **MINIMUM WIDTH OF PLANTING STRIP.** When located along any street right-of-way, vehicular parking lots shall be provided a minimum 5-foot wide continuous planting area for the purpose of providing space for screening the parking area from the adjacent street right-of-way. Such planting strip shall not be located within street right-of-way, except as may be permitted by subsection 304(L)(10), but may be a part of the landscaped street yard required by subsection 304(G). If earthen berms are to be installed to achieve screening of the parking lot from adjacent street right-of-way, a strip of land with at least 20 feet of depth shall be provided for the berm and associated landscaping.
- b. **LOCATION AND PROTECTION OF PLANTING STRIP.** The minimum 5-foot wide continuous planting area shall be located adjacent to the edge of parking lot pavement and shall be protected from damage by vehicles or from vehicular encroachment by appropriately located vertical curbs or wheel stops.
- c. **USE OF WALLS OR FENCES TO ACHIEVE REQUIRED SCREENING.** If walls and fences are installed to achieve screening of a parking lot from adjacent street right-of-way, the wall or fence shall be three feet in height, must avoid a blank and monotonous appearance by using such measures as architectural articulation and placement of vines, shrubs and/or trees and must be compatible (i.e., similar in color,

texture and pattern) with the architectural character of the building(s) being served by the parking lot. Walls or fences installed to achieve parking lot screening from adjacent street right-of-way shall be constructed of brick, stone, masonry, architectural tile or concrete or a combination of those materials, but may not include the use of wood, woven wire, welded wire or metal panels. Such walls or fences shall be located adjacent to the parking lot and may be located within the 5-foot wide continuous planting area, but shall not eliminate the requirement to install landscape materials within remaining portions of the planting area. Required landscape materials shall be located on the street right-of-way side of the wall or fence.

- d. **USE OF SHRUBS TO ACHIEVE REQUIRED SCREENING.** If shrubs are installed to achieve screening of a parking lot from adjacent street right-of-way, a sufficient number and type of shrubs shall be installed to achieve solid continuous screening of the parking lot's street frontage. The minimum size of shrubs at the time of installation shall be 18 inches in height. Shrubs used for parking lot screening shall be expected to obtain a height of at least 36 inches within the third year after planting. Spacing between shrubs will depend upon the type of shrub, but shall be close enough to achieve a solid screen when the plants reach maturity. The minimum size of other landscaping materials installed in the 5-foot wide continuous planting area, at the time of planting, shall be as follows: SHADE TREES --- 2-inch or greater caliper measured at a height of six inches above the ground; ORNAMENTAL TREES --- 1 1/2-inch or greater caliper measured at a height of six inches above the ground; EVERGREEN TREES --- 5 feet or more in height.
- e. **TREES WITHIN PLANTING STRIP.** Trees installed within the parking lot planting strip may be counted toward meeting the number of trees required to be installed by subsection 304.H of these regulations. Shrubs used to achieve screening of the vehicular parking lot shall not be counted as a substitute for required trees.

2. Landscaping Requirements for the Interior of Vehicular Parking Areas.

- a. **APPLICABILITY.** In order to enhance the appearance of vehicle parking lots and provide relief from the effect of large expanses of paved areas, all new parking lots which provide 50 or more parking spaces and all additions to existing parking lots which create an additional 50 or more parking spaces shall provide interior planting islands for installation of trees in accordance with this subsection.
- b. **MINIMUM NUMBER OF TREES TO BE PLANTED IN INTERIOR ISLANDS.** Shade or ornamental trees shall be planted and maintained in planting islands that are in the interior of a vehicular parking lot in the following proportion: at least one shade or two ornamental trees for each 50 vehicular parking spaces. Vehicular stacking or holding spaces shall not be counted when determining the number of parking spaces in the parking lot. Trees required by this subsection are in addition to trees required for the landscaped street yard [subsection 304(H)] and buffer areas [subsection 304(J)].

- c. **MINIMUM SIZE OF INTERIOR PLANTING ISLANDS.** Interior planting islands to accommodate the trees required by this section shall have a minimum of at least 49 square feet of permeable ground surface per tree. The trees within interior planting islands shall be protected from possible damage caused from vehicles through the use of raised vertical curbs, wheel stops or other protective means.
- d. **MINIMUM SIZE OF TREES TO BE PLANTED IN INTERIOR PLANTING ISLANDS.** The minimum size of trees required to be planted in interior planting islands, at the time of planting, shall be a 2-inch caliper for a shade tree and a 1 1/2-inch caliper for an ornamental tree, both measured at a height of 6 inches above the ground. Trees proposed for planting within interior planting islands shall be site specific in character.
- e. **LOCATION OF INTERIOR PLANTING ISLANDS.** The planting islands required by this subsection shall be reasonably dispersed throughout the vehicular parking lot, but shall not be at locations that unduly obstruct visibility or interfere with on-site vehicular circulation.

L. Other Landscape or Screening Regulations.

1. Landscaping and screening shall not conflict with the vision triangle requirements of these regulations.
2. The use of artificial trees, shrubs, vines, turf, or other plants to meet the requirements of this section is prohibited.
3. Required landscaped street yards [304.G and 304.H], landscaped buffer areas [304.J] and parking lot planting strips [304.K] shall provide a minimum of 55 percent ground surface covering with living grass or other living plant materials. The foliage crown of trees that may extend over monolithic paved surfaces beyond required landscaped yards / areas or required planting strips or over non-living surfaces within required landscaped yards / areas or planting strips shall not be counted as a part of the 55 percent calculation. The remaining 45 percent of required street yards, landscaped buffer areas and parking lot planting strips may be covered with bark, wood chips, rock, bricks, stone or similar materials (monolithic paving not included). An effective weed barrier shall be required in non-living landscaped areas. If screening walls or fences are located within required landscaped yards / areas or required parking lot planting strips, the amount of ground surface area covered by such walls or fences shall not be included as part of the figure used to compute the percentages of living / non-living coverage.
4. Clumped or multi-trunked trees, where used instead of single-trunk trees, shall be credited as only one tree.
5. Landscaping shall not interfere with the general function, safety or accessibility of any public utility easement. Landscaping shall be limited to an 8-inch mature height when within three feet of a fire-hydrant, traffic signal or utility structure.
6. The existing indigenous vegetation on a site is encouraged to be retained in a development project and may be counted toward required landscaping of this section, provided the existing vegetation is adequately protected during construction to ensure survival, meets the minimum size requirements of this

section, is healthy and insect free and is included in the list of preferred plant materials, Appendix A of these regulations.

7. All existing vegetation located in the street right-of-way adjacent to a development project shall be retained to the greatest extent possible, and may be counted toward the required landscaping of this Section, provided the existing vegetation complies with the requirements of subsection 304.L.6.
8. Where a calculation of a requirement results in a fractional number, the requirement shall be considered the next greatest whole number.
9. Prior to excavation for screening and landscaping within utility easements, the location of all underground utilities shall be determined by calling the Kansas One-Call System at 811.
10. Except for the “B-4” CENTRAL SHOPPING DISTRICT, and the “B-2A” BUCKNER BUSINESS DISTRICT, the placement of required landscaping within street right-of-way is prohibited. For the “B-4” Central Shopping District, and the “B-2A” BUCKNER BUSINESS DISTRICT, required trees or shrubs may be permitted to be placed in street or highway right-of-way if first approved in writing by the Director of Public Works or designated agent and, if applicable, by the Kansas Department of Transportation.
11. Walls and fences installed to meet the screening requirements of this section shall be constructed within the perimeter of the subject zoning lot and shall not be constructed within adjacent street rights-of-way.
12. Plants installed to meet the requirements of these regulations shall be high-quality nursery-grown stock which meets the American Association of Nurserymen standards as specified by the American National Standards Institution in ANSI Z60.1-1986 or as may be amended in the future. Landscape plans shall avoid the over use of a single plant species.
13. In anticipation of future screening, landscaping and lighting requirements, these issues are proper subjects to be discussed and, if deemed necessary by the Planning Commission, applied at the public hearing required for a requested zone change.

M. Maintenance.

1. The property owner is responsible for the maintenance of all landscaping materials and shall keep them in a proper, neat and orderly appearance, free from refuse and debris at all times.
2. Maintenance shall include mowing, trimming, weeding, cultivation, mulching, tightening and repairing of guys and stakes, resetting plants to proper grades and upright position, restoration of planting saucers, fertilizing, pruning, disease and insect control and other necessary operations.
3. All landscaped areas shall be provided with a readily available permanent water supply; provided, however, that LANDSCAPED BUFFER AREAS, required by subsection 304(J), and LANDSCAPING WITHIN THE INTERIOR OF VEHICULAR PARKING AREAS, required by subsection 304(K)(2), which utilize drought-tolerant plants may use a temporary above-ground system. Irrigation shall not be required for established trees and natural areas that remain undisturbed by development activities. Irrigation systems shall be designed and operated in a manner to avoid water on impervious surfaces and street rights-of-

way Long, narrow landscaped areas are difficult to irrigate efficiently, therefore landscaped areas less than five feet in any dimension shall not be irrigated with overhead spray sprinklers. Drip irrigation is acceptable for such areas.

4. Disturbed soil between trees and shrubs shall be mulched, planted or otherwise treated to prevent wind and water erosion.
5. Plants which die shall be replaced within 60 days or, if weather prohibits replanting within that time, replanted within the first 30 days of the next available planting season.

N. Water Conservation Measures.

When meeting the landscape requirements outlined in this section, property owners are encouraged to use water in the most efficient way possible. A number of principles for effective water usage are found in the Xeriscape approach to landscaping. The term Xeriscape is derived from a Greek word meaning “dry”. The desired effect of a Xeriscape, however, is to provide an attractive and even lush-appearing landscape with a minimum amount of water usage. This is accomplished through the application of the seven principles of Xeriscape.

Regardless of the extent to which the principles of Xeriscape are applied, AUTOMATIC IRRIGATION SYSTEMS installed in association with the landscaping requirements of this Section, MUST BE EQUIPPED WITH MOISTURE SENSING DEVICES OR AUTOMATIC RAIN SHUT-OFF DEVICES that forestall scheduled watering cycles when moisture adequate to sustain healthy plant life is present.

O. Enforcement / Assurances for Installation and Completion.

All work as indicated on an approved landscaping plan shall be inspected and approved by the Zoning Administrator or their designated agent prior to the issuance of a Certificate of Occupancy for any project where landscaping is required.

Notwithstanding the foregoing, a property owner may obtain a Certificate of Occupancy for a building project prior to the completion of required landscaping work if the completion is not possible, due to seasonal or weather conditions, and if the property owner submits a fiscal assurance to the City which guarantees the completion of required landscaping. Such fiscal assurance shall be submitted to the Zoning Administrator and be in the form of an IRREVOCABLE LETTER OF CREDIT or CERTIFIED CHECK for a dollar amount equal to ONE HUNDRED TWENTY-FIVE PERCENT of the cost of the landscaping work and shall be accompanied by cost estimates from a landscaping firm. If an IRREVOCABLE LETTER OF CREDIT is chosen as the method of assuring completion of required landscaping, the STANDARD LETTER OF CREDIT form of the City shall be used. Forfeiture of any IRREVOCABLE LETTER OF CREDIT or CERTIFIED CHECK shall not relieve the owner of the responsibility to complete required landscaping and / or screening.

P. Modifications.

The Planning Commission may, at its discretion, temporarily or permanently decrease, increase or waive the landscaping requirements of this Section if the Commission finds that: 1) adjacent or nearby land uses and properties and the general public will not benefit from such requirements or 2) the Commission determines that the installation of required landscaping is impractical or 3) the Commission determines that the amounts

of landscaping required by this section is insufficient to accomplish the intent of this section.

Modifications to the landscaping requirements of this section shall be accomplished by the Planning Commission at the time site plan review is completed pursuant to Section 305 of these regulations. For development projects not required to present site plan review drawings to the Planning Commission, an applicant may volunteer to file a site plan review request for Planning Commission review in order to propose, to the Commission, modifications to the landscaping requirements of this section. Such voluntary site plan review requests shall comply with all the requirements of Section 305, including the payment of a filing fee.

Q. Adjustment of Approved Landscape Plans.

Recognizing that the market availability of species of plants identified on approved landscape plans may not always be a constant and that exact plant locations may need to be altered based on factors identified at the time of actual site development, the Zoning Administrator is authorized to adjust approved landscape plans with regard to plant species and the general location of plants. Such adjustment shall maintain the integrity of the overall approved landscape plan and shall not be contrary to the design requirements set forth in these regulations.

Should the Zoning Administrator determine that proposed changes represent a substantial deviation from the approved plan, the Zoning Administrator shall not approve the revised plan. Rather, the applicant may choose to file a revised site plan review request for Planning Commission consideration. Any such request shall clearly delineate the landscaping changes being requested. A decision by an applicant to refile a site plan review request shall comply with all applicable requirements of Section 305, including the payment of a filing fee.

305 SITE PLAN APPROVAL

The purpose and intent of requiring site plan approval is to impose reasonable requirements to achieve the following: the compatible arrangement of buildings, off-street parking, pedestrian access, lighting, signage, landscaping, screening, outdoor display and storage, trash disposal, ingress and egress and drainage on and from the site, in a manner that will promote safety and convenience for the public and will preserve property values of surrounding properties.

A. Applicability.

All principal land uses shall submit site plans for approval by the Planning Commission except single-family residences and duplexes, unless the latter are arranged in courtyard or grouped settings. Such plans are applicable only to all new developments, unless major alterations to an existing site intensify factors which affect the overall design relationship. Minor revisions to such plans after initial plan approval may be approved by the Zoning Administrator based upon a written record of unforeseen circumstances.

B. Enforcement.

No zoning permit may be issued until the site plan is approved by the Planning Commission. A decision by the Zoning Administrator to deny issuance of a zoning permit or to issue a zoning permit with conditions based upon the approved site plan may be appealed to the Board of Zoning Appeals.

C. Fees.

Processing fees shall be in accordance with the City's fee resolution established by the Governing Body.

D. Form and Timing of Submittal.

Site plans should be submitted to the Zoning Administrator in a format containing detail and information required by the then current application form approved by the Zoning Administrator and shall be submitted for review in accordance with the then current closing date schedule adopted by the Planning Commission.

E. Number of Plan Copies.

A minimum of 15 copies are required for proper review.

F. Conditions of Approval.

1. Proposed uses are permitted in the district in which the property is located.
2. Proposed arrangement of buildings, off-street parking spaces, loading areas, access, walkways, lighting, signage, landscaping and screening, and drainage is compatible with adjacent land uses.
3. Vehicular ingress and egress to and from the site and circulation within the site provides for safe, efficient and convenient movement of traffic not only within the site, but on adjacent streets as well.
4. Site plan provides for the safe movement of pedestrians.
5. There is a sufficient mixture of grass, shrubs and trees within the interior and perimeter (including public right-of-way) of the site so that the proposed development will be in harmony with adjacent land uses and will provide a pleasing appearance to the public. Any part of the site plan area not used for buildings, structures, parking, loading or access ways shall be landscaped in accordance with a Landscaping Plan approved in accordance with subsection 304.E of these regulations.

6. All outdoor trash disposal and storage areas are screened, where necessary, and outdoor displays appropriately located, when permitted by these regulations.
- G. Assurances.** Continued compliance with the requirements, terms and conditions of a site plan approved by the City shall be a condition precedent for the issuance and maintenance of all building, zoning and other permits and occupancy certificates for all structures located within the area covered by said site plan
- H. Design Criteria.** From time to time, the Planning Commission may adopt design criteria in the form of policy statements to assist in reviewing site plans.

ARTICLE 4. ZONING DISTRICTS

400 ESTABLISHMENT OF DISTRICTS

In order to implement the Comprehensive Plan and the purpose and intent of these zoning regulations, the following districts are established. The zoning districts may be referenced by the letters or group of letters preceding the district name:

Symbol	District Name	Section
Residential Districts		
<i>Most Restrictive</i>		
R-1	Single-Family Residential District	401
R-2	Two-Family Residential District	402
R-3	Multiple-Family Residential District	403
R-4	Multiple-Family Residential District	404
Nonresidential Districts		
I-1	Institutional District	406
B-1	Office Business District	407
B-2	Neighborhood Business District	408
B-3	General Business District	409
B-4	Central Shopping District	410
B-5	Restricted Commercial, Warehousing and Limited Manufacturing District	411
M-1	Industrial District	412
<i>Least Restrictive</i>		
Special Purpose Districts		
R-1A	Single-Family/Zero Lot Line Residential District	401A
R-1B	Low Density Single-Family Residential District	401B
R-1C	Suburban Single-Family Residential District	401C
MH-1	Manufactured/Mobile Home Park District	405
B-2A	Buckner Business District	408A
PUD	Planned Unit Development District	Residential- 413A Non-Residential- 413B
F-P	Flood Plain District	416

In accordance with K.S.A. 12-757(b), the above table designates the zoning districts which are considered to be “lesser changes” due to their more restrictive characteristics as set forth in these Zoning Regulations. Due to their unique nature and special characteristics, all designated special purpose districts are excluded from consideration as “lesser change” zoning districts for the purposes of K.S.A. 12-757(b).

400A PERMITTED USES IN ALL DISTRICTS

- A. Off-street parking and loading as required by Article 5.
- B. Accessory and temporary uses and home occupations as permitted by Article 6.
- C. Signs as permitted by Article 7.

401 R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

This district is intended for medium density single-family dwellings and to allow certain public facilities. Generally, uses which may negatively impact the health, safety, order or general welfare of persons residing in the district or devalue property for residential purposes will be restricted or not permitted. Regulations are intended to control density of population and to provide adequate open space around buildings and structures to accomplish these purposes.

A. Permitted Uses.

- 1. Single-family detached dwellings, residential-design manufactured homes and group homes as defined in Section 202.
- 2. Golf courses, for daytime use only, but not including accessory clubhouses or commercial golf driving ranges, pitch and putt or miniature golf courses.
- 3. Parks and playgrounds and related structures thereto owned by a public agency.
- 4. Public and private schools: primary, intermediate and secondary including administrative centers, transportation centers, recreation areas, spectator sports facilities and related uses; provided, that such facilities are on land platted pursuant to the City’s Subdivision Regulations.

B. Special Uses.

See Section 1101 of these regulations.

C. Exceptions.

- 1. See Section 1004 of these regulations.

D. Lot Size Requirements.

- 1. Minimum lot area:
 - a. Residential dwellings: 8,400 square feet.
 - b. All other permitted uses: 10,000 square feet.
- 2. Minimum lot width:
 - a. Residential dwellings: 70 feet
 - b. All other permitted uses: 90 feet.
- 3. Minimum lot depth: 100 feet.

E. Bulk Regulations.

1. Maximum structure height: 35 feet.
2. Yard requirements:
 - a. Minimum front yard: 25 feet, except that on corner lots one of the yards may be reduced to 15 feet; however, 20 feet shall still be required for yards with access to a garage
 - b. Minimum side yards:
 - (1) Residential dwellings: 9 feet on one side and 7 feet on the other.
 - (2) All other permitted uses: 15 feet.
 - c. Minimum rear yard: 25 feet.
3. Maximum lot coverage: 30%

F. Use Limitations.

1. The square footage of any new addition to an existing principal structure shall not exceed 50% of the original structure's floor area.
2. Additions to existing principal structures shall not exceed the height of the existing principal structure.
3. Any addition greater than 100 square feet in size, that is attached to an existing principal structure, shall be accessible through an interior doorway from the existing principal structure, in addition to any access provided from the outside.
4. In addition to other use limitations, the following use limitations shall apply to Residential Design Manufactured Homes:
 - Such units shall provide all of the accommodations necessary to be a dwelling unit and all utilities shall be connected in conformance with applicable City regulations.
 - Such structures shall be on a permanent foundation which has minimum dimensions of 22 body feet in width, contain a pitched roof, siding and roofing materials which are customarily used on site-built homes, and comply with the following architectural or aesthetic standards so as to ensure their compatibility with site-built housing:
 - a. The roof must be predominantly double-pitched and have a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run, and must be covered with material that is customarily used on site-built dwellings, including but not limited to approved wood, asphalt composition shingles or fiberglass, but excluding corrugated aluminum, corrugated fiberglass, or metal roofing materials. The roof shall have a minimum eave projection and roof overhang on at least two sides of 10 inches, which may include a gutter.
 - b. Exterior siding shall be of a non-reflective material customarily used on site-built dwellings, such as wood, composition, simulated wood, clapboards, conventional vinyl or metal siding, brick, stucco or similar materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the exterior of the foundation or curtain wall or the joint between siding and enclosure wall shall be flashed in accordance with City building codes.

- c. The home shall be installed in accordance with the recommended installation procedures of the manufacturer and the standards set by the International Code Council (ICC) and published in the most current edition of "Guidelines for Manufactured Housing Installations." A continuous, permanent concrete or masonry foundation or masonry curtain wall, unpierced except for required ventilation and access which may include walk-out basements and garages, shall be installed under the perimeter of the home, also in accordance with the above referenced guidelines.
- d. At the main entrance door there shall be a landing that is a minimum of three feet by three feet, which is constructed to meet the requirements of the City's building codes.
- e. The moving hitch, axles, wheels and transporting lights must be removed at the time of installation of the home on the lot.
- f. The finished floor of the home shall be a maximum of 24 inches above the exterior finish grade of the lot on which it is located, as measured at the main entrance into the dwelling.
- g. Any attached addition to such a home shall comply with all construction requirements of the City's building codes. Architectural and aesthetic standards, as specified above, shall be applicable to all additions.
- h. If 50% or more of the existing site-built housing on both sides of the street on which the residential-design manufactured home is to be installed have a garage and a covered porch or recessed entry, such a home shall also provide a garage and porch or entry. On a corner lot, the street shall mean that street on which the facade has been designated for the household address number. External roofing and siding material of the garage and porch or entry shall be similar in appearance to the materials on the roofing and siding of the residential-design manufactured home.

401A R-1A SINGLE-FAMILY/ZERO LOT LINE RESIDENTIAL DISTRICT.

This district is intended to provide flexibility and innovation in zero lot line (ZLL) housing designs for single-family dwellings by permitting more variations and reductions in the lot size and bulk requirements than those required in other residential districts while retaining a minimum housing size comparable to conventional single-family dwellings in the surrounding area.

A. Permitted Uses.

- 1. Single-family detached dwellings, residential-design manufactured homes and group homes as defined in Section 202.

B. Special Uses.

- 1. See Section 1101 of these regulations.

C. Exceptions.

- 1. See Section 1004 of these regulations.

D. General Conditions.

- 1. Land used for a R-1A District:
 - a. Shall be located as a self-contained unit of development such as (1) a group of homes surrounding a cul-de-sac; (2) ZLL lots whose front lines are oriented to face similar types of lots across a street and are not located on a street carrying substantial volumes of traffic such as arterial or collector streets; or (3) lots which face land use other than single or two-family dwellings either existing or potentially to be developed.
 - b. Shall, as a condition of zoning, be platted according to City Subdivision Regulations with specific attention given to any problems of drainage or utility easements, which may be created by the particular design concept.
- 2. A fencing and/or screening design plan for all ZLL lots shall be submitted showing how privacy for each lot and its relationship to other lots will be achieved.
- 3. To ensure privacy, no windows, doors or other openings shall be permitted on the wall with the shortest distance to a setback line. Such wall shall be constructed of the same material as the other exterior walls of the dwelling unit.
- 4. In addition to the parking space requirements of Section 501(A)(1), each dwelling shall have adequate space for at least two automobiles on the driveway area.
- 5. Proposed restrictive covenants shall be submitted guaranteeing the maintenance of the fencing and/or screening plan, access for maintenance of structures in close proximity to one another, and other restrictions necessary to carry out the intent of the overall design concept.

E. Lot Size Requirements.

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

F. Bulk Regulations.

1. Maximum structure height: 35 feet.
2. Yard requirements:
 - a. Minimum front yard: On corner lots, 25 feet on all sides abutting a street, except that 15 feet is permitted where such frontage is adjacent to an interior ZLL lot. On interior lots, 15 feet, except that the length and width of the driveway area must extend at least 22 feet from the front lot line.
 - b. Minimum side yard: A minimum of 10 feet maintained between the adjacent residential structures. Overhanging eaves and gutters are permitted by Section 303(F)(1); provided, that provisions for their extension and maintenance over adjacent property is contained in the restrictive covenants.
 - c. Minimum rear yard: 15 feet.
3. Maximum lot coverage: 60%

G. Use Limitations.

1. The square footage of any new addition to an existing principal structure shall not exceed 50% of the original structure's floor area.
2. Additions to existing principal structures shall not exceed the height of the existing principal structure.
3. Any addition greater than 100 square feet in size, that is attached to an existing principal structure, shall be accessible through an interior doorway from the existing principal structure, in addition to any access provided from the outside.
4. In addition to other use limitations, the following use limitations shall apply to Residential Design Manufactured Homes:
 - Such units shall provide all of the accommodations necessary to be a dwelling unit and all utilities shall be connected in conformance with applicable City regulations.
 - Such structures shall be on a permanent foundation which has minimum dimensions of 22 body feet in width, contain a pitched roof, siding and roofing materials which are customarily used on site-built homes, and comply with the following architectural or aesthetic standards so as to ensure their compatibility with site-built housing:
 - a. The roof must be predominantly double-pitched and have a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run, and must be covered with material that is customarily used on site-built dwellings, including but not limited to approved wood, asphalt composition shingles or fiberglass, but excluding corrugated aluminum, corrugated fiberglass, or metal roofing materials. The roof shall have a minimum eave projection and roof overhang on at least two sides of 10 inches, which may include a gutter.
 - b. Exterior siding shall be of a non-reflective material customarily used on site-built dwellings, such as wood, composition, simulated wood, clapboards, conventional vinyl or metal siding, brick, stucco or similar materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the exterior of

the foundation or curtain wall or the joint between siding and enclosure wall shall be flashed in accordance with City building codes.

- c. The home shall be installed in accordance with the recommended installation procedures of the manufacturer and the standards set by the International Code Council (ICC) and published in the most current edition of "Guidelines for Manufactured Housing Installations." A continuous, permanent concrete or masonry foundation or masonry curtain wall, unpierced except for required ventilation and access which may include walk-out basements and garages, shall be installed under the perimeter of the home, also in accordance with the above referenced guidelines.
- d. At the main entrance door there shall be a landing that is a minimum of three feet by three feet, which is constructed to meet the requirements of the City's building codes.
- e. The moving hitch, axles, wheels and transporting lights must be removed at the time of installation of the home on the lot.
- f. The finished floor of the home shall be a maximum of 24 inches above the exterior finish grade of the lot on which it is located, as measured at the main entrance into the dwelling.
- g. Any attached addition to such a home shall comply with all construction requirements of the City's building codes. Architectural and aesthetic standards, as specified above, shall be applicable to all additions.
- h. If 50% or more of the existing site-built housing on both sides of the street on which the residential-design manufactured home is to be installed have a garage and a covered porch or recessed entry, such a home shall also provide a garage and porch or entry. On a corner lot, the street shall mean that street on which the facade has been designated for the household address number. External roofing and siding material of the garage and porch or entry shall be similar in appearance to the materials on the roofing and siding of the residential-design manufactured home.

401B R-1B LOW DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT

A. Statement of Intent.

- 1. This district is established to provide for the orderly growth of the City by establishing a zoning district classification whose provisions are:
 - a. Compatible with large lot / suburban-scale residential developments that may be annexed into the City;
 - b. Compatible with topographical considerations that effect the density and scale of development; and
 - c. Compatible with public infrastructure limitations.

TOPOGRAPHICAL CONSIDERATIONS may involve land subject to flooding and areas with unusual or special natural or man-made features. Areas with INFRASTRUCTURE LIMITATIONS are areas that are not, or are not likely in the future, to be served by a full range of urban-scale infrastructure.

- 2. Generally, uses which may negatively impact the health, safety, order or general welfare of persons residing in the district or devalue property for residential purposes will be restricted or not permitted. The regulations of this district are intended to control density of residential development by providing adequate open space around buildings and structures. Also the district is intended to control density of residential development relative to the character of existing development within and/or near the zoning/rezoning application area and the type of infrastructure serving or planned to serve the area.
- 3. The location, size and shape of an area proposed for designation as the R-1B Low Density Single-Family Residential District shall be evaluated for appropriateness relative to the following:
 - a. FOR EXISTING DEVELOPED AREAS, the compatibility of the standards and provisions of the R-1B District relative to the density of existing development, including the type of infrastructure serving such areas;
 - b. FOR UNDEVELOPED AREAS, the effect that a new area of low residential density will have on:
 - 1) The future development of adjacent properties according to the density of development typical of the “R-1” Single-Family Residential District;
 - 2) The City’s ability to provide cost-effective public services and infrastructure; and
 - 3) Natural or man-made topographical features which act to reduce the capacity of land to support residential densities typical of the “R-1” Single-Family Residential District. Such topographical features may include floodplains, areas experiencing an aircraft noise exposure equal to or greater than 70 DNL, and areas with infrastructure constraints.

B. Permitted Uses.

- 1. Single-family detached dwellings, residential-design manufactured homes and group homes as defined in Section 202.

2. Publicly or privately owned golf courses, for daytime use only. Such golf courses may, as accessory uses, offer for daytime use only areas for pitch and putt and golf driving ranges. In addition, publicly owned golf courses may, as an accessory use, provide a clubhouse.
3. Publicly owned parks and playgrounds, including all recreational facilities and structures thereto.

C. Special Uses.

1. See Section 1101 of these regulations.

D. Exceptions.

1. See Section 1004 of these regulations.

E. Lot Size Requirements.

1. Minimum lot area: 36,000 square feet; 4.5 acres if an on-site sewage lagoon is utilized; minimum lot area for special uses and exceptions to be determined as part of the applicable approval process.
2. Minimum lot width: 150 feet; minimum lot width for special uses and exceptions to be determined as part of the applicable approval process.
3. Minimum lot depth: 200 feet; minimum lot depth for special uses and exceptions to be determined as part of the applicable approval process.

F. Bulk Regulations.

1. Maximum structure height: 35 feet; maximum permitted height for special uses and exceptions to be determined as part of the applicable approval process.
2. Yard requirements:
 - a. Minimum front yard: 25 feet
 - b. Minimum side yards: 10 feet
 - c. Minimum rear yard: 25 feet.
3. Maximum lot coverage: 30%

G. Use Limitations.

1. The square footage of any new addition to an existing principal structure shall not exceed 50% of the original structure's floor area.
2. Additions to existing principal structures shall not exceed the height of the existing principal structure.
3. Any addition greater than 100 square feet in size, that is attached to an existing principal structure, shall be accessible through an interior doorway from the existing principal structure, in addition to any access provided from the outside.
4. In addition to other use limitations, the following use limitations shall apply to Residential Design Manufactured Homes:
 - Such units shall provide all of the accommodations necessary to be a dwelling unit and all utilities shall be connected in conformance with applicable City regulations.
 - Such structures shall be on a permanent foundation which has minimum dimensions of 22 body feet in width, contain a pitched roof, siding and roofing materials which are customarily used on site-built homes, and comply with

the following architectural or aesthetic standards so as to ensure their compatibility with site-built housing:

- a. The roof must be predominantly double-pitched and have a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run, and must be covered with material that is customarily used on site-built dwellings, including but not limited to approved wood, asphalt composition shingles or fiberglass, but excluding corrugated aluminum, corrugated fiberglass, or metal roofing materials. The roof shall have a minimum eave projection and roof overhang on at least two sides of 10 inches, which may include a gutter.
- b. Exterior siding shall be of a non-reflective material customarily used on site-built dwellings, such as wood, composition, simulated wood, clapboards, conventional vinyl or metal siding, brick, stucco or similar materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the exterior of the foundation or curtain wall or the joint between siding and enclosure wall shall be flashed in accordance with City building codes.
- c. The home shall be installed in accordance with the recommended installation procedures of the manufacturer and the standards set by the International Code Council (ICC) and published in the most current edition of "Guidelines for Manufactured Housing Installations." A continuous, permanent concrete or masonry foundation or masonry curtain wall, unpierced except for required ventilation and access which may include walk-out basements and garages, shall be installed under the perimeter of the home, also in accordance with the above referenced guidelines.
- d. At the main entrance door there shall be a landing that is a minimum of three feet by three feet, which is constructed to meet the requirements of the City's building codes.
- e. The moving hitch, axles, wheels and transporting lights must be removed at the time of installation of the home on the lot.
- f. The finished floor of the home shall be a maximum of 24 inches above the exterior finish grade of the lot on which it is located, as measured at the main entrance into the dwelling.
- g. Any attached addition to such a home shall comply with all construction requirements of the City's building codes. Architectural and aesthetic standards, as specified above, shall be applicable to all additions.
- h. If 50% or more of the existing site-built housing on both sides of the street on which the residential-design manufactured home is to be installed have a garage and a covered porch or recessed entry, such a home shall also provide a garage and porch or entry. On a corner lot, the street shall mean that street on which the facade has been designated for the household address number. External roofing and siding material of the garage and porch or entry shall be similar in appearance to the materials on the roofing and siding of the residential-design manufactured home.

401C R-1C SUBURBAN SINGLE-FAMILY RESIDENTIAL DISTRICT

A. Statement of Intent.

- 1. This district is established to provide for the orderly growth of the City by establishing a zoning district classification which only applies to:
 - a. Large lot / suburban-scale residential developments that have been annexed into the City; and
 - b. Is compatible with areas where a full range of municipal facilities are not available and not likely to be available in the near future.
- 2. Generally uses which may negatively impact the health, safety, order or general welfare of persons residing in the district or to devalue property for residential purposes will be restricted or not permitted. The regulations of this district are intended to control density of residential development by providing adequate open space around buildings and structures. Also, the district is intended to control density of residential development relative to the character of existing development within or near the rezoning application area and the type of infrastructure serving or planned to serve the area.
- 3. Certain regulations found in these regulations, the Municipal and Public Offense Codes may be modified from time to time as deemed appropriate by the Derby City Council to reflect the uses, activities and lifestyles associated with properties that are located in the R-1C District. These modifications include, but are not limited to bulky waste and tree waste, weeds and other vegetation, nuisances, requirements for the surfacing of off-street parking areas and driveways, and the discharge of firearms.
- 4. The location, size and shape of an area proposed for designation as the R-1C Suburban Single-Family Residential District shall be evaluated for appropriateness relative to the density of existing development, including the type of infrastructure serving such areas.

B. Permitted Uses.

- 1. Single-family detached dwellings, residential-design manufactured homes and group homes as defined in Section 202.
- 2. Publicly or privately owned golf courses, for daytime use only. Such golf courses may, as accessory uses, offer for daytime use only areas for driving ranges, chipping and putting. In addition, publicly and privately owned golf courses may, as an accessory use, provide a clubhouse.
- 3. Publicly and privately owned parks and playgrounds, including all recreational facilities and structures thereto.

C. Special Uses.

- 1. See Section 1101 of these regulations.

D. Exceptions.

- 1. See Section 1004 of these regulations.

E. Lot Size Requirements.

1. Minimum lot area: 2.2 acres; minimum lot area for special uses and exceptions to be determined as part of the applicable approval process.
2. Minimum lot width: 200 feet; minimum lot width for special uses and exceptions to be determined as part of the applicable approval process.
3. Minimum lot depth: 400 feet; minimum lot depth for special uses and exceptions to be determined as part of the applicable approval process.

F. Bulk Regulations.

1. Maximum structure height: 35 feet; maximum permitted height for special uses and exceptions to be determined as part of the applicable approval process.
2. Yard requirements:
 - a. Minimum front yard: 25 feet
 - b. Minimum side yards: 25 feet
 - c. Minimum rear yard: 25 feet.
3. Maximum lot coverage: 30%

G. Use Limitations.

1. The square footage of any new addition to an existing principal structure shall not exceed 50% of the original structure's floor area.
2. Additions to existing principal structures shall not exceed the height of the existing principal structure.
3. Any addition greater than 100 square feet in size, that is attached to an existing principal structure, shall be accessible through an interior doorway from the existing principal structure, in addition to any access provided from the outside.
4. In addition to other use limitations, the following use limitations shall apply to Residential Design Manufactured Homes:
 - Such units shall provide all of the accommodations necessary to be a dwelling unit and all utilities shall be connected in conformance with applicable City regulations.
 - Such structures shall be on a permanent foundation which has minimum dimensions of 22 body feet in width, contain a pitched roof, siding and roofing materials which are customarily used on site-built homes, and comply with the following architectural or aesthetic standards so as to ensure their compatibility with site-built housing:
 - a. The roof must be predominantly double-pitched and have a minimum vertical rise of 2.2 inches for every 12 inches of horizontal run, and must be covered with material that is customarily used on site-built dwellings, including but not limited to approved wood, asphalt composition shingles or fiberglass, but excluding corrugated aluminum, corrugated fiberglass, or metal roofing materials. The roof shall have a minimum eave projection and roof overhang on at least two sides of 10 inches, which may include a gutter.
 - b. Exterior siding shall be of a non-reflective material customarily used on site-built dwellings, such as wood, composition, simulated wood, clapboards, conventional vinyl or metal siding, brick, stucco or similar

materials, but excluding smooth, ribbed or corrugated metal or plastic panels. Siding material shall extend below the top of the exterior of the foundation or curtain wall or the joint between siding and enclosure wall shall be flashed in accordance with City building codes.

- c. The home shall be installed in accordance with the recommended installation procedures of the manufacturer and the standards set by the International Code Council (ICC) and published in the most current edition of "Guidelines for Manufactured Housing Installations." A continuous, permanent concrete or masonry foundation or masonry curtain wall, unpierced except for required ventilation and access which may include walk-out basements and garages, shall be installed under the perimeter of the home, also in accordance with the above referenced guidelines.
- d. At the main entrance door there shall be a landing that is a minimum of three feet by three feet, which is constructed to meet the requirements of the City's building codes.
- e. The moving hitch, axles, wheels and transporting lights must be removed at the time of installation of the home on the lot.
- f. The finished floor of the home shall be a maximum of 24 inches above the exterior finish grade of the lot on which it is located, as measured at the main entrance into the dwelling.
- g. Any attached addition to such a home shall comply with all construction requirements of the City's building codes. Architectural and aesthetic standards, as specified above, shall be applicable to all additions.
- h. If 50% or more of the existing site-built housing on both sides of the street on which the residential-design manufactured home is to be installed have a garage and a covered porch or recessed entry, such a home shall also provide a garage and porch or entry. On a corner lot, the street shall mean that street on which the facade has been designated for the household address number. External roofing and siding material of the garage and porch or entry shall be similar in appearance to the materials on the roofing and siding of the residential-design manufactured home.

402 R-2 TWO-FAMILY RESIDENTIAL DISTRICT.

This district is intended to permit a slightly higher density than the R-1 District. The district allows duplexes, single-family dwellings and certain community facilities.

A. Permitted Uses.

1. Any use permitted in the R-1 Residential District, except residential-design manufactured homes.
2. Two-family dwellings.
3. Single-family attached dwellings, not exceeding two.

B. Special Uses.

1. See Section 1101 of these regulations.

C. Exceptions.

1. See Section 1004 of these regulations.

D. Lot Size Requirements.

1. Minimum lot area:
 - a. Single-family dwellings: 6,800 square feet.
 - b. Single-family attached and two-family dwellings: 4,500 square feet per dwelling unit.
 - c. All other permitted uses: 10,000 square feet.
2. Minimum lot width:
 - a. Single-family dwellings: 60 feet.
 - b. Single-family attached and two-family dwellings: 70 feet for each two dwellings.
 - c. All other permitted uses: 90 feet.
3. Minimum lot depth: 90 feet.

E. Bulk Regulations.

1. Maximum structure height: 35 feet.
2. Yard requirements:
 - a. Minimum front yard: 25 feet on all sides abutting a street.
 - b. Minimum side yard:
 - 1) Single-family dwellings: 8 feet on one side and 5 feet on the other.
 - 2) Single-family attached and two-family dwellings: 8 feet, except for the common lot line of an attached dwelling.
 - 3) All other permitted uses: 15 feet.
 - c. Minimum rear yard: 20 feet.
3. Maximum lot coverage: 35%

F. Use Limitations.

1. The square footage of any new addition to an existing principal structure shall not exceed 50% of the original structure's floor area.
2. Additions to existing principal structures shall not exceed the height of the existing principal structure.
3. Any addition greater than 100 square feet in size, that is attached to an existing principal structure, shall be accessible through an interior doorway from the existing principal structure, in addition to any access provided from the outside.

403 R-3 MULTIPLE-FAMILY RESIDENTIAL DISTRICT.

This district is intended to permit various types of low density multiple dwelling units and certain community facilities. The district is not intended for general single or two-family use except as incidental to the area.

A. Permitted Uses.

1. Any use permitted in the R-2 Residential District.
2. Multiple-family dwellings.
3. Boarding or rooming houses.

B. Special Uses.

1. See Section 1101 of these regulations.

C. Exceptions.

1. See Section 1004 of these regulations.

D. Lot Size Requirements.

1. Minimum lot area:
 - a. Single-family dwellings: 6,800 square feet.
 - b. Single-family attached and two-family dwellings: 4,500 square feet per dwelling unit.
 - c. Multiple-family dwelling units: 3,000 square feet per dwelling unit, but no zoning lot less than 10,000 square feet.
 - d. All other permitted uses: 10,000 square feet.
2. Minimum lot width:
 - a. Single-family dwellings: 60 feet.
 - b. Single-family attached and two-family dwellings: 70 feet for each two dwellings.
 - c. Multiple-family dwellings: 80 feet.
 - d. All other permitted uses: 80 feet.
3. Minimum lot depth: 90 feet.

E. Bulk Regulations.

1. Maximum structure height: 35 feet.
2. Yard requirements:
 - a. Minimum front yard: 25 feet on all sides abutting a street.
 - b. Minimum side yard:
 - 1) All residential dwellings: 5 feet, except for the common lot line of an attached dwelling.
 - 2) All other permitted uses: 15 feet.
 - c. Minimum rear yard: 20 feet.
3. Maximum lot coverage: 40%

F. Use Limitations.

1. The square footage of any new addition to an existing principal structure shall not exceed 50% of the original structure's floor area.
2. Additions to existing principal structures shall not exceed the height of the existing principal structure.
3. Any addition greater than 100 square feet in size, that is attached to an existing principal structure, shall be accessible through an interior doorway from the existing principal structure, in addition to any access provided from the outside.

404 R-4 MULTIPLE-FAMILY RESIDENTIAL DISTRICT.

This district is intended to permit medium density multiple dwelling units of an apartment type where such uses may be located along collector and arterial streets and have community facilities and services available. The district is not intended for general single or two-family uses except as incidental to the area.

A. Permitted Uses.

- 1. Any use permitted in the R-3 Residential Districts.
- 2. Adult and child care centers and boarding homes for children and adults.

B. Special Uses.

- 1. See Section 1101 of these regulations.

C. Exceptions.

- 1. See Section 1004 of these regulations.

D. Lot Size Requirements.

- 1. Minimum lot area:
 - a. Single-family dwellings: 6,000 square feet.
 - b. Single-family attached: 4,500 square feet per dwelling.
 - c. Two-family dwellings: 8,000 square feet.
 - d. Multiple-family dwellings: 1,750 square feet per dwelling unit, but no zoning lot less than 8,000 square feet.
 - e. All other permitted uses: 10,000 square feet.
- 2. Minimum lot width:
 - a. Single-family dwellings: 50 feet.
 - b. Two-family dwellings: 60 feet.
 - c. Single-family attached: 70 feet for each two dwellings.
 - d. Multiple-family dwellings: 75 feet.
 - e. All other permitted uses: 75 feet.

E. Bulk Regulations.

- 1. Maximum structure height: 45 feet.
- 2. Yard requirements:
 - a. Minimum front yard: 25 feet on all sides abutting a street.
 - b. Minimum side yard:
 - 1) All residential dwellings: 5 feet, except for the common lot line of an attached dwelling.
 - 2) All other permitted uses: 10 feet.
 - c. Minimum rear yard: 20 feet.
- 3. Maximum lot coverage: 50%.

F. Use Limitations.

- 1. The square footage of any new addition to an existing principal structure shall not exceed 50% of the original structure’s floor area.
- 2. Additions to existing principal structures shall not exceed the height of the existing principal structure.
- 3. Any addition greater than 100 square feet in size, that is attached to an existing principal structure, shall be accessible through an interior doorway from the existing principal structure, in addition to any access provided from the outside.

405 MH-1 MANUFACTURED/MOBILE HOME PARK DISTRICT.

This district is intended to provide low density manufactured/mobile home parks which would be compatible with the character of the surrounding neighborhood and would be consistent with the future land use plan element of the Comprehensive Plan. No more than 10% of the homes may be for rent. Parks may be further governed by a Manufactured/Home Park Ordinance of the City.

A. Permitted Uses.

- 1. Manufactured/Mobile home parks including related facilities for the residents, such as:
 - a. Child care centers and preschools.
 - b. Recreational facilities such as playgrounds, swimming pools, tennis courts, shuffleboards, ball fields and lakes providing boating and fishing.
 - c. Recreation or community buildings, washrooms, rest rooms, laundry facilities, storm shelters, storage areas and offices for the manufactured home parks.

B. Special Uses.

- 1. See Section 1101 of these regulations.

C. Exceptions.

- 1. See Section 1004 of these regulations.

D. Lot Size Requirements for Parks.

- 1. Minimum lot area: 130,000 square feet.
- 2. Minimum lot width: None
- 3. Minimum lot depth: None

E. Bulk Regulations for Parks.

- 1. Maximum structure height: 35 feet.
- 2. Yard requirements:
 - a. Minimum front yard: 25 feet on all sides abutting a street.
 - b. Minimum side yard: 25 feet.
 - c. Minimum rear yard: 25 feet.
- 3. Maximum lot density: Seven homes per gross acre.

F. Standards for Manufactured/Mobile Home Parks.

- 1. The park shall be under one ownership and control and individual occupants other than the owner shall not own any parcel or portion of the park.
- 2. The applicant for a new park, or for the expansion of an existing park shall submit a site layout plan complying with the minimum requirements of this section. Such plan shall be considered for approval as part of the application for a change in zoning district classification. Applications and plans shall be submitted in a form as required by the Zoning Administrator.
- 3. Topographic contours at intervals of one foot shall be indicated on the plan.

4. The park shall be located on a well-drained site, which is properly graded to insure rapid drainage and freedom from stagnant pools of water in compliance with all applicable federal, state and local laws, rules, regulations, ordinances, resolutions, policies, procedures, and permits.
5. The park shall provide individual spaces for homes. Each such space must be clearly defined and delineated. No single space may contain less than 3,600 square feet nor have a width of less than 40 feet.
6. Homes shall be located with a minimum clearance of 20-feet between homes; provided, however, with respect to homes parked end-to-end, the clearance shall not be less than 10 feet. No home shall be located less than 10 feet from its front driveway.
7. No home shall be located less than 25 feet from any property line of the park or from any community building within the park, including any washroom, toilet, laundry facility or sales office.
8. All spaces for homes shall front upon a private driveway of not less than 24 feet in width, including curbs on each side; provided, however, that no on-street parking is permitted. If parallel parking is permitted on one side of the street, the width shall be increased to 28 feet, and if parallel parking is permitted on both sides of the street, the width shall be increased to 36 feet.
9. Common walks shall be provided in locations where pedestrian traffic is concentrated and shall connect the entrance to the park, the park office and other park facilities. Common walks shall be located through interior park areas and shall be separated from streets.
10. All driveways and sidewalks within the park shall be surfaced with concrete and/or asphalt which is well maintained and adequately lighted.
11. Each manufactured home park shall devote a minimum of 200 square feet per space as area for recreational facilities. Individual areas recreational facilities shall not be less than 5,000 square feet. Required setbacks, driveways and off-street parking spaces shall not be considered as recreational space. A minimum of 50% of recreational area facilities shall be constructed prior to the development of one-half of a new and/or the expansion of an existing park, and all recreational facilities shall be constructed by the time a new and/or the expansion of an existing park is 75% developed.
12. A solid visual screen or landscaped buffer shall be provided between the MH-1 District and any adjoining property or property immediately across an alley which is not zoned MH-1. Fences or walls providing screening shall be a minimum of six feet high and a maximum of eight feet high. Landscaped buffers installed in lieu of a fence or wall shall be a minimum of 25 feet in width and shall provide a combination of coniferous and deciduous plant materials to achieve screening for the park. When a landscaped buffer is used, the buffer shall not be considered as any part of a required rear yard for a manufactured/mobile home space.

Fences, walls, and landscaping shall not be located within a vision triangle as defined by these regulations. The fence, wall and/or landscaping shall be properly policed and maintained by the owner.

13. Each space shall be provided with a paved patio of not less than 150 square feet and a storage structure of not less than 60 square feet. Such storage structure shall be designed in a manner that will enhance the park and shall be constructed of weather resistant material.
14. Provided community buildings, recreation facilities, laundry facilities and/or other similar facilities shall be permanent type structure(s) complying with all applicable building codes adopted by the City. Storm shelter(s) adequate for all park residents shall be included in such facilities or shall be provided as separate structure(s) within the park.
15. A potable supply of water shall be provided in each park. The size and location of water mains and any fire hydrants determined to be necessary by the City and/or other regulating government or agency shall be designed by a licensed professional engineer and installed in accordance with the requirements of the agency from which the water supply is obtained. Individual water service connections shall be provided at each space.
16. Individual sewer connections shall be provided for each space and shall be in accordance with all codes and regulations regarding such systems. All sewage systems shall be designed by a licensed professional engineer and shall be submitted to the City for approval prior to installation and inspection prior to issuance of a zoning permit and/or occupancy permit for a new and/or the expansion of an existing park.
17. All electric distribution systems, plumbing systems and telephone service systems to each space, except outlets and risers shall be underground.
18. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any property located in any other residential district.
19. The park and each home therein shall comply with all applicable federal, state and local laws, rules, regulations, ordinances, resolutions, policies, procedures and permits, including established standards for anchoring homes.
20. Any substantial deviation from the approved plan, as determined by the Zoning Administrator, shall constitute a violation of the zoning permit authorizing construction of the project. Changes to plans shall be submitted for consideration and approval by the Planning Commission and Governing Body prior to the issuance of a zoning permit.

406 I-1 INSTITUTIONAL DISTRICT

This district is intended to permit limited office uses and various public, quasi-public and private institutional uses, which are of a moderate density and intensity of use. Such uses should have adequate vehicular and pedestrian access and serve as buffer areas between residential uses and more intensive development and/or arterial streets.

A. Permitted Uses.

1. A portion of a building may have an Automated Teller Machine (ATM) or be used as a barber shop, beauty shop, gift shop, newsstand or restaurant, when located entirely within a principal building. Such uses shall not involve any drive-through facilities and must be accessory to a permitted use. Such accessory uses, shall be accessed or entered only from an interior lobby or hallway, and shall have no signs outside the principal building advertising the existence of such use. Outdoor directional signs are permitted for such accessory uses.
2. Bed and Breakfast Inns.
3. Boarding Homes for Children and Adults.
4. Business and Professional Offices not exceeding 3,500 square feet of floor area.
5. Child and Adult Day Care, which may include outdoor recreation space.
6. Churches, Chapels, Temples, and Synagogues, including related day care facilities.
7. Educational, religious, philanthropic and charitable institutions, including incidental day care facilities, but not including penal or mental institutions.
8. Fraternal and Service Clubs: such as YMCA, YWCA, Scouts, Moose, veterans' organizations, labor unions, hobby and social clubs and similar uses, including incidental child or adult care facilities.
9. Hospitals including incidental day care facilities.
10. Medical Services.
11. Museums, Libraries and Colleges, including incidental day care facilities.
12. Nursing, Assisted Care and Convalescent Homes.
13. Pharmacies.
14. Single-family and multiple-family dwellings constructed in conjunction with other permitted uses in the district.
15. Group Homes for persons with disabilities which may exceed the limitation on occupancy as defined in Section 202.
16. Communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers which are mounted on the roof or directly secured to a wall of a principal building when the height of the communication equipment is 55 feet or less [See Section 303.G of these regulations].
17. Mobile food vending as permitted by the Derby Municipal Code.

B. Special Uses.

1. See Section 1101 of these regulations.

C. Exceptions.

1. See Section 1004 of these regulations.

D. Lot size Requirements.

1. Minimum lot area: 10,000 square feet
2. Minimum lot width: 70 feet
3. Minimum lot depth: 100 feet

E. Bulk Regulations.

1. Maximum structure height: 45 feet, except that communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers mounted on the roof or directly secured to a wall of a principal building may have a maximum height of 55 feet without a special use permit.
2. Yard requirements
 - a. Minimum front yard: 25 feet on all sides abutting a street. No portion of a communication structure, television and radio antenna or broadcasting and microwave transmitting and relay tower, aerial, or any anchor or guy may encroach upon the land or airspace of a required front yard.
 - b. Minimum side yard: 5 feet on each side, plus one additional foot for each two feet of height over 30 feet. No portion of a communication structure, television and radio antenna or broadcasting and microwave transmitting and relay tower, aerial, or any anchor or guy may encroach upon the land or airspace of a required side yard.
 - c. Minimum rear yard: 25 feet or 20% of the depth of the lot, whichever amount is smaller. No portion of a communication structure, television and radio antenna or broadcasting and microwave transmitting and relay tower, aerial, or any anchor or guy may encroach upon the land or airspace of a required rear yard.
3. Maximum lot coverage: 50%
4. Maximum impervious surface: 80%, unless a smaller percentage is required to meet the requirements of Section 304 of these regulations (Screening and Landscaping).

F. Use Limitations.

1. Exterior lighting shall be shaded and/or directed to minimize light cast upon adjoining properties and public streets.
2. All business, service, storage, and display goods shall be located within a completely enclosed structure, except:
 - a. Paved customer and employee vehicle parking and paved parking for vehicles used in conjunction with the use occupying the zoning lot.
 - b. Outdoor recreation space for day care facilities incidental to a permitted use.

3. All structures shall be located on sites that are planted and landscaped, except for parking areas and hard-surfaced walks. .
4. Off-street parking facilities shall not be used for the display of vehicles or items for sale.
5. The promotional activities of any business establishment shall not involve the following:
 - a) Outdoor use of string type lighting or outdoor use of reflective or non-reflective banners, streamers, pennants, balloons or promotional flags.
 - b) Outdoor use of sound projecting devices or loudspeakers.
 - c) Advertisement attached or painted to any wall or fence erected to provide screening from adjacent properties.
 - d) Outdoor placement of temporary signage or displays which advertise types of products, name brands or management policies.
6. Outdoor signs as permitted by Article 7 of these regulations.
7. Off-street parking and loading as required by Article 5 of these regulations.
8. Screening and landscaping as required by Section 304 of these regulations.

407 B-1 OFFICE BUSINESS DISTRICT

This district is intended to provide for business and professional offices that have limited evening activities. Uses permitted within this district are envisioned to be located along major streets to serve as buffer areas between other business, industrial and the residential districts.

A. Permitted Uses.

1. Banks, Savings and Loans, Automated Teller Machines (ATM) and Credit Unions, but not including drive-through facilities.
2. Bed and Breakfast Inns.
3. Business and Professional Offices, the structure of which may contain storage space; provided, however, such space does not exceed 50% of the gross floor area of the structure.
4. Child and Adult Day Care, which may include outdoor recreation space.
5. Medical Service limited to 4,000 square feet of floor area or less, and that do not include emergency or 24-hour services.
6. Pharmacies (without drive-through facilities).
7. Single-family and multiple-family dwelling units constructed in conjunction with other permitted uses in this district.
8. A portion of a building may have an Automated Teller Machine (ATM) or be used as a barber shop, beauty shop, gift shop, newsstand or restaurant, when located entirely within a principal building. Such uses shall not involve any drive-through facilities and must be accessory to a permitted use. Such accessory uses shall be accessed or entered only from an interior lobby or hallway and shall have no signs outside the principal building which advertises the existence of such use. Outdoor directional signs are permitted for such accessory uses.
9. Communication structures, television and radio antennas and broadcasting and microwave transmitting relay towers which are mounted on the roof or directly secured to a wall of a principal building when the height of the communication equipment is 45 feet or less [See 303.G].
10. Mobile food vending as permitted by the Derby Municipal Code.

B. Special Uses.

1. See Section 1101 of these regulations.

C. Exceptions.

1. See Section 1004 of these regulations.

D. Lot Size Requirements.

1. Minimum lot area: 6,000 square feet
2. Minimum lot width: 60 feet
3. Minimum lot depth: 100 feet

E. Bulk Regulations.

1. Maximum structure height: 35 feet, except that communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers mounted on the roof or directly secured to a wall of a principal building may have a maximum height of 45 feet without a special use permit.
2. Yard requirements:
 - a) Minimum front yard: 20 feet on all sides abutting a street. No portion of a communication structure, television and radio antenna or broadcasting and microwave transmitting and relay tower, aerial, or any anchor or guy may encroach upon the land or airspace of a required front yard.
 - b) Minimum side yard: None, but if there is a side yard provided, it shall not be less than five feet.
 - c) Minimum rear yard: None, but if there is a rear yard provided, it shall not be less than five feet if adjacent to non-residential districts or 10 feet if adjacent to residential districts.
3. Maximum lot coverage: 40%
4. Maximum impervious surface: 85%, unless a smaller percentage is required to meet the requirements of Section 304 of these regulations (Screening and Landscaping).

F. Use Limitations.

1. Exterior lighting shall be shaded and/or directed to minimize light cast upon adjoining properties and public streets.
2. All business, service, storage, and display goods shall be located within a completely enclosed structure, except:
 - a) Paved customer and employee vehicle parking and paved parking for vehicles used in conjunction with the use occupying the zoning lot.
 - b) Outdoor recreation space for day care facilities incidental to a permitted use.
3. All structures shall be located on sites that are planted and landscaped, except for parking areas and hard-surfaces walks.
4. Off-street parking facilities shall not be used for the display of vehicles or items for sale.
5. The promotional activities of any business establishment shall not involve the following:
 - a) Outdoor use of string type lighting.
 - b) Outdoor use of sound projecting devices or loudspeakers.
 - c) Advertisement attached or painted to any wall or fence erected to provide screening from adjacent properties.
 - d) Outdoor placement of temporary signage or displays which advertise types of products, name brands or management policies.
6. Outdoor signs as permitted by Article 7 of these regulations, unless specifically prohibited by the text of this district.
7. Off-street parking and loading as required by Article 5 of these regulations.
8. Screening and Landscaping as required by Section 304 of these regulations.

408 B-2 NEIGHBORHOOD BUSINESS DISTRICT

This district is intended to accommodate the retail sale of convenience goods and services in shopping districts of limited size that serve neighboring residential uses. Access for pedestrian and vehicular traffic shall be provided.

A. Permitted Uses.

1. Amusement Centers, indoor only and not exceeding 3,500 square feet of floor area.
2. Appliance Repair Shops not exceeding 3,500 square feet of floor area.
3. Appliance Sales and Rental Shops.
4. Arts and Craft Shops.
5. Automotive Supply Stores, but not including parts installation or tire mounting.
6. Banks, Savings and Loans and Credit Unions, including drive-through facilities and automated teller machines (ATM).
7. Barber Shops.
8. Beauty, Tanning and Nail Care Shops.
9. Bed and Breakfast Inns.
10. Bicycle Sales and incidental bicycle rental and Bicycle Repair Shops.
11. Book Stores.
12. Business, Professional and Public Offices.
13. Camera and Film Processing Shops, including drive-through facilities for film pick-up.
14. Candy and Ice Cream Stores.
15. Carpet and Tile Sales.
16. Clothing and Wearing Apparel Shops.
17. Coffee and Donut Shops.
18. Convenience Stores which do not include the sales of gasoline, except as may be permitted as an exception.
19. Drug Stores and Pharmacies, including drive-through facilities for medicine pick up.
20. Dry Cleaning and Laundry Receiving Stations where processing or cleaning of clothing is done on the premises by no more than five employees. The dry cleaning or laundry receiving station may include drive-through facilities for clothing drop-off and pick-up.
21. Food Stores, including Grocery Stores, Meat Markets, Bakeries, Specialty Stores and Delicatessens.
22. Florist Shops.
23. Furniture Stores not exceeding 6,000 square feet of floor area.
24. Gift, Antique and Collectable Shops.
25. Hardware Stores, including incidental rental of tools, gardening and lawn maintenance equipment.

26. Jewelers and Jewelry Repair.
27. Key, Security Devices, and Locksmith Shops not exceeding 3,500 square feet of floor area. This may include sales of security devices for automobiles, but shall not include on-site installation.
28. Mail Receiving and Packaging Services not exceeding 3,500 square feet of floor area.
29. Medical Services.
30. Mirror and Decorative Glass Shops, but not including automobile glass.
31. Music and Record and Tape/Disc Stores, including incidental musical instrument rental and instruction.
32. Novelty Stores, including costume and apparel rental.
33. Office Supply and Stationery Stores, including incidental rental and servicing of office equipment.
34. Pet Supply and Pet Grooming Shops.
35. Picture or Portrait Framing Shops.
36. Photographic Studios.
37. Printing or Copying Shops, Limited.
38. Restaurants not exceeding 3,500 square feet of enclosed floor area plus an option for an outdoor eating and serving area not exceeding in size 20% of the enclosed portion of the business. The area of any outdoor eating and serving area shall be a factor in determining the number of required off-street parking spaces.
39. Self Service Laundries.
40. Shoe Sales and Repair Shops.
41. Sporting Goods Shops, including incidental sporting equipment rental.
42. Tailor, Dress Making and Bridal Shops, including incidental apparel rental.
43. Tobacco and Smoking Accessory Shops.
44. Toy Stores.
45. Upholstery and Furniture Repair Shops not exceeding 3,500 square feet of floor area.
46. Variety Stores.
47. Vision and Optical Shops.
48. Wallpaper and Home Decorating Shops.
49. Window Blind, Tinting and Drapery Sales.
50. Communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers which are mounted on the roof or directly secured to a wall of a principal building when the height of the communication equipment is 50 feet or less [See 303.G].

51. Other general retail or service uses not specifically listed above as permitted uses, but which in the opinion of the Zoning Administrator are in keeping with the intent of this section.

52. Mobile food vending as permitted by the Derby Municipal Code.

B. Special Uses.

1. See Section 1101 of these regulations.

C. Exceptions.

1. See Section 1004 of these regulations.

D. Lot Size Requirements.

1. Minimum lot area: 10,000 square feet.
2. Minimum lot width: 70 feet.
3. Minimum lot depth: 100 feet.

E. Bulk Regulations.

1. Maximum structure height: 40 feet, except that communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers mounted on the roof or directly secured to a wall of a principal building may have a maximum height of 50 feet without a special use permit.
2. Yard requirements:
 - a) Minimum front yard: 35 feet on all sides abutting a street, unless adjacent to a commercial or industrial district and then the yard may be reduced to 20 feet. No portion of a communication structure, television and radio antenna or broadcasting and microwave transmitting and relay tower, aerial, or any anchor or guy may encroach upon the land or airspace of a required front yard.
 - b) Minimum side yard: None, but if a side yard is provided, it shall not be less than 10 feet.
 - c) Minimum rear yard: None, but if a rear yard is provided, it shall not be less than 10 feet.
3. Maximum lot coverage: 40%
4. Maximum impervious surface: 90%, unless a smaller percentage is required to meet the requirements of Section 304 of these regulations (Screening and Landscaping).

F. Use Limitations.

1. Retail, medical and service businesses located in this district are limited to 8,000 square feet of floor area unless otherwise indicated
2. All areas not otherwise used for structures, parking, loading, driveways or walkways, shall be landscaped with plant materials.
3. Unless specifically established for certain uses, no separate business establishment shall occupy more than 8,000 square feet of floor space.

- 4. All business establishments shall be retail or service establishments dealing directly with consumers. Wholesaling establishments are not permitted.
- 5. Unless specifically permitted, all business, service, storage and display of goods, shall be conducted within completely enclosed structures.
- 6. The providing of outdoor vending machines and/or outdoor storage lockers for ice or similar products is prohibited unless specifically provided for as part of an exception authorizing a car wash, and/or automobile service station or in conjunction with the approval of incidental sales of gasoline for a convenience store.
- 7. Unless specifically permitted, no business establishment shall offer goods or services directly to customers waiting in motor vehicles.
- 8. Exterior lighting shall be shaded and/or directed to minimize light cast upon adjoining properties and public streets.
- 9. Off-street parking facilities shall not be used for the display of vehicles or items for sale.
- 10. No business establishment shall assemble goods or items for off-site sales.
- 11. The promotional activities of any business establishment shall not involve the following:
 - a. Outdoor use of string type lighting;
 - b. Outdoor use of sound projecting devices or loudspeakers;
 - c. Advertisement attached or painted on any wall or fence erected to provide screening from adjacent properties;
 - d. Outdoor placement of temporary signage or displays, unless such signage constitutes a wall sign, in compliance with the requirements of Article 7 (Signs) of these regulations, which advertises types of products, name brands or management policies, i.e., matching of competitor prices, double coupons value, etc.
- 12. Temporary outdoor uses identified by Section 601 of these regulations are prohibited in the B-2 Neighborhood Business District.
- 13. Outdoor signs as permitted by Article 7 of these regulations.
- 14. Off-street parking and loading as required by Article 5 of these regulations.
- 15. Screening and Landscaping as required by Section 304 of these regulations, unless specified otherwise by this District's provisions. For purposes of the B-2 District, the term SOLID VISUAL SCREENING means an opaque wall or fence with a height of at least six feet which is required to prevent the passage of debris and light to mitigate adverse visual impacts. The wall or fence shall be constructed of brick, stone, masonry, architectural tile, concrete, wood or a combination of those materials, but may not include the use of woven wire, welded wire or metal panels. When the wall or fence is located within 20 feet of a street right-of-way line, the height of the wall or fence shall be reduced to three feet.

G. Uses Not Permitted.

Nothing in the preceding subsections shall be construed to permit the following uses in the B-2 District:

1. Any general retail business, service business or office use, such as an office for a building contractor, electrical or plumbing business, heating and air conditioning firm or excavating business, which involves the outside storage of inventory and/or equipment on either a temporary or permanent basis.
2. Motels or Hotels.
3. Physical Fitness Centers.
4. Raising and wholesaling of plant nursery stock.
5. Repair or servicing of motor vehicles, boats or trailers, including the on-site installation or removal of parts or accessories, except as may be permitted as part of an exception authorizing an automobile service station.
6. Sale of new or used automobiles, trucks, recreational vehicles, motorcycles, trailers, farm tools/implements or boats.
7. Storage Warehouses or Mini-Storage Warehouses.
8. Theaters.
9. Truck Service Stations.
10. Vehicle Body and Fender Repair Shops.

408A B-2A BUCKNER BUSINESS DISTRICT

This district provides enhanced standards for the conversion of existing residential buildings within the district to institutional, office and commercial uses. The district standards allow property owners to capitalize on existing high traffic volume along the Buckner Street and Meadowlark Boulevard corridors by providing expanded allowable uses for their properties. The City’s standards are intended to enhance appearance within the streetscape assisting with the area’s conversion to non-residential uses while maintaining its existing residential character.

All buildings are required to maintain the general single story residential character by either maintaining said appearance of existing buildings, or by constructing new structures to such appearance. Additionally, specific requirements for screening, parking and signage for the B-2A District are included in Articles 3, 5, and 7, respectively. Special accommodations are provided for meeting parking needs based on the present lot configurations within this district and the lack of ability to provide additional off-street parking because of said lot configuration.

A. Permitted Uses.

1. Appliance Sales and Rental Shops.
2. Arts and Crafts Shops.
3. Art Studio and/or Gallery.
4. Banks, Credit Unions, Savings & Loans, and other Financial Institutions.
5. Barber, Beauty, Tanning, Massage Therapy, Nail Care Shops and Spas.
6. Bicycle Sales and incidental bicycle rental and Bicycle Repair Shops.
7. Book Stores.
8. Business, Professional and Public Offices.
9. Camera and Film Processing Shops.
10. Candy, Ice Cream, Coffee and Donut, Cake and Cookie Shops, and bakeries.
11. Child and Adult Day Care.
12. Clothing and Wearing Apparel Sales and Alteration Shops.
13. Florist Shops.
14. Gift, Stationary, Antique and Collectibles Shops.
15. Interior Design/Decorating Studios.
16. Jewelers and Jewelry Repair Shops.
17. Key, Security Device and Locksmith Shops.

18. Mail Service and Photocopying Shops.
19. Medical Services limited to 4,000 square feet of floor area or less.
20. Music Stores, including Musical Instrument Sales, Rental, Repair, and Instruction.
21. Novelty Stores, including Costume and Apparel Rental.
22. Pet Grooming Shops, including Ancillary Supply Services.
23. Pharmacies (without drive-through facilities).
24. Picture or Portrait Framing Shops and Photographic Studios.
25. Shoe, Tailor, Dress Making and Bridal Shops, including Rental and Repair.
26. Single-Family Detached Dwelling.
27. Specialty Sporting Goods Shops, including incidental equipment rental.
28. Specialty Toy/Game Stores.
29. Vision and Optical Shops.
30. Mobile food vending as permitted by the Derby Municipal Code.
31. Other general limited retail, office and service uses not specifically listed above as permitted uses, but which in the opinion of the Zoning Administrator are in keeping with the intent of this section and compatible with the uses listed above.

B. Special Uses.

1. See Section 1101 of these regulations.

C. Exceptions.

1. See Section 1004 of these regulations.

D. Lot Size Requirements.

1. Minimum Lot Area: 7,500 square feet.
2. Minimum Lot Width: 55 feet.
3. Minimum Lot Depth: 115 feet.

E. Bulk Regulations.

1. Maximum structure height: 35 feet.

2. Yard requirements:
 - b. Minimum front yard (new construction): 25 feet on all sides abutting a street.
 - c. .Minimum side yard: 5 feet
 - d. Minimum rear yard: 25 feet
3. Maximum lot coverage: 40%
4. Maximum impervious surface: 75%

F. Use Limitations.

1. All areas not otherwise used for structures, parking, loading, driveways or walkways shall be landscaped with plant materials.
2. Outdoor storage is prohibited.
3. Unless specifically permitted by Special Use, no business establishment shall offer goods or services directly to customers waiting in motor vehicles.
4. Exterior lighting shall be shaded and/or directed to minimize light cast upon adjoining properties and public streets
5. The outdoor display of items for sale is prohibited.
6. The promotional activities of any business establishment shall not involve the following:
 - b. Outdoor use of string lighting;
 - c. Outdoor use of sound projecting devices or loudspeakers;
 - d. Advertisement materials attached or painted on any wall or on any fence erected to provide screening from adjacent properties;
7. Signs as permitted by Article 7 of these regulations.
8. Off-street parking and loading as required by Article 5 of these regulations.
9. Screening and Landscaping as required by Section 304 of these regulations.
10. The hours of operation for all uses, except the Single-Family Detached Dwellings, shall be limited to 6:00 AM – 10:00 PM daily.
11. Commercial developments within this district shall be limited to a maximum of five contiguous platted lots and/or un-platted parcels.

G. Uses Not Permitted.

1. Any retail, office or service business which involves the outside storage or inventory and/or equipment on either a temporary or permanent basis.
2. Motels and Hotels.
3. Raising and wholesale sales of plant nursery stock.
4. Repair or servicing of motor vehicles, including but not limited to automobiles, trucks, recreational vehicles, motorcycles, boats or trailers, including the on-site installation or removal of parts or accessories.
5. Sale of new or used motor vehicles, including but not limited to automobiles, trucks, recreational vehicles, motorcycles, trailers or boats.
6. Storage Warehouses or Mini-Storage Warehouses.
7. Tattooing and Body Piercing Facilities.
8. Theaters.
9. Vehicle Paint & Body and Repair Shops.
10. Wholesale Businesses.

409 B-3 GENERAL BUSINESS DISTRICT.

This district is intended to group the more intensive retail merchandising activities of the City into concentrated areas. The uses permitted in this district are intended to serve the shopping needs and activities of the City's residents and the residents of Derby's retail trade area. Those types of land uses, which are compatible with and act to strengthen the retail business area, are included as permitted uses.

A. Permitted Uses.

1. Amusement Centers, indoor only, if located outside of APZ I or II.
2. Animal Hospitals limited to the care, treatment and grooming of dogs, cats and other small animals, where all activities take place within a completely enclosed building. Accessory incineration facilities for the disposal of dead animals are prohibited.
3. Any use permitted in the B-2 District. Square footage restrictions included as part of permitted uses in the B-2 District do not apply to those uses in the B-3 District; provided, that the following uses are allowed only if located outside of APZ 1 or II: Candy Stores, Ice Cream Stores, Coffee Shops and Donut Shops, if any such use includes a dining area.
4. Automobile Service Stations, Car Washes, and Vehicle Repair Garages, but not including Body and Fender Repair. [See applicable use limitations of this section].
5. Banks, Savings and Loans, and Credit Unions.
6. Bus Stations and Taxicab Stands.
7. Business, Professional and Public Offices.
8. Child and Adult Day Care, which may include outdoor recreation space.
9. Churches, Chapels, Temples and Synagogues, if located outside of APZ I or II.
10. Convenience Cash Businesses (See applicable use limitations of this section.).
11. Establishments offering repair services such as plumbing and electrical work whose operation involves having no more than 10 employees on the use's zoning lot during any given work shift.
12. Retail Food/Grocery Stores; provided, that if such stores have an enclosed floor area exceeding 3,000 square feet, they must be located outside of APZ I OR II.
13. Home Improvement Centers. [See applicable use limitations of this section].
14. Hospitals.
15. Medical Services.
16. Motels and Hotels, if located outside of APZ I OR II.

17. Motorcycle Sales.
18. Mortuaries and Funeral Homes, if located outside of APZ I OR II.
19. Newspaper and Publishing Offices.
20. Pawnbrokers.
21. Pharmacies (with or without drive-through facilities).
22. Physical Fitness Centers, if located outside of APZ I OR II.
23. Printing Shops.
24. Private and Public Assembly Halls and Fraternal and Service Clubs, if located outside of APZ I OR II.
25. Private Clubs and Drinking Establishments other than Adult Entertainment Establishments, if located outside of APZ I OR II.
26. Restaurants, including drive-in and drive-through establishments. Restaurants may include an option for outdoor eating and serving areas not exceeding in size 20% of the enclosed portion of the business, if located outside of APZ I OR II.
27. Retail businesses, if located outside of APZ I OR II or within APZ II if the combined gross square footage of all buildings within APZ II does not exceed 20% of that portion of the site.
28. Retail Liquor and Cereal Malt Beverage businesses, provided that there is no conflict with Chapter 5.16 (Alcoholic Liquor and Cereal Malt Beverages) of the Derby Municipal Code or any other applicable city ordinances.
29. Shops for manufacturing or assembly of items which are sold at retail on the premises. The manufacture or assembly of items for wholesale sales or for off-site sales is prohibited in the B-3 District.
30. Theaters, indoor, if located outside of APZ I OR II.
31. Vehicle parking lots for temporary outdoor parking of passenger vehicles and trucks that are in operable condition. Vehicles being provided temporary parking shall not exceed a one ton axle weight capacity. No vehicle being provided a parking space which is outside of a completely enclosed building shall be parked for more than 72 consecutive hours.
32. Communication structures, television and radio antennas and broadcasting or microwave transmitting and relay towers which are mounted on the roof or directly secured to a wall of a principal building when the height of the communication equipment is 60 feet or less [See 303.G].
33. Mobile food vending as permitted by the Derby Municipal Code.

34. Other uses not specifically listed above as permitted uses, but which in the opinion of the Zoning Administrator are in keeping with the intent of and compatible with the uses listed this section and in compliance with these regulations.

B. Special Uses.

1. See Section 1101 of these regulations.

C. Exceptions.

1. See Section 1004 of these regulations.

D. Lot Size Requirements.

1. Minimum lot area: 15,000 square feet.
2. Minimum lot width: 35 feet.
3. Minimum lot depth: 100 feet.

E. Bulk Regulations.

1. Maximum structure height: 45 feet, except that communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers mounted on the roof or directly secured to a wall of a principal building may have a maximum height of 60 feet without a special use permit..
2. Yard requirements:
 - a. Minimum front yard: 35 feet. No portion of a communication structure, television and radio antenna or broadcasting and microwave transmitting and relay tower, aerial or any anchor or guy may encroach upon the land or airspace of a required front yard.
 - b. Minimum side yard: When adjacent to a non-residential district, none, but, if there is one provided, it shall not be less than five feet. When adjacent to a residential district, it shall not be less than 20 feet.
 - c. Minimum rear yard: When adjacent to a non-residential district none, but if there is one provided, it shall not be less than five feet. When adjacent to a residential district, it shall not be less than 25 feet.
3. Maximum lot coverage: 50% of the zoning lot, unless a smaller percentage is required because of the off-street parking and loading, landscaping or screening, yard and setback requirements of these regulations.

F. Use Limitations.

1. All business, service, storage and display goods shall be located within a completely enclosed structure, except:

- a. Paved customer and employee vehicle parking and paved parking for vehicles used in conjunction with the business occupying the zoning lot is permitted outdoors.
- b. Temporary uses as permitted by Section 601 of these regulations.
- c. Display and sales area equivalent to not more than five percent of the total floor area of the enclosed portion of the business establishment is permitted outside of a completely enclosed building, unless a different percentage is specifically authorized for certain uses within Section 409(F) or under an approved exception issued in accordance with Section 1004; provided that:
 - 1) Such outside use areas do not occupy or interfere with any required parking spaces or obstruct any vision triangle;
 - 2) The outside use area may be located within any required yard or setback unless the provisions of this subsection (F) or Section 1004 of these regulations prohibit such use of a required yard or setback;
 - 3) The outside use area is paved with concrete or asphaltic concrete, unless provided for otherwise by this subsection (F) or Section 1004 of these regulations;
 - 4) The arrangement of display items shall not obstruct handicapped accessibility or impede pedestrian movement.
- d. HOME IMPROVEMENT CENTERS may have storage or display areas which are located outside of completely enclosed buildings, for building materials and supplies, equivalent to not more than 20% of the total floor area of the completely enclosed portion of the Center; provided that;
 - 1) Items being stored outside of a completely enclosed building are a part of the Center's inventory for future on-site retail sale;
 - 2) At least 50% of all items being stored outside of the enclosed portions of the Center are stored beneath a roof structure, which complements the style of the Center's overall architecture. All ground surface beneath the roofed structure shall be paved with a concrete surface. Any fencing or partial enclosure of the sides, front, or back of the roofed structure shall not contrast with the architectural style of the Center;
 - 3) Any area used for outside merchandise storage or display shall be paved with concrete or asphaltic concrete and provided with appropriate fire-lane aisles;
 - 4) Any accessory structures built or placed for merchandise storage or display purposes and any INCIDENTAL CONCRETE MIXING FACILITY, approved as an exception, shall not be located within a required FRONT YARD SETBACK and shall be located behind the front wall or the principal building. Such accessory structures and uses shall observe at least a 40-foot setback from any perimeter property line, however, only a

10-foot side or rear yard setback is required if the adjacent property is zoned B-3, B-4, B-5 or M-1;

- 5) All items being stored or displayed outside of a completely enclosed building shall be provided solid visual screening and landscaping to block ground-level view by persons occupying residential uses adjacent to or across a street from the Center and along the zoning lot's direct boundary with any residential zoning district. When bordered by any non-residential zoning district, other than the B-3, B-4, B-5 or M-1 Districts, the outside storage or display area shall be provided landscaping to partially screen its ground-level view from such districts;
 - 6) The use area of the outside storage and display shall not be a factor in determining the Center's overall off-street parking requirement;
 - 7) Outside display and storage areas shall not be located within a required FRONT YARD SETBACK and shall observe at least a 10-foot setback from any perimeter property line, however, no side or rear yard setback need be observed if the adjacent property is zoned the B-3, B-4, B-5 or M-1 District.
- e. AUTOMOBILE SERVICE STATIONS and VEHICLE REPAIR BUSINESSES may have storage areas located outside of a completely enclosed building for vehicles undergoing active repair; provided that:
- 1) Any area used for outside storage of vehicles or equipment shall be paved with concrete or asphaltic concrete;
 - 2) Except for required customer and employee parking and the parking of vehicles used in conjunction with the Service Station or Vehicle Repair Business, any area used for outside vehicle storage shall not be located within a required FRONT YARD SETBACK and shall be located behind the front wall of the principal building;
 - 3) Any area used for outside vehicle storage shall observe at least a 10-foot setback from any perimeter property line when the adjacent property is zoned a residential district;
 - 4) Except for required customer and employee vehicle parking and the parking of vehicles used in conjunction with the Service Station or Vehicle Repair Business all vehicles being stored outside shall be provided solid visual screening and landscaping to block ground level view of such vehicles by persons occupying residential uses adjacent to or across a street from the business and along the zoning lots direct boundary with any residential district. When bordered by any non-residential zoning district, other than the B-3, B-4, B-5 or M-1 Districts, the outside vehicle storage area shall be provided landscaping to partially screen its ground-level view from such districts;
 - 5) The use area for the outside vehicle storage shall not be a factor in determining the business' overall off-street parking requirement, unless

during review of the required exception to these regulations, it is decided that such outdoor use areas should be a factor in determining required off-street parking;

- 6) Outside storage of inoperable vehicles and equipment that are not undergoing active repair or which are being salvaged or "parted out" is not permitted in the B-3 District.
2. Exterior lighting fixtures shall be shaded and/or directed to minimize light cast upon adjoining properties and public streets.
 3. Outdoor signs as permitted by Article 7 of these regulations.
 4. Screening and landscaping as required by Section 304 of these regulations, unless specified otherwise by this District's provisions. For purposes of the B-3 District, the term SOLID VISUAL SCREENING means an opaque wall or fence with a height of at least six feet which is required to prevent the passage of debris and light and to mitigate adverse visual impacts. The wall or fence shall be constructed of brick, stone, masonry, architectural tile, concrete, wood or a combination of those materials, but may not include the use of woven wire, welded wire or metal panels. When the wall or fence is located within 20 feet of a street right-of-way line, the height of the wall or fence shall be reduced to three feet.
 5. Off-street parking, vehicle stacking spaces, and loading as required by Article 5 of these regulations.
 6. CAR WASHES shall observe the following use limitations:
 - a. All vehicle washing, drying and cleaning equipment shall observe at least a 60-foot setback from any lot line that is adjacent to property within a residential zoning district or that is used for residential purposes at the time of construction/installation;
 - b. Solid visual screening shall be provided along any side and rear property line which is adjacent to a residential use, a residential zoning district and/or the I-1 or B-1 zoning districts;
 - c. All areas to be used for washing and drying operations, including all driveways, shall be paved with concrete or asphaltic concrete;
 - d. All parking areas shall have adequate guards to prevent the extension or overhanging of vehicles beyond property lines or parking spaces;
 - e. All drainage both natural and that created by the car wash operation shall be handled in a manner satisfactory to the City Engineer and in compliance with all applicable federal, state and local laws, rules, regulations, ordinances, resolutions, policies, procedures and permits;
 - f. The car wash shall be properly policed through inspections by the owner and/or operator to assure proper maintenance of car washing facilities and removal of trash.

7. No new CONVENIENCE CASH BUSINESS shall be located within 1,500 feet of any other existing CONVENIENCE CASH BUSINESS, whether the existing business is located within or outside the city limits, or within 250 feet of any residence, said measurements being made in a straight line without regard to intervening structures or objects, from the nearest portion of the property line of the premises where the existing business or residence is located to the nearest portion of the property line of the premises where the new business is proposed.
8. In addition to the prohibitions of Sections 409.A, 1004, and 1101 of these regulations, the following criteria shall be used to determine whether a specific use shall be prohibited or permitted in the B-3 district when the location of the use is wholly or partially within APZ II:
 - a. The use would involve a level of employment significantly greater than is typical of non-residential uses, considering the size of the area involved in the use.
 - b. The use may result in congregation of a significant number of people, either regularly or occasionally.
 - c. For any retail or similar use, whether it be a single tenant building or a multiple tenant building, the floor area would not exceed 20% of the total lot area. For any manufacturing or similar use, the floor area would not exceed 28% of the total lot area. Warehousing or storage uses would not exceed 60% of the total lot area.
 - d. The use would involve hazardous materials or chemicals that would pose an unreasonable risk in the event of an aircraft-related accident.
 - e. The use would produce conditions detrimental to the safe operation of aircraft using McConnell Air Force Base, such as but not limited to the emission of smoke, light, and electronic signals.

410 B-4 CENTRAL SHOPPING DISTRICT.

This district is similar to the B-3 District, but is intended to recognize that portions of the original retail trade area of the City need reduced requirements for vehicular parking spaces, reduced required yards or setbacks and a wider range of allowable uses in order to remain a viable part of the community.

A. Permitted Uses.

1. Any uses permitted in the B-3 District except hospitals.
2. Automobile, truck, boat, trailer and recreational vehicle sales. [See applicable use limitations of this section].
3. Educational, Religious, Philanthropic and Charitable Institutions, including incidental day care facilities, but not penal or mental institutions.
4. Fraternal and Service Clubs: such as YMCA, YWCA, Scouts, Moose, Veterans' Organizations, Labor Unions, Hobby and Social clubs and similar uses, including incidental child or adult care facilities.
5. Group Homes for persons with a disability which may exceed the limitation on occupancy as defined in Section 202.
6. Microbrewery or Mircrodistillery. [See 410.F.4.]
7. Medical Services.
8. Multiple-family dwellings which do not exceed the density permitted for such dwelling units in the R-4 District.
9. Museums, Libraries and Colleges, including incidental day care facilities.
10. Nursing, Assisted Care and Convalescent Homes.
11. Communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers which are mounted on the roof or directly secured to a wall of a principal building when the height of the communication equipment is 60 feet or less [See 303(G)].
12. Mobile food vending as permitted by the Derby Municipal Code.
13. Other uses not specifically listed above as permitted uses, but which in the opinion of the Zoning Administrator are in keeping with the intent of this Section and compatible with the uses listed herein.

B. Special Uses.

1. See Section 1101 of these regulations.

C. Exceptions.

1. See Section 1004 of these regulations.

D. Lot Size Requirements.

1. Minimum Lot area: 2,500 square feet.
2. Minimum lot width: 25 feet.
3. Minimum lot depth: 100 feet.

E. Bulk Regulations.

1. Maximum structure height: 50 feet, except that communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers mounted on the roof or directly secured to a wall of a principal building may have a maximum height of 60 feet without a special use permit.
2. Yard requirements:
 - a. Minimum front yard: 5 feet on all sides abutting a street. No portion of a communication structure, television and radio antenna or broadcasting and microwave transmitting and relay tower, aerial, or any anchor or guy may encroach upon the land or airspace of a required front yard.
 - b. Minimum side yard: None, but if there is one provided, it shall not be less than five feet.
 - c. Minimum rear yard: None, but if there is one provided, it shall not be less than five feet.
3. Maximum lot coverage: A building structure, or use may occupy all that portion of the lot not otherwise required for off-street parking, driveways, landscaping, screening, loading or the yard requirements listed above.

F. Use Limitations.

1. All business, service, storage and display goods shall be located within a completely enclosed structure, except:
 - a. Paved customer and employee vehicle parking and paved parking for vehicles used in conjunction with the business occupying the zoning lot is permitted outside of a completely enclosed building.
 - b. AUTOMOBILE, TRUCK, RECREATIONAL VEHICLE, TRAILER AND BOAT SALES (both new and used that are for sale or lease), may have vehicle storage and display areas that are not located within a completely enclosed building provided that:

- 1) All outside vehicle storage and display areas shall be provided solid visual screening to block their ground-level view from adjacent residential, institutional, B-1 and B-2 zoning districts;
 - 2) Any area used for outside storage or display of vehicles shall be paved with concrete or asphaltic concrete and shall provide appropriate fire-lane aisles and, if required, fire hydrants;
 - 3) The advertising and promotional activities of the vehicle sales or leasing business shall not include the use of string-type lighting;
 - 4) The outdoor use of sound projecting devices or loudspeakers is prohibited;
 - 5) Customer and employee parking spaces shall be signed as either "Customer Parking" or "Employee Parking." The storage or display of vehicles for sale or lease shall not be permitted on parking spaces signed for such purposes;
 - 6) Vehicles to be sold or leased from shall not exceed a 1 ton weight classification;
 - 7) In accordance with the requirements of Section 501 of these regulations, the use area of outside vehicle storage and display shall be a factor in determining the business' overall off-street parking requirement.
- c. Temporary uses as permitted by Section 601 of these regulations;
- d. Display and sales area equivalent to not more than five percent of the total floor area of the enclosed portion of the business establishment is permitted outside of a completely enclosed building, unless in Section 410.F or Section 1004 of these regulations a different percentage is specifically authorized for certain uses, provided that:
- 1) Such outside use areas do not occupy or interfere with any required parking spaces or obstruct any vision triangle;
 - 2) The outside use area may be located within any required yard or setback unless the provisions of Section 410.F or Section 1004 of these regulations prohibit such use of a required yard or setback;
 - 3) The outside use area is paved with concrete or asphaltic concrete, unless provided for otherwise by Section 410.F or Section 1004 of these regulations,;
 - 4) The arrangement of display items shall not obstruct handicapped accessibility or impede pedestrian movement.
- e. HOME IMPROVEMENT CENTERS same as the B-3 District. [See 409].

2. Exterior lighting fixtures shall be shaded and/or directed to minimize light cast upon adjoining properties and streets.
3. CAR WASHES same as B-3. [See 409.F].
4. MICROBREWERY and MICRODISTILLERY locations shall not conflict with Chapter 5.16 (Alcoholic Liquor and Cereal Malt Beverages) of the Derby Municipal Code or any other applicable federal, state and/or local laws, ordinances, rules and/or regulations.
5. Outdoor signs as permitted by Article 7 of these regulations. The attaching or painting of advertisement on any wall or fence erected to provide screening from adjacent properties is prohibited.
6. Screening and landscaping as required by Section 304 of these regulations, unless specified otherwise by this District's provisions. For purposes of the B-4 District, the term SOLID VISUAL SCREENING means an opaque wall or fence with a height of at least six feet which is required to prevent the passage of debris and light to mitigate adverse visual impacts. The wall or fence shall be constructed of brick stone, masonry, architectural tile, concrete, wood or a combination of those materials, but may not include the use of woven wire, welded wire or metal panels. When the wall or fence is located within 20 feet of a street right-of-way line, the height of the wall or fence shall be reduced to three feet.
7. Off-street parking and loading as required by Article 5 of these regulations.

411 B-5 RESTRICTED COMMERCIAL, WAREHOUSING AND LIMITED MANUFACTURING DISTRICT

This district is designated to permit non-residential uses that (1) are compatible with land designated by the United States Air Force's Air Installation Compatible Use Zone (AICUZ) Study, as being within Accident Potential Zone I or II of McConnell Air Force Base; (2) conforms to the guidelines of the 2004 Sedgwick County Joint Land Use Study (JLUS) (3) are consistent with the capacity and availability of public and private services; (4) are appropriate for development on land experiencing aircraft noise exposure equal to or in excess of 75 DNL; and (5) which provide either landscaping or screening, or a combination of both, to block or soften the view of areas devoted to outside uses and storage. The establishment of this district classification is not meant to be restricted to land designated by the Air Force as APZ I or II. However, it is intended only for properties along or near K-15 Highway from a point north of Red Powell to a point north of 55th Street South and for properties which experience an aircraft noise exposure equal to or above 75 DNL.

A. Permitted Uses.

1. Any use permitted in the B-3 District unless prohibited by Section 411.G.
2. Adult Entertainment Establishments [see 411.F.1 for Use Limitations]; provided, that no Adult Cabaret, Adult Motion Picture Arcade or Adult Motion Picture Theater shall be located within APZ I or APZ II.
3. Automobile, Truck, Trailer, Motorcycle, Recreational Vehicle, and Boat Repair and Sales, including Body and Fender Repair. [See 411.F.7.d and f].
4. Construction Contractor Equipment Storage Yards.
5. Equipment Rental or Sales Businesses. [See 411.F.7.f].
6. Garden Centers, including accessory Greenhouses. [See 411.F.7.g].
7. Laundry and Dry Cleaning where processing or cleaning of clothing is done on the premises.
8. Machine or Welding Shops. [See 411.F.7.j].
9. Mini-Storage Warehouses and Storage Warehouses.
10. Pet Cemeteries, and if first approved as an exception in accordance with Section 1004 of these regulations, accessory Incineration Facilities for disposal of dead animals.
11. Printing Firms.
12. Shops involved in the Manufacture or Assembly of products for wholesale or retail sales either on or off the premises. [See 411.F.7.j].
13. Sign Shops, including Manufacture, Construction and Service. [See 411.F.7.j].

14. Truck Service Stations. [See 411.F.7.f].
15. Vehicle Parking Lots for temporary outdoor parking of passenger vehicles and trucks that are in operating condition. Vehicles being provided temporary outdoor parking shall not exceed a one and one-half ton axle weight capacity. No vehicle being provided a parking space, which is outside of a completely enclosed building, shall be parked on the property for more than 72 consecutive hours.
16. Wholesale Businesses and Storage; except those which handle hazardous chemicals or products of a highly explosive, combustible or volatile nature such as anhydrous ammonia, petroleum products, dynamite including fireworks or similar products which may be considered dangerous to life and/or property.
17. Wholesaling of Plant Nursery Stock, including outdoor cultivation and Greenhouses. [See 411.F.7.g].
18. Communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers which are mounted on the roof or directly secured to a wall of a principal building when the height of the communication equipment is 60 feet or less [See 303.G and 411.E.2.a].
19. Mobile food vending as permitted by the Derby Municipal Code.
20. Other uses not specifically listed above as permitted uses, but which in the opinion of the Zoning Administrator are in keeping with the intent of Section 411, are compatible with the uses listed in Section 411(A) or are listed as Permitted Uses in Table 4.3 of the AICUZ Study in APZ I and/or APZ II.

B. Special Uses.

1. See Section 1101 of these regulations.

C. Exceptions.

1. See Section 1004 of these regulations.

D. Lot Size Requirements.

1. Minimum lot area: 15,000 square feet.
2. Minimum lot width: 100 feet.
3. Minimum lot depth: 150 feet.

E. Bulk Regulations.

1. Maximum structure height: 45 feet, except that communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers mounted on the roof or directly secured to a wall of a principal building may have a maximum height of 60 feet without a special use permit.

2. Yard requirements:

- a. Minimum front yard: 35 feet on all sides abutting a street. No portion of a communication structure, television and radio antenna or broadcasting and microwave transmitting and relay tower, aerial or any anchor or guy may encroach upon the land or airspace of a required front yard setback.
- b. Minimum side yard: When adjacent to a non-residential district, none, but if there is one provided, it shall not be less than ten feet. When adjacent to a residential district, it shall not be less than 20 feet.
- c. Minimum rear yard: When adjacent to a non-residential district, none, but if there is one provided, it shall not be less than ten feet. When adjacent to a residential district, it shall not be less than 25 feet.

3. Maximum lot coverage:

- a. APZ I – 11% for Construction Contractor Equipment Storage yards, 28% for all other permitted uses.
- b. APZ II – 20% for all Retail uses, 22% for Construction Contractor Equipment Storage Yards, 60% for Warehousing and Storage services, and 28% for all other permitted uses.
- c. Outside APZ – 60%, unless a smaller percentage is required to meet the off-street parking, landscaping or screening, yard and setback requirements of these regulations.

F. Use Limitations.

1. In addition to use limitations applicable under these regulations, Adult Entertainment Establishments shall comply with all other City ordinances pertaining to their location of operation, as such ordinances may be from time to time amended.
2. Exterior lighting fixtures shall be shaded and/or directed to minimize light cast upon adjoining properties and streets.
3. Signs as permitted by Article 7 of these regulations. The attaching or painting of advertisement on any wall or fence erected to provide screening from adjacent properties is prohibited.
4. Screening and landscaping as required by Section 304 of these regulations, unless specified otherwise by this District's provisions. For purposes of the B-5 District, the term SOLID VISUAL SCREENING means an opaque wall, landscaped earth berm or fence with a height of at least six feet which is required to prevent the passage of debris and site lighting and to mitigate adverse visual impacts. The wall or fence shall be constructed of brick, stone, masonry, architectural tile, concrete, wood or a combination of those materials, but may not include the use of woven wire, welded wire or metal panels. Landscaped earth berms shall be per a plan approved in accordance with subsection 304.E of these regulations.

5. Off-street parking and loading as required by Article 5 of these regulations.
6. In addition to the prohibitions of Section 413 G, the following criteria shall be used to determine whether a specified use shall be prohibited or permitted in the B-5 district when the location of the use is wholly or partially within APZ I or II:
 - a. The use would involve a level of employment significantly greater than is typical of non-residential uses, considering the size of the area involved in the use.
 - b. The use may result in the congregation of a significant number of people on a regular basis.
 - c. The use would involve hazardous materials or chemicals that would pose an unreasonable risk in the event of an aircraft related accident.
 - d. The use would produce conditions detrimental to the safe operation of aircraft using McConnell Air Force Base such as, but not limited to, emission of smoke, light or electronic signals.
7. All business, service, storage, manufacturing and display of goods shall be located within a completely enclosed building, except:
 - a. Paved customer and employee vehicle parking and parking for vehicles used in conjunction with the business occupying the zoning lot is permitted outside of a completely enclosed building;
 - b. Temporary uses as permitted by Section 601 of these regulations.
 - c. Display and sales area equivalent to not more than ten percent of the total floor area of the enclosed portion of the business establishment is permitted outside of a completely enclosed building; provided that:
 - 1) The outside use area shall not occupy or interfere with any required parking spaces or obstruct any vision triangle;
 - 2) The outside use area shall observe at least a 10-foot setback from any perimeter property line; however, no side or rear yard setback need be observed if the adjacent property is zoned B-5 or M-1;
 - 3) The outside use area, if located in front of the front wall of the principal building, shall be paved with concrete, asphalt or asphaltic concrete. If the outdoor display area is located behind the front wall of the principal building, the use area may be surfaced with hard aggregate as defined in these regulations;
 - 4) The arrangement of display items shall not obstruct accessibility for persons with disabilities or impede pedestrian movement.
 - d. BUSINESSES OFFERING AUTOMOBILES, TRUCKS, RECREATIONAL VEHICLES, MOTORCYCLES, TRAILERS AND BOATS FOR SALE may have storage and display areas for sales inventory that are not located in a completely enclosed building; provided, that:

- 1) All outside vehicle storage and display areas shall be provided solid visual screening to block their ground-level view from adjacent residential, institutional, B-1 and B-2 zoning districts;
 - 2) Any area used for outside storage or display of vehicles shall be paved with asphalt, concrete or asphaltic concrete and shall provide appropriate fire lane aisles and, if required, fire hydrants. Such use may be located within a FRONT YARD SETBACK;
 - 3) As per the requirements of Section 501 of these regulations, the use area of outside vehicle storage and display shall be a factor in determining the business' overall off-street parking requirement.
- e. HOME IMPROVEMENT CENTERS may have storage areas for building materials and supplies and/or merchandise display areas which are located outside of a completely enclosed building; provided that
- 1) The total square footage of storage and merchandise display areas located outside of a completely enclosed building shall not exceed in size the square footage of the completely enclosed portions of the Home Improvement Center;
 - 2) Outside storage areas for building materials and supplies shall be fenced and shall not be located within any FRONT YARD SETBACK or in front of the front wall of the principal building and shall observe at least a 10-foot setback from any perimeter property line. No side or rear yard setback need be observed if the adjacent property is zoned B-5 or M-1;
 - 3) When the zoning lot is bordered by any zoning district other than the B-5 and M-1 Districts, the outside storage area for building materials and supplies shall be provided solid visual screening to block its ground level view from such zoning districts. The height of required solid visual screening shall not be less than six feet;
 - 4) Outside storage areas for building materials and supplies shall be provided solid visual screening to block their view from persons traveling along any street which abuts the zoning lot. The height of required solid visual screening shall not be less than six feet;
 - 5) Any area used for outside display of building materials and supplies, which is in front of the front wall of the principal building, shall be paved with either concrete, asphalt or asphaltic concrete. If the outside storage area is located behind the front wall of the principal building, the use area may be surfaced with hard aggregate as defined in these regulations. All outside storage areas shall provide appropriate fire-lane aisles and, if required, fire hydrants;
 - 6) Any roofed, but unenclosed, structure built for storage of building materials and supplies or other merchandise and any INCIDENTAL

CONCRETE MIXING FACILITY, approved as an exception, shall not be located within any FRONT YARD SETBACK and shall be located behind the front wall of the principal building. Such uses shall observe at least a 25-foot setback from any perimeter property line, however, no side or rear yard setback need be observed if the adjacent property is zoned B-5 or M-1;

- 7) Outside merchandise display areas shall observe at least a 10-foot setback from any perimeter property line, however, no side or rear yard setback need be observed if the adjacent property is zoned B-5 or M-1;
 - 8) When the zoning lot is bordered by any non-residential zoning district, other than the B-5 and M-1 Districts, the outdoor merchandise display area and any INCIDENTAL CONCRETE MIXING FACILITY shall be provided landscaping to partially screen its ground-level view from such districts. When the zoning lot is bordered by any residential zoning district, the outdoor merchandise display area or CONCRETE MIXING FACILITY shall be provided solid visual screening to block its ground-level view from such districts. The height of required solid visual screening shall not be less than six feet;
 - 9) Outside merchandise display areas, if located in front of the front wall of the principal building, shall be paved with concrete, asphalt or asphaltic concrete. If the outdoor display area is located behind the front wall of the principal building, the use area may be surfaced with hard aggregate as defined in these regulations. The arrangement of display items shall not obstruct accessibility for persons with disabilities or impede pedestrian movement;
 - 10) Outside merchandise display areas shall not be a factor in determining the Home Improvement Center's overall off-street parking requirement. Outside storage areas for building materials and supplies shall not be a factor in determining required parking.
- f. VEHICLE REPAIR BUSINESSES, EQUIPMENT RENTAL BUSINESSES AND TRUCK SERVICE STATIONS may have storage areas for vehicles and equipment that are outside a completely enclosed building; provided that:
- 1) For EQUIPMENT RENTAL AND SALES BUSINESSES; any area used for outdoor storage of rental inventory, including but not limited to vans, trucks and trailers, shall be fenced, shall not be located within any FRONT YARD SETBACK and shall be located behind the front wall of the principal building. Such use areas shall observe at least a 10-foot setback from any perimeter property line, however, no side or rear yard setback need be observed if the adjacent property is zoned B-5 or M-1;
 - 2) For EQUIPMENT RENTAL AND SALES BUSINESSES; all rental inventory and items being stored outdoors and any INCIDENTAL CONCRETE MIXING FACILITY shall be provided solid visual

screening to block ground-level view from residential, institutional, B-1 or B-2 zoning districts which border the zoning lot. The height of required solid visual screening shall not be less than six feet;

- 3) For EQUIPMENT RENTAL AND SALES BUSINESSES; all rental inventory and items being stored outdoors and any INCIDENTAL CONCRETE MIXING FACILITY shall be provided solid visual screening to block the view of items being stored by persons traveling on any street which abuts the zoning lot. The height of required solid visual screening shall not be less than six feet;
- 4) The area used for outdoor vehicle and equipment storage shall not be a factor in determining the principal use's overall off-street parking requirement, unless during review of a required exception permitted under Section 1004 of these regulations, it is decided that such outdoor storage areas should be a factor in determining required off-street parking;
- 5) For VEHICLE REPAIR BUSINESSES AND TRUCK SERVICE STATIONS areas used for the temporary storage of vehicles undergoing active repair shall be paved with asphalt, concrete or asphaltic concrete. Such temporary outdoor storage areas shall not be located within any FRONT YARD SETBACK and shall be located behind the front wall of the principal building. Outdoor storage of inoperable vehicles and equipment that are not undergoing active repair or which are being salvaged or "parted out" is not permitted in the B-5 District;
- 6) Any INCIDENTAL CONCRETE MIXING FACILITY, approved as an exception for an EQUIPMENT RENTAL BUSINESS, shall not be located within any FRONT YARD SETBACK and shall be located behind the principal building. Such incidental use shall observe at least a 25-foot setback from any perimeter property line, however, only a 10-foot side yard or rear yard setback need be observed if the adjacent property is zoned B-5 or M-1. Solid visual screening of the Concrete Mixing Facility shall be provided as required above;

All vehicular parking areas for customer and employee vehicles and for the parking of vehicles used in conjunction with the business occupying the zoning lot and parking and storage areas for rental vehicles and rental equipment, shall be paved with concrete, asphalt or asphaltic concrete.

- g. GARDEN CENTERS and businesses involved with the WHOLESALING OF PLANT NURSERY STOCK may have use areas, for the cultivation of plant materials, GREENHOUSES and display areas for plant materials and merchandise, which are outside of completely enclosed building; provided that:

- 1) OUTDOOR PLANT NURSERY AREAS shall be fenced and shall be provided perimeter landscaping to partially screen their ground-level view from adjacent residential, institutional, B-1 or B-2 zoning districts;
 - 2) The total square footage of merchandise display areas, located outside of a completely enclosed building, shall not exceed in size the square footage of the enclosed portion of the business. For purposes of making the square footage calculation, area used for OUTDOOR PLANT NURSERIES shall not be counted;
 - 3) Outside merchandise display areas shall observe at least a 10-foot setback from any perimeter property line, however, no side or rear yard setback need be observed if the adjacent property is zoned B-5 or M-1;
 - 4) When the zoning lot is bordered by any nonresidential zoning district, other than the B-5 and M-1 Districts, the outside merchandise display area shall be provided landscaping to partially screen its ground-level view from such districts. When the zoning lot is bordered by any residential district, the outside merchandise display area shall be provided solid visual screening to block its ground-level view from such districts. The height of required solid visual screening shall not be less than six feet;
 - 5) Outside merchandise display areas, if located in front of the front wall of the principal building, shall be paved with concrete, asphalt or asphaltic concrete. If the outdoor display area is located behind the front wall of the principal building, the use area may be surfaced with hard aggregate as defined by these regulations. The arrangement of display items shall not obstruct accessibility for persons with disabilities or impede pedestrian movement:
 - 6) GREENHOUSES shall observe at least a 40-foot setback from any perimeter property line, however, only a 10-foot side or rear yard setback is required if the adjacent property is zoned B-5 or M-1;
 - 7) Outside merchandise display areas shall not be a factor in determining the Garden Center's overall off-street parking requirement. OUTDOOR PLANT NURSERY AREAS shall not be a factor in determining the amount of required off-street parking.
- h. SWIMMING POOL EQUIPMENT BUSINESSES may have use areas, for the display of swimming pools and accessory items common to swimming pools, that are outside of a completely enclosed building; provided that:
- 1) The total square footage of display areas, not located within a completely enclosed building, shall not exceed in size the square footage of the enclosed portion of the business;
 - 2) Outside pool and merchandise display areas shall observe at least a 10-foot setback from any perimeter property line, however, no side or

rear yard setback need be observed if the adjacent property is zoned B-5 or M-1;

- 3) When the zoning lot is bordered by any nonresidential zoning district, other than the B-5 and M-1 Districts, the outside pool and merchandise display area shall be provided landscaping to partially screen its ground-level view from such districts. When the zoning lot is bordered by any residential zoning district, the outside pool and merchandise display area shall be provided solid visual screening to block its ground-level view from such districts. The height of required solid visual screening shall not be less than six feet;
 - 4) Outside pool and merchandise display areas, if located in front of the front wall of the principal building, shall be paved with concrete, asphalt or asphaltic concrete. If the outdoor display area is located behind the front wall of the principal building, the use area may be surfaced with hard aggregate as defined by these regulations. Outdoor display areas shall provide appropriate fire-lane aisles and, if required, fire hydrants. The arrangement of display items shall not obstruct accessibility for persons with disabilities or impede pedestrian movement;
 - 5) Outside pool and merchandise display areas shall not be a factor in determining the business' overall off-street parking requirement.
- i. Businesses offering for sale BURIAL MONUMENTS may have areas for the display and storage of burial monuments which are outside of a completely enclosed building; provided, that:
- 1) The total square footage of display and storage areas, not located within a completely enclosed building, shall not exceed in size the square footage of the enclosed portion of the business;
 - 2) Outside burial monument display and storage areas shall observe at least a 10-foot setback from any perimeter property line, however, no side or rear yard setback need be observed if the adjacent property is zoned B-5 or M-1.
 - 3) When the zoning lot is bordered by any nonresidential zoning district, other than the B-5 or M-1 Districts, the outside burial monument display and storage area shall be provided landscaping to partially screen its ground-level view from such districts. When the zoning lot is bordered by any residential district, the outside burial monument display and storage area shall be provided solid visual screening to block its ground-level view from such districts. The height of required solid visual screening shall not be less than six feet;
 - 4) Outside burial monument display and storage areas, if located in front of the front wall of the principal building, shall be paved with concrete, asphalt or asphaltic concrete. If the outdoor display area is located behind the front wall of the principal building, the use area may be

surfaced with hard aggregate as defined by these regulations. The arrangement of display items shall not obstruct accessibility for persons with disabilities or impede pedestrian movement;

- 5) Outside burial monument display and storage areas shall not be a factor in determining the business' overall off-street parking requirement.
- j. MACHINE OR WELDING SHOPS, MANUFACTURING OR ASSEMBLY SHOPS AND SIGN SHOPS may have storage areas, for materials used in conjunction with the business, that are outside of a completely enclosed building; provided that:
- 1) The total square footage of storage areas not located within a completely enclosed building shall not exceed in size the square footage of the enclosed portion of the business;
 - 2) Any area used for outside storage shall be paved with asphalt, concrete or asphaltic concrete or surfaced with hard aggregate;
 - 3) Any area used for outside storage shall be fenced and shall be located behind the front wall of the principal building. Such outside storage areas shall observe at least a 10-foot setback from any perimeter property line, however, no side or rear yard setback need be observed if the adjacent property is zoned B-5 or M-1;
 - 4) Any area used for outside storage shall be provided solid visual screening to block ground level view from residential, institutional, B-1 or B-2 zoning districts which border the zoning lot. The height of required solid visual screening shall not be less than six feet;
 - 5) Any area used for outside storage shall be provided solid visual screening to block the view of items being stored by persons traveling on any street which abuts the zoning lot. The height of required solid visual screening shall not be less than six feet;
 - 6) The area used for outside storage shall not be a factor in determining the principal use's overall off-street parking requirement;
 - 7) All vehicular parking areas for customer and employee parking and for the parking of vehicles used in conjunction with the permitted use shall be paved with asphalt, concrete or asphaltic concrete.

G. Uses Prohibited.

Nothing in the preceding subsections shall be construed to permit the following uses in the B-5 District:

1. Agricultural Feed, Grain and Fertilizer Mixing or Storage.

2. Building Materials Production, except incidental fabrication of metal building products at machine or welding shops and except concrete mixing facilities permitted as an exception in accordance with Section 1004 of these regulations
3. Building Materials Storage Yards, except as permitted by 411.F.7.e for Home Improvement Centers.
4. Child Care Facilities, Adult Care Homes and Centers, Group Homes and Assisted Care Homes.
5. Churches, Chapels, Temples and Synagogues.
6. Correctional Facilities.
7. Medical Facilities and uses, including Hospitals, Health Clinics, Minor Medical Emergency Centers, Rehabilitation Homes and Nursing or Convalescent Homes and Medical and Dental Office.
8. Oil Field Equipment Assembly, Repair, Storage and Sales.
9. Physical Fitness Centers when located in APZ II,.
10. Public Assembly Uses, such as; Amusement Centers, Theaters, Private and Public Assembly Halls and Fraternal and/or Service Clubs.
11. Public and Private Schools (all levels and types), Libraries and Museums.
12. Residential uses, except for a night watchman permitted as part of an exception granted in accordance with Section 1004 of these regulations for an Outdoor storage yard which leases space for the temporary storage of operable commercial trucks or trailers, recreational vehicles or equipment, boats, campers and operable automobiles and trucks.
13. Retail uses, when located in APZ I.
14. Restaurants, Private Clubs and Drinking Establishments when located in APZ II.
15. Retail Food Stores which have an enclosed floor area exceeding 3,000 square feet when located in APZ II.
16. Salvage Yards.
17. Transient Lodging, Hotels, Motels, Bed and Breakfast Inns and Recreational Vehicle Parks.
18. Those uses listed in Section 412(B) as prohibited in the M-1 Industrial District.

412 M-1 INDUSTRIAL DISTRICT

This district is intended for general manufacturing uses which (1) do not generally require large amounts of land; (2) do not generate excessive amounts of traffic; (3) are consistent with the capacity and availability of public and private services; (4) limit the intermixing of residences; and (5) have the potential of generating limited environmental impact, including but not specifically limited to the creation of odor, smoke, dust, glare, vibration, noise and the use of dangerous and/or hazardous materials. This district is not intended for basic industry uses or residential uses.

A. Permitted Uses.

1. Agricultural, Construction and Oil Field Equipment Assembly, Repairs, Storage and Sales.
2. Agricultural Feed, Grain and Fertilizer Mixing, Storage and Sales.
3. Aircraft Sub-assembly and Parts Manufacturing, including incidental sales.
4. Animal Hospitals, which may include accessory Incineration Facilities for disposal of dead animals. Animal Hospitals may provide accessory Dog Kennel facilities, provided all such activities are conducted within a completely enclosed building. The Animal Hospital may include the incidental sales of pet supplies and accessories.
5. Assembly, Manufacture or Repair of electrical and mechanical appliances, instruments and the like.
6. Automobile, Truck, Trailer, Motorcycle and Recreational Vehicle, Repair, Storage and Sales, including Body and Fender Repair. [See 412.G.3].
7. Automobile Service Stations and Car Washes. [See 412.G.5].
8. Boat Building, Repair and Sales.
9. Building Material Production (no extraction operation), Storage and Sales including manufactured housing, lumber, mixed concrete, asphalt, sand and gravel. [See 412.G.3].
10. Burial Monument Sales.
11. Business and Professional Offices.
12. Clothing and Textile Manufacture, including incidental sales.
13. Construction Contractor's Office, Equipment and Storage area. [See 412.G.3].
14. Equipment Rental and Sales Businesses. [See 412.G.3].
15. Food Manufacture, Distribution, Storage and Sales. [See 412.B.22].
16. Furniture Manufacture, Repair and Sales.

17. Garden Centers.
18. Greenhouses, including incidental sales.
19. Home Improvement Centers.
20. Laundry, Dry Cleaning and Dyeing Works.
21. Lumberyards.
22. Machine Shops.
23. Mail Receiving and Packaging Services.
24. Manufactured Products such as: bags, bicycles, brooms, brushes, ceramics, cosmetics, drugs, jewelry, paint, paper goods, shoes, sporting and office equipment, toys and the like.
25. Metal Fabrication and Assembly, including incidental sales.
26. Microbreweries and Microdistilleries.
27. Motor Freight Terminals.
28. Pet Cemeteries, including accessory Incineration Facilities for disposal of dead animals.
29. Plant Nurseries, including incidental sales.
30. Printing Firms.
31. Private Clubs and Drinking Establishments, if located outside of APZ II.
32. Private, operated for profit, Outdoor Recreational uses.
33. Publishing Companies.
34. Public Utility Uses including water towers and standpipes not exceeding the Bulk Regulations set forth in Section 412.F.
35. Research Laboratories.
36. Restaurants, including drive-in and drive-through establishments, provided such uses are located outside of APZ II.
37. Security Device Shops.
38. Sign Shops; Manufacture, Construction, Service and Sales.
39. Stone Monument Works.

40. Swimming Pool Equipment Businesses.
41. Truck Service Stations and Truck Washes. [See 412.G.5].
42. Welding Shops.
43. Wholesale Businesses and Storage and Mini-Storage Facilities; except those, which handle products of an explosive, combustible or volatile nature such as anhydrous ammonia, petroleum products, dynamite including fireworks or similar products, which may be determined by the Zoning Administrator to be potentially dangerous to life and/or property.
44. Communication structures, television and radio antennas and broadcasting and microwave transmitting and relay towers which are mounted on the roof or directly secured to a wall of a principal building when the height of the communication equipment is 60 feet or less;
45. Mobile food vending as permitted by the Derby Municipal Code.
46. Other uses not specifically listed above as permitted uses, but which in the opinion of the Zoning Administrator are in keeping with the intent of Section 412 and compatible with the uses listed in Section 412.A.

B. Uses Prohibited.

Nothing in the proceeding subsections shall be construed to permit the following uses in the “M-1 District:

1. Acid Manufacture.
2. Adult or Child Day Care, except as permitted by Section 600(B), provided such accessory use is located outside of APZ II.
3. Automobile Race Tracks.
4. Cement, Lime, Gypsum or Plaster of Paris Manufacture.
5. Churches, Chapels, Temples, and Synagogues.
6. Creosote or Tar Treatment.
7. Distillation of Bones.
8. Explosives Manufacture or Storage, including Fireworks.
9. Fat Rendering.
10. Fertilizer Manufacture.

11. Garbage, Offal or Dead Animal Incineration or Reduction, unless the incineration facility is accessory to an Animal Hospital or a Pet Cemetery.
12. Glue or Soap Manufacture.
13. Hospitals.
14. Medical and Dental Offices.
15. Minor Medical Emergency Centers when located within APZ II.
16. Motorcycle Motorcross.
17. Petroleum Processing and Refining.
18. Primary Smelting of Base Metals from Ore.
19. Those Public Assembly Uses which are otherwise permitted in the M-1 District, e.g., Restaurants, Private Clubs and Drinking Establishments when located within APZ II.
20. Residential uses except for a night watchman permitted as part of an exception granted in accordance with Section 1004 of these regulations for a Building Materials Storage Yard or an Outdoor Storage yard which leases space for the temporary storage of operable commercial trucks or trailers, recreational vehicles or equipment, boats, campers, automobiles and/or trucks.
21. Retail Food Stores which have an enclosed floor area exceeding 3,000 square feet when located within APZ II.
22. Stockyards, Livestock Sales Barns and the Slaughter of animals and poultry.
23. Tanning, Curing or Storage of Rawhides or Skins.

C. Special Uses.

1. See Section 1101 of these regulations.

D. Exceptions.

1. See Section 1004 of these regulations.

E. Lot Size Requirements.

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

F. Bulk Regulations.

1. Maximum structure height: Three stories or 50 feet, exclusive of grain elevators, except that television and radio antennas, broadcasting and microwave transmitting and relay towers and water towers and standpipes may be a maximum height of 60 feet.
2. Yard requirements:
 - a. Minimum front yard: 35 feet when adjacent to an arterial street, 25 feet when adjacent to other types of street rights-of-way. No portion of a communication structure, television and radio antenna or broadcasting and microwave transmitting and relay tower, aerial or any anchor or guy may encroach upon the land or airspace of a required front yard setback.
 - b. Minimum side yard: When adjacent to a non-residential district, none, but if a side yard is provided, it shall be not less than 10 feet. When adjacent to a residential district, it shall not be less than 20 feet.
 - c. Minimum rear yard: When adjacent to a non-residential district, none, but if a rear yard is provided, it shall be not less than 10 feet. When adjacent to a residential district, it shall not be less than 25 feet.
3. Maximum lot coverage: 75%

G. Use Limitations.

1. Outdoor operations, display and storage is prohibited within a FRONT YARD SETBACK, except as provided for below:
 - a. Required and accessory customer and employee vehicle parking and parking for vehicles used in conjunction with the business occupying the zoning lot is permitted in the FRONT YARD SETBACK;
 - b. If the principal business use is the sales or rental of automobiles, trucks, boats, trailers, recreational vehicles or motorcycles, the display of such vehicles or equipment for sale or rent may be located on paved areas within the FRONT YARD SETBACK;
2. Development of any part of a site which is located within APZ II, as established by the 1994 AICUZ Study prepared by the United States Air Force and any amendments thereto, shall observe maximum lot coverage restrictions established in 411.E [Bulk Regulations - B-5 District] of these regulations.
3. Businesses devoted to the temporary OUTDOOR STORAGE OF OPERABLE VEHICLES, BOATS, RECREATIONAL VEHICLES OR EQUIPMENT, TRAILERS and such, EQUIPMENT SALES AND RENTAL BUSINESSES which involve outside storage yards for equipment or vehicles that are for rent or sale and BUILDING CONTRACTOR or BUILDING MATERIAL PRODUCTION OR STORAGE BUSINESSES which involves the outside storage of excavation and/or earth moving equipment and/or building materials and supplies, shall provide fenced storage yards

- for such items that are paved with concrete, asphalt or asphaltic concrete or which are surfaced with minimum three-quarter inch diameter crushed rock or approved alternate material, such as asphalt millings, to a depth of at least four inches. If a crushed rock or alternate material surface is selected, the subgrade of such areas shall be treated to the specifications of the City Engineer. Areas surfaced with crushed rock shall be treated with dust retardants, as needed, and stored equipment and vehicles shall be kept free of weeds. Appropriate fire-lane aisles and, if required, fire hydrants shall be provided. All vehicular parking areas for customers, employees and for vehicles associated with the business, except as provided above, shall be paved with concrete, asphalt or asphaltic concrete.
4. Areas used for the temporary outdoor storage of vehicles undergoing active repair shall be paved with asphalt, concrete or asphaltic concrete. Such temporary outdoor storage areas shall not be located within any FRONT YARD SETBACK. Storage, outside of a completely enclosed building, of inoperable vehicles and equipment that are not undergoing active repair or which is being salvaged or "parted out" is not permitted in the M-1 District, unless an exception for a salvage yard has been granted in accordance with Section 1004 of these regulations.
 5. Outdoor merchandise display areas shall be paved with concrete, asphalt or asphaltic concrete and, except as provided above by use limitation number 1, shall not be located within any FRONT YARD SETBACK. The arrangement of display items shall not obstruct handicapped accessibility or impede pedestrian movement.
 6. Outdoor signs as permitted by Article 7 of these regulations. The attaching or painting of advertisement on any wall or fence erected to provide screening from adjacent properties is prohibited.
 7. Screening and landscaping as required by Section 304 of these regulations, unless specified otherwise by this District's provisions. For purposes of the M-1 District, the term SOLID VISUAL SCREENING means an opaque wall or fence with a height of at least six feet which is required to prevent the passage of debris and light and to mitigate adverse visual impacts. The wall or fence shall be constructed of brick, stone, masonry, architectural tile, concrete, wood or a combination of those materials, but may not include the use of woven wire, welded wire or metal panels. When the wall or fence is located within 20 feet of a street right-of-way, the height of the wall or fence shall be reduced to three feet.
 8. Off-street parking and loading as required by Article 5 of these regulations.

413 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT.

The Planned Unit Development District is a Special Purpose Base Line Zoning District. The PUD district is not defined as an overlay district and is not granted in conjunction with other baseline or underlying zoning districts. Future development within the PUD District is based on a Site Development Plan or map that depicts the general layout of the future land use types planned to be developed within the PUD along with written text that explains and details the developmental layout.

A. Residential Planned Unit Development District

1. Statement of Intent.

The purpose of the Residential Planned Unit Development (PUD) District is to provide well planned, cohesive and unified residential developments for properties held under unified control at the time of initial Residential PUD approval. In order to achieve this purpose, the Residential PUD review process recognizes there may be a need to establish controls not typically required of non-unified or residential developments that are not planned as an integrated unit. The review process also recognizes that, in order to provide greater design flexibility for unified residential developments, it may be necessary to deviate from: (1) the bulk and lot area requirements typical of the common base line residential zoning districts, and (2) the requirements of the landscaping section of these regulations, as well as, (3) the design and improvement standards of the City's Subdivision Regulation.

For purposes of these regulations, UNIFIED RESIDENTIAL DEVELOPMENTS are defined as the grouping of building sites, planned as an integrated unit or cluster, on property under unified control or ownership at the time the Residential PUD District was approved by the City. The sale, subdivision or other partition of the site after Residential PUD approval does not exempt the project, or portions thereof, from complying with the development standards committed to at the time of Residential PUD approval. The submittal by the developer and the approval by the City of development plans represent a firm commitment by the developer that development will indeed follow the approved plans in concept, intensity of use and quantities of open space.

The protection of public safety, convenience, health and general welfare is accomplished for a Residential PUD through a review of the size, shape, orientation and location of differing residential land use types or densities relative to the entire tract of land subject to the Residential PUD District. The purposes to be achieved by such a review is to ensure that future residential uses are provided:

- a. Proper ingress and egress from adjacent street rights-of-way relative to anticipated traffic demand;
- b. Sufficient land area for on-site storm water detention areas and other drainage facilities needed to serve the residential development in compliance with all applicable federal, state and local laws, rules, regulations, ordinances, resolutions, policies, procedures and permits;

- c. Sufficient land area for common open space and recreational facilities to serve the residential development;
- d. Adequate land area to accomplish effective screening and landscaping, from adjacent properties and / or street rights-of-way, of the planned residential development;

The Residential PUD District is intended to encourage: (1) innovation in residential development by permitting greater variety and flexibility in type, design and layout of dwellings, (2) more efficient use of land by reflecting changes in the technology of residential land development, (3) development which incorporates the best features of modern residential design, while conserving the value of land, and (4) planned residential developments that are designed in a manner that will produce more usable open space, better recreational opportunities, and safer and more attractive neighborhoods than under conventional residential zoning and development techniques. Provided however items 1 through 4 shall be considered as guidelines only and not as mandates or requirements of a PUD application. Other reasonable concepts of innovative and creative development design can be considered.

As such, the Residential PUD District provides a developer with the latitude of using innovative techniques in the development of residential uses not feasible under application of conventional residential zoning requirements. The Residential PUD District is intended to provide a procedure that relates the type, design and layout of residential development to the particular site and particular demand for housing in a manner consistent with the public health, safety and/or welfare.

The layout and character of the development subject to a Residential PUD District must be appropriate relative to surrounding properties and conditions. As such, safeguards or conditions for future development may be established as a part of the Residential PUD District to ensure that the development will minimize negative impacts, if any, to the value of surrounding property and its enjoyment by its owners or occupants.

The design of a Residential PUD District must be such that access and circulation by firefighting equipment and other emergency vehicles are assured and are not retarded by heavy or extensive landscaping, walls or fences or building spacing.

2. **Standards for Residential Planned Unit Developments (PUD).** The following regulations shall apply to property intended for residential development which is zoned the Residential PUD District:
 - a. **Ownership.** The entire tract of land to be established as a PUD shall be held by a single landowner, or if there are two or more owners, the PUD application must be filed jointly by all owners listed on the ownership list.
 - b. **Size.** There is not a minimum acreage requirement for the Residential PUD District.
 - c. **Uses Permitted.** Any residential land use type and density, including exceptions and special uses typical in the common base line residential zoning districts, may be permitted within the Residential PUD District provided the Planning Commission and Governing Body determines the land

uses are appropriate for the Residential PUD and the uses are specifically listed as permitted by the text detailing the Residential PUD Site Development Plan and further provided that mobile homes shall not be permitted as part of any Residential PUD. A Residential PUD may include provision for neighborhood swimming pools, neighborhood clubhouses and other recreational areas and facilities intended for use by persons residing within the Residential PUD.

d. **Development Intensity.** The level of residential development allowed within a Residential PUD shall not exceed the level that can be adequately served by public facilities.

1) **Increased Density.** A Residential PUD District may provide for a greater number of dwelling units per gross acre than would be permitted by the common base line residential zoning district(s) otherwise applicable to the site. If the proposed number of dwelling units per gross acre, for the entire Residential PUD, exceeds the density permitted by the applicable common base line residential district(s), the Residential PUD applicant must demonstrate to the satisfaction of the Planning Commission and Governing Body that the increased density or intensity of use will not have an undue or adverse impact on public facilities and will not interfere with the reasonable enjoyment of neighboring properties by their owners and / or occupants.

In the case of a common base line zoning district(s), which does not permit residential uses, the dwelling units per gross acre calculation shall be based on the density permitted by the “R-1” Single Family Residential District. When calculating the maximum residential density permitted under conventional “R-1” zoning, the number of dwelling units permitted per gross acre shall be 3.52. When evaluating a proposal for increased residential density for a Residential PUD, or specific Residential PUD parcel, the Planning Commission and Governing Body shall review the proposal relative to the following:

- i. Areas being established for common or private recreational amenities, such as golf courses or homeowner association owned neighborhood swimming pools, tennis courts and playgrounds;
- ii. Areas being established for perpetual common open space that are of a character, size and shape to accommodate future recreational use by residents of the PUD District;
- iii. Areas being established as future sites for a public park or as permanent easements for creek side hike and bike trails and / or other public recreation and access purposes;
- iv. The physical characteristics of the subject PUD parcel and its location relative to the overall development layout of the PUD; and
- v. The location, design and type of dwelling units and other uses to be developed on land making up the subject PUD parcel.

If increased density is not effectively accommodated by the provision of recreational amenities and / or perpetual open space, the Planning Commission and Governing Body may deny the proposed density increase.

Any common open space established as a result of a decision to increase the residential development density of a Residential PUD, or specific Residential PUD parcel, SHALL BE set aside for the perpetual use, benefit and enjoyment of the residents of the Residential PUD District. As a condition of Residential PUD approval, the Planning Commission and / or Governing Body shall require the applicant to provide for the establishment of an agency that will own and maintain the common open space. Such agency SHALL NOT be dissolved or permitted to dispose of any common open space, established to permit a Residential PUD to develop to a density greater than that permitted under conventional residential zoning, by sale or otherwise (except to a new agency assuming all the duties and obligations of the original agency). If the agency fails to maintain such common open space, or improperly disposes of the open space, or if the applicant fails to establish the agency such action or actions shall be considered a violation of these regulations and subject to the penalties and / or remedies set forth in Section 903 of these regulations.

- 2) **Decreased Density.** A Residential PUD District may be used to achieve, and assure in perpetuity, less dense residential development than would be permitted or assured by the common base line residential district(s) otherwise applicable to the site. The location, size and shape of a Residential PUD, or Residential PUD parcels, that provides for less dense residential development than is typical of areas developed under conventional residential zoning shall be evaluated for appropriateness relative to the following:
 - i. The effect that reduced density and its proposed layout will have on the future development of adjacent properties according to conventional zoning and subdivision design and improvement practices;
 - ii. The effect that reduced density and its proposed layout will have on the City’s ability to provide public services and infrastructure in a cost effect fashion; and
 - iii. The existence of either natural or man-made topographical features that reduce the capacity of land to support conventional residential densities. Such areas include floodplains, areas subject to an aircraft noise exposure that is equal to or greater than 70 DNL, and areas with infrastructure constraints.

If, because of decreased residential density, infrastructure design and improvement standards are proposed to be modified the Residential PUD applicant must demonstrate to the satisfaction of the Planning Commission and Governing Body that modified infrastructure is appropriate in terms of the density of residential development to be served and the present and future long-term development needs and interests of the City. As part of this demonstration, it must be shown that modified infrastructure (1) will not result in an undue future maintenance burden to either residents of the PUD or the City, (2) will not adversely affect the street and utility layout system of the general area of the City in which the PUD District is located, and (3) will not jeopardize public health and safety.

e. **Development Standards.** Subject to adequate justification being provided by the Residential PUD applicant, the following otherwise applicable development standards of these regulations may be deviated from as part of approval of a Residential PUD Site Development Plan and rezoning process:

- 1) Minimum lot size, depth and width,
- 2) Maximum lot coverage,
- 3) Maximum building or structure height,
- 4) Minimum depth of required yards or building setbacks,
- 5) Screening and landscaping standards.

The above identified DEVIATIONS may only be granted when there is ample evidence that such deviations will not adversely affect neighboring properties and surrounding areas and where such deviations do not constitute the granting of a privilege that would not be universally appropriate for other similarly designed and situated Residential PUDs. In addition, the types of DEVIATIONS listed above MAY ONLY BE permitted when the deviation addresses one or more of the following development issues: (1) Protects environmentally sensitive areas (including unusual topography); (2) Protects existing vegetation and important views and vistas to and from the site; (3) Enhances a project's diversity of housing type; or (4) Encourages creative streetscape design, including the use of high quality screening walls, increased buffering and landscape material size and quantity, pedestrian amenities, etc.

A decision by the Planning Commission and Governing Body to authorize less stringent requirements from the otherwise applicable development standards of these regulations, OR to require the establishment of MORE RESTRICTIVE requirements, SHALL BE specified as part of the Residential PUD development provisions. Such changes from otherwise applicable standards may be specific to certain Residential PUD parcels or may be applied to the entire Residential PUD.

3. **Preservation of Natural Features.** For all properties included within the perimeter of a Residential PUD, preservation of mature trees, vegetative cover, watercourses and other natural site features SHOULD BE considered. Abrupt changes in natural slope SHOULD BE avoided. Preservation SHOULD BE directed toward:
 - a. Enhancing the quality of new development;
 - b. Protecting the natural environment;
 - c. Providing buffering between new development and surrounding properties; and
 - d. Preserving the character of existing neighborhoods.

4. **Review Procedure.** Applications for a Residential Planned Unit Development shall involve Planning Commission review and approval of both a Preliminary Residential PUD and a Final Residential PUD. A Preliminary or Final Residential PUD application shall be processed in the same manner as a rezoning amendment, except that a proposal to establish a Residential PUD can only be initiated by the owner of the property and, the Governing Body does not review or act on a Preliminary Residential PUD application. Written notice to property owners and advertisement of a Public Hearing before the Planning Commission, as required by subsection 1100.E of these regulations, shall be provided for the Planning Commission's review of a Preliminary Residential PUD application, as well as a Final Residential PUD application. As is the case for any rezoning case, final approval or denial of an application to establish a Residential PUD District rests with the Governing Body. The same requirements and provisions for filing of protest petitions, as is required for any other rezoning case, also apply to an application to establish a Residential Planned Unit Development (PUD) District.
 - a. **Planning Commission Consideration of a Preliminary Residential PUD Application.** A completed application for Preliminary Residential PUD approval shall be submitted to the Zoning Administrator, or their designated agent, in a form established by the Administrator. The completed application shall be accompanied by a certified ownership list, a Preliminary Residential PUD Site Development Plan and a non-refundable filing fee, as established by the Fee Resolution of the Governing Body of the City of Derby, Kansas, to help defray the cost of processing the PUD application. A Preliminary Residential PUD Site Development Plan shall not be forwarded to the Planning Commission for review until a completed application has been filed with the Zoning Administrator along with the required ownership list and filing fee.

At the advertised Public Hearing for the Planning Commission's review of the Preliminary Residential PUD application, the Commission shall review the request for the PUD District relative to:

- 1) Compatibility with the Comprehensive Plan;
- 2) Findings in accordance with Section 1100.C of these regulations;

- 3) Requirements of this Section (413); and
- 4) Other requirements and/or or standards of these regulations.

During the course of Preliminary Residential PUD review, the Planning Commission may, as a condition of approval, require changes to be depicted on the Residential PUD Site Development Plan and / or its accompanying written provisions. If the Planning Commission recommends denial or disapproval of a Preliminary Residential PUD, the Preliminary PUD application shall be forwarded to the Governing Body for final action.

Although the Governing Body does not normally review a Residential PUD application in its preliminary form, the applicant may appeal to the Governing Body Preliminary Residential PUD approval conditions established by the Planning Commission and the Planning Commission may request that the Preliminary Residential PUD be reviewed by the Governing Body. Any such appeal of approval conditions by the applicant shall be made in writing and filed with the Zoning Administrator within 30 DAYS after the date of the Planning Commission's requirement. The written appeal must specify what factor(s) or requirement(s), or lack of requirement(s), established by the Planning Commission are the subject of the appeal. The written appeal must include statements as to why the appeal should be granted. Should the Planning Commission determine that review of the Preliminary Residential PUD by the Governing Body is advisable, then a written statement shall be provided that outlines what factors or issues warrant Governing Body review of the preliminary application.

- b. **Preliminary Residential Site Development Plan – Contents and Submission Requirements.** Fifteen (15) paper copies and an electronic copy of a Preliminary Residential Site Development Plan shall accompany an application for Preliminary Residential PUD approval. Based on either an existing plat of the application area or on the configuration of a future subdivision plat for the same, the Preliminary Residential Site Development Plan shall depict the division of the Residential PUD application area into one or more Residential PUD parcels. The boundaries of such Residential PUD parcels shall match the perimeter boundaries of either existing and/or planned future platted lots, reserve areas or blocks. AT A MINIMUM, the Preliminary Residential Site Development Plan for the proposed Residential PUD District shall depict the following information:

- 1) North arrow and engineer's scale.
- 2) A key map indicating the location of the proposed PUD within the City.
- 3) A legal description for the property. If the property is unplatted, or is to be replatted, the name of the future plat or replat shall be referenced.
- 4) Existing topography with contours at two-foot intervals and land areas within a floodway and / or 100-year floodplain.

- 5) A statement setting forth the maximum number of dwelling units permitted under conventional residential zoning for the entire PUD and the number of dwelling units proposed by the Residential PUD Site Development Plan.
- 6) General extent and character of future landscaping and screening proposed to buffer: (1) multiple-family PUD parcels from PUD parcels established for single family and two-family uses and (2) single, two-family and multiple-family uses from adjacent arterial street rights-of-way.
- 7) Existing streams, drainage channels and other bodies of water.
- 8) Location, massing and pattern of existing vegetation.
- 9) General locations of future focal points and site amenities.
- 10) Existing structures on the site accompanied by the note “to remain” or “to be removed”.
- 11) Street and traffic patterns affecting the site, including the general location of future driveways serving multiple-family uses.
- 12) Development barriers (such as limited access highways, railroad tracks, aircraft accident potential zones and noise contours, pipelines, power lines, existing easements, etc.)
- 13) Surrounding uses and activities, within 200 feet of the property proposed to be subject to a Residential PUD District that influence development of the site and adjacent properties. Such surrounding uses and activities include:
 - i. Any public streets which are of record, including any additional or new street rights-of-way to be dedicated by the PUD applicant;
 - ii. Any private driveways which exist or which are proposed to the degree that they appear on plans on file with the City; and
 - iii. Any buildings that exist or are proposed to the degree that their location and size are shown on plans on file with the City. One and two-family residential dwellings may be shown in approximate location and general size and shape.
- 14) A schedule(s) or table(s) indicating by PUD parcel:
 - i. Parcel size;
 - ii. Number of permitted dwelling units by dwelling unit type;
 - iii. Number of dwelling units per gross acre and minimum lot size (land use intensity); and

- iv. For a PUD parcel on which a multiple family residential use is planned, the number of required and the number of planned off-street parking spaces.

In addition to the above identified information, such a schedule(s) or table(s) shall depict any other quantities of development features determined by the Zoning Administrator to be necessary to determine compliance with the requirements of these regulations.

- 15) A schedule or table listing, by PUD parcel, proposed uses.
- 16) A listing, by PUD parcel, of proposed deviations from the typical standards of these regulations which are identified in subsection 413.B.5, including a written attachment listing factors that the applicant believes supports approval of such deviations.
- 17) Boundary lines of the perimeter of the Residential PUD District, including angles or bearings, dimensions and reference to a section corner, quarter corner or a previously platted lot corner.
- 18) Name and address of the landowner.
- 19) Name and address of the architect, landscape architect, planner, engineer, surveyor or other person responsible for preparation of the Preliminary Site Development Plan.
- 20) Date when the Preliminary Residential PUD Development Plan was prepared or last updated.
- 21) When determined necessary by the Zoning Administrator, architect’s drawings that depict important views within the site and vistas to and from the site may be required.

c. **Planning Commission and Governing Body Consideration of a Final Residential PUD Application.** A completed application for Final Residential PUD approval shall be submitted to the Zoning Administrator, or their designated agent, in a form established by the Administrator. If the date of the advertised Public Hearing before the Planning Commission will be more than six months from the certification date indicated on the certified ownership list submitted with the Preliminary Residential PUD application, then an updated certified ownership list shall be submitted with the Final Residential PUD application. If required by the City’s “Fee Resolution”, the Final Residential PUD application shall be submitted with a non-refundable filing fee to help defray the cost of processing the application. A Final Residential Site Development Plan shall not be forwarded to the Planning Commission for review until a completed application, filing fee and, if required, an updated ownership list has been filed with the Zoning Administrator. As with any rezoning case, the Planning Commission’s recommendation regarding the establishment of a Residential PUD District shall be forwarded to the Governing Body for final action.

- d. **Final Residential Site Development Plan – Contents and Submission Requirements.** Fifteen (15) copies and an electronic copy of a Final Residential Site Development Plan shall accompany an application for Final Residential PUD approval. All Final Site Development Plans shall be drawn to a standard engineer's scale and shall include written provisions deemed necessary by the Planning Commission. The actual scale of the Final Site Development Plan will depend on the size of the development and shall be subject to the approval of the Zoning Administrator. In addition to the 15 paper copies and electronic copy mentioned above, one copy of the proposed Final Site Development Plan shall be reduced onto eight and one-half (8 1/2) inch by eleven (11) inch bond paper and submitted with the Final Residential PUD application.

AT A MINIMUM, the Final Residential Site Development Plan for the proposed Residential PUD District shall depict the following information:

- 1) North arrow and engineer's scale.
- 2) A legal description for the property. If the property is unplatted, or is to be replatted, the name of the future plat or replat shall be referenced.
- 3) All existing and proposed adjacent public street rights-of-way, including existing or proposed centerlines, and the location, size and radii or all existing median breaks and turning lanes and approximate locations, size and radii for proposed median breaks and turning lanes.
- 4) All existing and proposed adjacent public street intersections and the approximate location of planned driveways to serve multiple-family uses.
- 5) Location, width and limits of all existing sidewalks and approximate locations of future sidewalks.
- 6) A statement setting forth the maximum number of dwelling units permitted under conventional residential zoning for the entire Residential PUD and the number of dwelling units proposed by the Residential PUD Site Development Plan.
- 7) A schedule(s) listing, per PUD parcel, the location and dimensions of building setbacks or required yards being established by the Residential PUD.
- 8) A schedule(s) listing, per PUD parcel, building height and lot coverage restrictions.
- 9) The acreage of land included within the Residential PUD District.
- 10) A drainage plan, depicting the location of existing above-ground drainage facilities, existing topography with contours at two-foot intervals, land areas with a floodway and/or 100-year floodplain and the general location of planned drainage facilities, in compliance with all applicable federal,

state and local laws, rules, regulations, ordinances, resolutions, policies, procedures, and permits.

- 11) Landscaping and screening plans which depict landscaping and screening which meets or exceeds the standards of Section 304 of these regulations or Section 502(R) of the Subdivision Regulation.
 - 12) A schedule(s) indicating, per PUD parcel,:
 - i. Parcel size;
 - ii. Number of permitted dwelling units by dwelling unit type;
 - iii. Number of dwelling units per gross acre and minimum lot size (land use intensity); and
 - iv. For a PUD parcel, which is planned for multiple-family residential use, the number of required and the number of planned off-street parking spaces.
 - 13) A schedule or table listing, by PUD parcel, authorized uses.
 - 14) A listing, by PUD parcel, of proposed deviations provided for by subsection 413.B.5.
 - 15) The boundary lines of the perimeter of the proposed Residential PUD District as well as boundary lines for individual PUD parcels. The Residential PUD District boundary shall be provided a tie point to a section corner, quarter corner or previously platted lot corner. Such boundary lines shall be dimensioned and provided appropriate angles or bearings.
 - 16) Name and address of the landowner.
 - 17) Name and address of the architect, landscape architect, planner, engineer, surveyor or other person responsible for preparation of the Final Residential Site Development Plan.
 - 18) Date when the Final Residential Site Development Plan was prepared or last updated.
- e. **Additional Information to be Submitted with a Final Residential PUD Application.** The following shall be submitted in support of the Final Residential PUD application:
- 1) If conveyances are not required to be made by way of a subdivision application, separate instruments necessary to dedicate public rights-of-way, grant easements or establish access control to public streets required as a condition of Final Residential PUD approval.

- 2) If required by Preliminary Residential PUD approval, a copy of all covenants and restrictions applicable to the property within the proposed Residential PUD District.
- 3) Evidence that any stipulations associated with Preliminary Residential PUD approval, which were conditions to be met before filing an application for a Final Residential PUD, have been satisfactorily completed.
- 4) Supporting information for any proposed deviations provided for by subsection 413.B.5.
- 5) A certificate that specifies that a Residential PUD District has been approved for the subject property. Such certificate shall be filed of record and shall contain the following information:
 - i. A legal description of the property.
 - ii. A statement that copies of the Residential PUD Site Development Plan and its written provisions are on file with the City of Derby.
 - iii. A statement that development restrictions imposed by the Residential PUD District and the responsibility for continuing maintenance and compliance with the Residential PUD Site Development Plan and its written provisions shall be binding upon all successors and assigns, unless the Residential PUD District is amended in conformance with the procedures set forth by these regulations.

f. Planning Commission Action on a Final Residential PUD Application.

The Planning Commission shall review the Final Residential PUD application relative to requirements established for the Preliminary Residential PUD and the requirements of Section 1100 of these regulations. Based on the factors identified in Section 1100.C and on information received at the Public Hearing, the Commission shall take one of the following actions on a Final Residential PUD:

- 1) A Final Residential PUD, which involves no modifications or additions from the approved Preliminary Residential PUD, shall be approved by the Planning Commission IF THE COMMISSION DETERMINES:
 - i. That proposed landscaping and screening meets or exceeds the requirements of Section 304 of these regulations; and
 - ii. That all other requirements of Preliminary Residential PUD approval have been satisfied.
- 2) A Final PUD, which involves modifications or changes from the approved Preliminary Residential PUD, MAY BE approved by the Commission, provided it is determined that the Final Residential Site Development Plan, and its accompanying written provisions, are in SUBSTANTIAL

COMPLIANCE with the approval conditions established for the Preliminary Residential PUD. THIS IS PROVIDED THE COMMISSION DETERMINES:

- i. That proposed landscaping and screening meets or exceeds the requirements of Section 304 of these regulations; and
 - ii. That all other requirements of Preliminary Residential PUD approval have been satisfied.
- 3) For purposes of this subsection, “lack of substantial compliance” shall mean any of the following:
- i. Increase in the density or intensity of residential uses, for any PUD parcel, which is more than five percent.
 - ii. Increase in lot coverage, on any given PUD parcel, of more than five percent.
 - iii. Increase in the permitted height of any building, on any given PUD parcel, which is more than 10 percent.
 - iv. Decrease of any perimeter yard or building setback of more than five percent.
 - v. Decrease in the size of areas devoted to common open space, which is below the minimum amount required by Preliminary PUD approval, or the substantial relocation of such areas.
 - vi. Changes in traffic circulation patterns that will affect either traffic within or outside the perimeter of the Residential PUD District.
 - vii. Modification or removal of conditions or requirements established at the time of Preliminary Residential PUD approval.
 - viii. Proposal of deviations, provided for by subsection 413.B.5, that were not subject to Commission evaluation at the time of Preliminary PUD approval.
- 4) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED to mean the Planning Commission cannot continue to another meeting the Public Hearing required for a Final Residential PUD application. In addition, based on information received at the Final PUD Public Hearing, the Planning Commission is specifically authorized to modify Preliminary PUD approval conditions or establish new conditions for Final PUD approval.
- g. **Report of Zoning Administrator.** The Zoning Administrator shall have prepared a Staff Report that reviews a proposed Residential PUD in light of the following:
- 1) The Comprehensive Plan;

- 2) PUD standards of this Section; and
- 3) Other requirements of these regulations including, but not limited to, Section 304 (Landscaping, Screening and Lighting) and Article 5 (Off-Street Parking and Loading).

If either EXCEPTIONS OR SPECIAL USES, typical of the common residential base line zoning districts, are proposed to be approved by way of a Residential PUD, the Staff Report shall specifically address this proposal by recommending approval or disapproval of the request. If approval is recommended, the Staff Report shall provide approval conditions, if any, designed to help assure that such uses are compatible with surrounding properties and the nature of the Residential PUD and are therefore appropriate for including as part of the Residential PUD District.

If the applicant proposes DEVIATIONS, provided for by subsection 413.B.5, the Staff Report shall specifically address this proposal by recommending approval or disapproval of the request. If approval is recommended, the Staff Report shall provide approval conditions, if any, which are designed to help assure that such deviations will not negatively affect either properties within the perimeter of the proposed Residential PUD District or in close proximity to it.

- h. **Appeals of Final Action.** The Governing Body's decision on a Residential PUD, or amendments thereto, SHALL BE the final local action. Appeals of the Governing Body's final action shall be taken to district court.
- i. **Amendments to Residential PUDs.** Approved Residential Planned Unit Developments may be amended in whole or in part. The addition of a use to an existing Residential PUD District MAY ONLY BE accomplished by way of a Residential PUD amendment. Amendments shall follow the same procedures required for consideration and approval of the application that first established the Residential PUD District.
 - 1) **Notification.** Although the notification area for amendment of a portion of a Residential PUD is the same as required when the entire Residential PUD was first approved, when an amendment is sought that pertains to only a given PUD parcel, and the overall Residential PUD is under multiple ownerships, only the signature(s) of the owner(s) who owns property within the given PUD parcel requested for amendment is(are) required to sign the amendment application.

When the Governing Body considers the proposed amendment, they shall be provided the following:

- i. The percentage of land area within the legal protest area, in accordance with the terms, conditions, and procedures established in K.S.A. 12-757, as amended, subject to valid protest petitions; and
- ii. The percentage of land area within the Residential PUD District, excluding the amendment application area (PUD Parcel), subject to valid protest petitions.

If the owners of 20% or more of the land area, within the legal notification area outside the perimeter of the Residential PUD, OR of 20% or more of the land area within the perimeter of Residential PUD, excluding the area of the PUD subject to the amendment, file valid protest petitions against the proposed amendment, then approval of the amendment by the Governing Body shall require at least a 3/4 vote of all the members of the Governing Body.

- 2) **Final Approval.** Any special requirements which are imposed upon the Residential PUD amendment shall be referenced on an amended PUD Site Development Plan, and if applicable, referenced in the PUD's written provisions. At the discretion of the Governing Body, a public hearing may be held to consider the proposed amendment. In accordance with the terms, conditions and procedures established in K.S.A. 12-757, as amended, the Governing Body may adopt the recommendation of the Planning Commission, override the Commission's recommendation or return the proposed Residential PUD amendment to the Planning Commission for reconsideration.

j. Adjustments to Residential PUDs.

- 1) The Zoning Administrator may approve adjustments of a minor nature to approved Residential PUDs, unless the Zoning Administrator finds that the proposed adjustment would have one or more of the following negative impacts:
 - i. Would adversely affect the safety and convenience of vehicular and pedestrian circulation in the vicinity of the subject tract, including traffic reasonably expected to be generated by the proposed use and other uses in the area given the existing zoning, existing land uses and proposed land uses in the area;
 - ii. Would potentially create more adverse impacts on existing or permitted uses in surrounding areas than which reasonably might result from development of the site in strict compliance with the standard requested for adjustment;
 - iii. Would not be compatible with existing or permitted uses on abutting sites, in terms of adjusted building height, setbacks and open spaces, bulk and scale, landscaping, parking, circulation and/or other development features; or
 - iv. Would be detrimental to the public health, safety or welfare and/or materially injurious to properties or improvements in the vicinity for reasons articulated in writing by the Zoning Administrator.
- 2) The developer shall have the burden of demonstrating that the proposed adjustment meets the applicable review criteria. IN NO CASE SHALL the Zoning Administrator approve an adjustment that allows any of the following:

- i. More than a 5-foot or 10 percent increase in building height, whichever is less;
 - ii. More than a 5 percent increase in lot coverage;
 - iii. More than a 10 percent increase in residential unit density, when calculated on a total aggregate project basis;
 - iv. The addition of a new use to the list of uses allowed within the perimeter of a given PUD parcel;
 - v. More than a 5-foot or a 10 percent reduction in building setback lines referenced on the Residential PUD's Site Development Plan, whichever is less, provided however, such setback lines have not been platted as part of a subdivision plat. In the case of a platted setback(s), proposals to reduce such setback(s) shall be processed as a Vacation Case as provided for by Article 10 of the Subdivision Regulation.
 - 3) When an application for Residential PUD adjustment has been denied or when such application has been approved with conditions or changes unacceptable to the applicant, the applicant may file for a Residential PUD amendment [See Subsection 415(D)(9)].
 - k. **Successive Applications.** In the event the Governing Body denies an application for initial Residential PUD approval or denies an application for a Residential PUD amendment, a similar rezoning application shall not be refiled within three months from the advertised Public Hearing date of the denied application. The Public Hearing date shall be the date of the hearing when the Planning Commission acted on the Final Residential PUD application.
5. **Definitions.** For purposes of this Section, the following terms are defined:
- APPROPRIATE** - Sympathetic, or fitting to the context of the overall Residential Site Development Plan and the community as a whole.
- COHESIVE** - Unity or logical connection between the parts of the Residential Site Development Plan.

B. NON-RESIDENTIAL PLANNED UNIT DEVELOPMENT (NRPUD) DISTRICT

1. **Statement of Intent.** The Non-Residential Planned Unit Development (NRPUD) district is intended to encourage innovative land planning and design and avoid the monotony sometimes associated with large developments by:
 - a. Reducing or eliminating the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots;
 - b. Allowing greater freedom in selecting the means to provide access, light, open space and design amenities;
 - c. Promoting quality urban design and environmentally sensitive development, including the positioning, orientation, size and architectural treatment of buildings, and by allowing development to take advantage of special site characteristics, locations and land uses; and
 - d. Allowing deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this code.

2. **Establishment of a NRPUD.**

- a. **Application.** An application for NRPUD approval shall be filed by all owner(s) of the property proposed to be included within the district, and shall be considered in accordance with Section 1100 of these regulations. A complete application for an amendment of the official zoning map or the text of these regulations shall be submitted to the Zoning Administrator in a form established pursuant to these regulations, along with a nonrefundable application fee fixed by resolution of the Governing Body. No application shall be processed until the application is complete and the required fee has been paid.

Each application for NRPUD approval shall be accompanied by a NRPUD Site Plan in a form established by the Zoning Administrator and made available to the public. At a minimum, the NRPUD Site Plan shall include the following information:

- 1) A graphic presentation depicting the general layout of future land uses along with text explaining and detailing the planned development. Such graphic presentation shall address the following basic items:
 - i. A plan submitted to scale illustrating the number, size and orientation of NRPUD parcels being proposed for future independent ownership and lot development.
 - ii. A schedule or table indicating by NRPUD parcel: (1) parcel size; (2) bulk regulations, including but not limited to the maximum permitted amounts of gross building coverage and gross floor area; and (3) permitted uses.

- iii. Sufficient dimensions to indicate the general relationship between any existing or future buildings and the property lines of the NRPUD District, parking areas planned within the NRPUD, and other important elements of the plan.
 - iv. The general location of driveways to and from streets, drainage patterns, and the location of existing public streets and easements. Existing pedestrian and vehicular access points and the general location of future pedestrian and vehicular access points, including all proposed traffic signage/light signalization.
 - v. The conceptual locations of future buildings and other structures, parking areas and circulation aisles.
 - vi. The general locations and dimensions for all proposed freestanding signage.
 - vii. General extent and character of future landscaping and screening proposed to buffer NRPUD parcels from adjacent or residential areas.
 - viii. General extent and character of all proposed exterior lighting.
 - ix. If there is to be the development of outdoor merchandise display and storage areas, then there shall be a description of the allowed percentage of lot coverage for these areas, and their general location.
 - x. If there is a proposed deviation from the parking standards of these regulations, the proposed number of off-street parking spaces shall be provided.
 - xi. Sufficient land area for on-site storm water detention areas and other drainage facilities needed to serve the development in compliance with all applicable federal, state and local laws, rules, regulations, ordinances, resolutions, policies, procedures and permits.
- 2) An explanation of how the proposed plan of development differs from what could be accomplished through strict compliance with the standards of these regulations and how the proposed NRPUD represents an improvement over what could be accomplished through application of traditional zoning standards.
 - 3) The following supplemental information:
 - i. North arrow and engineer's scale.
 - ii. A key indicating the location of the proposed NRPUD within the City.

- iii. A legal description for the property. If the property is unplatted, or is to be replatted, the name of the future plat or replat shall be included. NRPUD parcels shall match existing or proposed lot lines.
 - iv. A drainage plan, depicting the location of existing above-ground drainage facilities, existing topography with contours at two-foot intervals, land areas within a floodway and/or 100-year floodplain and the general location of planned drainage facilities, in compliance with all applicable federal, state and local laws, rules, regulations, ordinances, resolutions, policies, procedures, and permits.
 - v. Surrounding uses and activities, within 200 feet of the property proposed to be subject to the NRPUD District that influence development of the site and adjacent properties. Such surrounding uses and activities include:
 - (1) Any public streets, which are of record.
 - (2) Any private driveways which exist or are proposed, and which appear on plans on file with the City.
 - (3) Any buildings which exist or are proposed, and the location or size of which is shown on plans on file with the City. One and two-family residential dwellings may be shown by approximate location and general size and shape.
 - vi. Name and address of the person or agency that prepared the NRPUD site plan.
 - vii. Date when the NRPUD site plan was prepared or last updated.
- b. **Notice.** Promptly upon determining that an application is complete, the Zoning Administrator shall schedule a public hearing before the Planning Commission, notice of which shall be provided in accordance with the terms, conditions and procedures established in K.S.A. 12-757, as amended.
- c. **Review Process.** An application for NRPUD shall be processed in accordance with the terms, conditions and procedures established in K.S.A. 12-757, as amended.
3. **NRPUD Development Standards.** Deviations from certain otherwise applicable development standards of these regulations may be established as part of NRPUD approval; provided that the public health, safety and general welfare is not negatively affected.

Subject to adequate justification being provided by the NRPUD applicant, the following otherwise applicable development standards of these regulations may be deviated from as part of approval of a Non-Residential PUD:

- a. **Permitted Uses.** Any non-residential use may be permitted within a NRPUD District; provided, that the Planning Commission and Governing Body determine the use is appropriate. All uses allowed within the NRPUD shall be specifically listed in the text accompanying the NRPUD Site Plan.
 - b. **Landscaping and Screening Standards.** Notwithstanding the provisions of Section 304 of these regulations, as part of the NRPUD approval process, standards for landscaping and screening shall be established by the NRPUD. The standards of Section 304 of these regulations may be used as a guide to develop the NRPUD's landscaping and screening requirements.
 - c. **Signage Standards.** As part of the NRPUD approval process, standards for signage within the NRPUD District shall be established by the NRPUD. The signage standards of Article 7 of this Ordinance may be used as a guide to develop the NRPUD's standards for signage.
 - d. **Off-Street Parking Standards.** Notwithstanding the provisions of Article 5 of these regulations, as part of the NRPUD approval process, standards for the minimum number of spaces for off-street parking, loading and unloading, and vehicle stacking spaces shall be established by the NRPUD. The standards of Section 502 of these regulations may be used as a guide to develop the NRPUD's off-site parking percentage as well as other requirements for such parking.
 - e. **Development Intensity.** The level of development allowed within a NRPUD shall not exceed the level that can be adequately served by public facilities.
 - f. **Bulk Regulations.** Modifications of minimum lot size, depth and width, minimum depth of required yards of building setbacks, maximum building or structure height, maximum lot coverage, permitted size of outdoor merchandise, display and storage areas, and allowable amount of impervious surface may be established by the NRPUD.
 - g. **Site Plan Review.** As part of the NRPUD approval process, the requirements of Section 305 of these regulations SHALL NOT apply.
4. **Successive applications.** The rules set forth in paragraph 413.D.11 of these regulations shall apply to refiling of applications for establishment or amendment of a NRPUD.
 5. **Adjustment of NRPUD.** The Zoning Administrator may make adjustments to a NRPUD based on the considerations set forth in paragraph 413.D.11 of these regulations; provided, that any person aggrieved by the action of the Zoning Administrator hereunder may file an application for amendment of the NRPUD.
 6. **NRPUD Certificate.** Following a recommendation for approval of the NRPUD by the Planning Commission, the NRPUD applicant shall submit a NRPUD certificate in the form outlined by paragraph 415.D.5.e of these regulations. Following approval of the NRPUD by the Governing Body, the PUD certificate shall be filed of record.

414 RESERVED

415 RESERVED

416 F-P FLOOD PLAIN DISTRICT.

Certain areas of the City are periodically subject to flooding which can result in losses due to: (1) the cumulative effect of obstructions in floodways causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods and/or hazardous to others which are inadequately elevated or otherwise protected from flood damage. This Flood Plain District is intended to permit the gainful use of certain lands which are determined, in accordance with local, state and federal laws, rules, regulations, policies, procedures, findings, and/or maps to be in the path of potential flood waters and from which certain structures and other property use that is subject to damage by flood water should be excluded. More specifically, the purpose of this overlay zoning district is to:

1. Prohibit the placement of structures, fill and materials, which would unduly impede or obstruct flood flows.
2. Protect human life and health, prevent property damage, minimize business interruptions and minimize and facilitate rescue and relief efforts during a flood event.
3. Minimize expenditures of public monies for costly flood control projects and minimize the damage to public facilities in the flood plain, such as water mains, sewer lines, streets and bridges.
4. Minimize flood blight areas while maintaining property values and a stable tax base adjacent to the flood plain.
5. Require that uses vulnerable to floods, including public facilities, be provided with flood protection at the time of initial construction.
6. Alert potential purchasers of affected properties' status and suitability for specific uses/purposes in flood hazard areas.
7. Assure that eligibility is maintained for property owners in the City to purchase flood insurance in the Federal Flood Insurance Program.

- A. **Definitions.** The following definitions which supplement Section 204 of these regulations shall be used in the construction and interpretation of these regulations:

ACTUARIAL RATES OR RISK PREMIUM RATES: Those rates established by the Federal Insurance Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with 42 U. S. Code 4014 and the accepted actuarial principles. Actuarial rates include provisions for operating costs and allowances.

BASE FLOOD: The flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT: Any area of the building having its floor subgrade (below ground level) on all sides.

CHANNEL: A natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow thus is that water which is flowing within the limits of a defined channel.

DEVELOPMENT: In the F-P District only, development means any man made change to improved or unimproved property, including but not limited to buildings or other structures, fences, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

FLOOD: A temporary rise in stream flow or stage that results in water overlapping its banks and inundating areas adjacent to the channel. Also, an unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD ELEVATION DETERMINATIONS: A determination of the water surface elevations of the 100 year flood, i.e., the level of flooding that has a one percent chance of occurrence in any given year.

FLOOD INSURANCE RATE MAP (F.I.R.M.): The official map prepared by the Federal Insurance Administration of the Federal Emergency Management Agency, for a community delineating special hazard areas and the risk premium zones applicable to such areas.

FLOOD INSURANCE STUDY (F.I.S): The official report provided by the Federal Insurance Administration which contains flood profiles and water surface elevations for various flood frequencies as well as the boundaries and water surface elevations of the 100 year flood.

FLOOD PLAIN MANAGEMENT: The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to an emergency preparedness plan, flood control works and flood plain management regulations.

FLOOD PROTECTION SYSTEM: Those physical structural works constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard". Such a system typically includes levees or dikes. These specialized modifying works are those constructed in conformance with sound engineering standards.

FLOOD PROOFING: Any combination of structural and non-structural additions, changes or adjustments to structures, including utility and sanitary facilities, which would preclude the entry of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

FLOODWAY: The channel of a river, creek or other watercourse and the adjacent portion of the flood plain that must be reserved in order to discharge the 100 year flood without undue restriction and without unreasonable effect on another by not increasing the water surface elevation more than one foot at any point assuming equal conveyance reduction outside the channel from the two sides of the flood plain.

FLOOD FRINGE: That area of the flood plain, outside of the floodway, that on the average is likely to be flooded once every 100 years, i.e., that has a one percent chance of flood occurrence in any given year.

LEVEE: A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LOWEST FLOOR: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of these regulations.

MANUFACTURED HOME: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include “recreational vehicle”.

MANUFACTURED HOME PARK OR SUBDIVISION: A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION: Those structures where new or substantial improvements are initiated after the effective date of F.I.R.M., as subsequently amended.

OVERLAY DISTRICT: A district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

RECREATIONAL VEHICLE: A vehicle that is:

- a. built on a single chassis
- b. 400 square feet or less when measured at its largest horizontal projections
- c. designed to be self-propelled or permanently towable
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOOD ELEVATION: An elevation indicated on the F.I.R.M. as the elevation of the 100 year flood.

REGULATORY FLOOD PROTECTION ELEVATION: An elevation one foot higher than the water surface elevation of the regulatory flood.

START OF CONSTRUCTION: This means the date the zoning permit was issued for new construction including substantial improvements; provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The "actual start" means the first placement of permanent construction of a structure on a site, such as the pouring of a

slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwellings units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE: As pertaining to the Flood Plain District only, a walled and roofed structure, including gas or liquid storage tanks, that are principally above the ground, including but without limitations to buildings, factories, sheds, cabins, manufactured homes, and other similar uses.

SUBSTANTIAL DAMAGE: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. This includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by a local building trades or code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

VARIANCE: Is a grant of relief to a person from the requirements of these regulations, which permits construction in a manner otherwise prohibited by these regulations where specific enforcement would result in unnecessary hardship.

VIOLATION: The failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without an elevation certificate, other certifications, or other evidence of compliance required by these regulations is presumed to be in violation until such time as that documentation is provided.

100 YEAR FLOOD: The base flood having a one percent chance of annual occurrence.

B. General Standards.

1. All proposed development shall be reviewed to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including the Federal Water Pollution Control Act Amendments of 1972, as amended.

2. All applications for zoning permits shall be reviewed to determine whether proposed building sites will be appropriately protected from the effects of flooding. If a proposed building site is in a flood prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) shall: (i) be designed (or modified) to accommodate lateral movement of the structure; (ii) be constructed with materials and utility equipment resistant to flood damage; and (iii) be constructed by methods and practices that minimize flood damage.
 3. All subdivision proposals and other proposed new developments, including manufactured home parks and subdivisions, greater than 50 lots or five acres, whichever is lesser, are required to include within such proposals base flood elevation data.
 4. Any base flood elevation data available from a Federal, State or other source, shall be obtained, reviewed, and reasonably utilized until such other data has been provided by the Zoning Administrator, as criteria for requiring that (i) all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated one foot above the base flood level except as may be permitted by Section 416.J.3.a and (ii) all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or flood proofed one foot above the base flood level.
 5. In riverine situations, notification must be given to adjacent communities and the State Coordinating Office, i.e., the Water Resources Division of the Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and copies submitted of such notifications to the Zoning Administrator.
 6. The flood carrying capacity within the altered or relocated portion of any watercourse must be maintained.
 7. The placement of any manufactured homes is prohibited, except in an existing manufactured home park or manufactured home subdivision, within the adopted regulatory floodway.
- C. **Lands to Which District Applies:** The regulations of this section shall apply to all lands within the jurisdiction of the City of Derby, Kansas that are identified as numbered and unnumbered A Zones and AE Zones on the Sedgwick County Index Map dated February 2, 2007, of the Flood Insurance Rate Map (FIRM) and any future revisions thereto. In all areas covered by these regulations, no development shall be permitted except through the issuance of a floodplain development permit, granted by the City of Derby or its duly designated representative under such safeguards and restrictions as the Governing Body or their designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article 4 of these regulations.
- D. **Warning and Disclaimer of Liability:** The degree of flood protection required by this district is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study which consist of the following series of interrelated steps:

1. Selection of a regulatory flood, which is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The regulatory flood selected for this district is representative of large floods known to have occurred in this region and which are reasonably characteristic of what can be expected to occur on the particular streams subject to these regulations. It is in the general order of a flood that has a one percent chance of occurrence in any one year, as delineated on the Federal Insurance Administration's Flood Insurance Study dated February 2, 2007 and illustrative materials (F.I.R.M.) with the effective date of February 2, 2007, as amended.
2. Calculation of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and over bank areas to convey the regulatory flood.
3. Computation of the floodway required to convey this flood without increasing flood heights more than one foot at any point.
4. Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any increase in flood height.
5. Delineation of the flood fringe, i.e., that area outside the floodway encroachment lines but which still is subject to inundation by the regulatory flood.

Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. These regulations do not imply that areas outside the Flood Plain District with its floodway and flood fringe boundaries or land uses permitted within such a district will be free from flooding or flood damage. These regulations shall not create liability on the part of the City or any officer or employee thereof for any flood damages that may result from reliance on these regulations or any administrative decision lawfully made thereunder.

- E. **Interpretation of Boundaries.** The floodway and flood fringe overlay boundaries shall be determined by scaling distances on the Official Zoning Map to form the boundaries for the Flood Plain District. Where interpretation is needed to the exact location of such boundaries or where there appears to be a conflict between a mapped boundary and actual field conditions, the Zoning Administrator shall make the necessary interpretation. Were the interpretation is contested, an appeal may be taken to the Board of Zoning Appeals as provided for in Section 1002. The regulatory flood elevation for the point in question shall be the governing factor in locating the boundary on the land. The appellant shall be given a reasonable opportunity to submit his own technical evidence, if he so desires.
- F. **Consideration of Flood Plain Management Programs in Neighboring Communities.** The Governing Body will, in all official actions, consider flood plain management programs in effect in Sedgwick County and any other neighboring areas.
- G. **Establishment of Flood Plain District.** The flood plain area within the jurisdiction of these regulations is hereby declared to be one district, the F-P Flood Plain District. The area delineated for the district is shown on the Federal Insurance Administrator's

Flood Insurance Rate Map with the effective date of February 2, 2007 and subsequent amendments thereto which is hereby incorporated by reference and made a part of the Official Zoning Maps(s) of these regulations. Such maps also designate those areas to be in the floodway portion and the flood fringe portion of the Flood Plain District. The F-P District shall be considered an overlay zoning district in that the existing underlying zoning districts and their regulations continue to apply in addition and in complement to the provisions contained herein. All uses not meeting the standards of this district and those standards of the underlying zoning districts shall be prohibited. This district shall be consistent with all "A" zones including zones A and AE, as identified on the official F.I.R.M. and in the Flood Insurance Study.

H. **Standards Within the Floodway and Flood Fringe Overlay Boundaries.** No zoning permits for development shall be granted for new construction or substantial improvements within these boundaries unless the following conditions are satisfied:

1. All areas identified as unnumbered "A" Zones in the F.I.R.M. are subject to inundation of the 100-year flood; however, the water surface elevation was not provided. The unnumbered "A" Zones shall be subject to all provisions of this district. If the Flood Insurance Study data is not available, the City will utilize any base flood elevation or floodway data currently available from federal, state or other sources.
2. New developments or substantial improvements shall be designed or modified and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
3. New or replacement water supply systems and/or sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems shall be located so as to avoid impairment of them or contamination from beyond applicable environmental control limits during flooding.
4. Proposed subdivisions and other new development shall be required to assure that:
(a) All such proposals are consistent with the need to minimize flood damage; (b) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; (c) adequate drainage is provided so as to reduce exposure to flood hazards.
5. Substantial improvements shall: (a) Use construction materials and utility equipment that are resistant to flood damage; (b) use construction methods and practices that will minimize flood damage, consistent with economic practicability.
6. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damage, and with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding

I. **Floodway Overlay Boundary.**

1. **Permitted Uses.** The following uses having a low flood-damage potential and non-obstructing flood flows shall be permitted within the floodway boundary to the extent that they are not prohibited by any other applicable district and provided they do not require structures, fill or storage of materials or equipment. All encroachments, including fill, new construction, substantial improvements and other developments must be prohibited unless certification by a professional registered engineer or architect is provided demonstrating that such encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. No use shall increase the flood levels of the regulatory flood elevation. These predominantly open spaces uses are subject to the standards of Section 419(H).
 - a. Agricultural uses, but not accessory structures.
 - b. Residential related uses such as lawns, gardens, parking and play areas.
 - c. Non-residentially related uses where areas are used for loading or parking space.
 - d. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

In unnumbered "A" Zone, obtain, review and reasonably utilize any floodway data available through federal, state or other sources or Section 419(B)(3) of the regulations, in meeting the standards of this section.

2. **Exceptions.** The following uses which involve structures (temporary or permanent), fill, or storage of materials or equipment may be permitted only upon application to the Board of Zoning Appeals for an exception as provided for in Section 1004 of these regulations. Such uses are also subject to the provisions of Section 416.H, which applies to all exceptions proposed in the floodway boundary plus the exception standards required by Section 416.I.3.
 - a. Uses or structures accessory to permitted open space uses listed in Section 416.I.1 and for other exceptions listed below.
 - b. Circuses, carnivals, and similar transient amusement enterprises.
 - c. Drive-in theaters, new and used car lots, roadside stands, signs and billboards.
 - d. Extraction of sand, gravel and other materials.
 - e. Marinas, boat rentals, docks, piers and wharves.
 - f. Railroads, streets, bridges, utility transmission lines, and pipe lines.
 - g. Storage yards for equipment, machinery, or materials.
 - h. Kennels and stables.

- 1) Other similar exceptions consistent with the standards set forth in Section 416.I.3.
3. Standards for Exceptions. In reviewing applications for exceptions listed in Section 416(2), the Board of Zoning Appeals shall require that the following conditions be met:
- a. No structure (temporary or permanent), fill (including fill for roads and levees) deposit, obstruction, storage of materials or equipment, or other use may be allowed as an exception which affects the capacity of the floodway or increases flood heights in the floodway. In addition, all such uses shall be further subject to the following standards:
 - 1) Fill.
 - i. Any fill proposed to be deposited in the floodway must be shown to have some beneficial purpose and the amount thereof not greater than is necessary to achieve that purpose, as demonstrated by a plan submitted by the owner showing the uses to which the filled land will be put and the final dimensions of the proposed fill or other materials.
 - ii. Such fill or other materials shall be protected against erosion by riprap, vegetative cover, or bulk-heading.
 - 2) Structures (temporary or permanent).
 - i. Structures shall not be designed for human habitation.
 - ii. Structures shall have a low flood-damage potential.
 - iii. The structure or structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters.
 - (1) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of the flood flow; and;
 - (2) So far as practicable, structures shall be placed approximately on the same flood-flow lines as those of adjoining structures.
 - iv. Structures shall be firmly anchored to prevent flotation, which may result in damage to other structures, restriction of the stream or river.
 - v. Service facilities such as electrical and heating equipment shall be constructed at or above the regulatory flood-protection elevation for the particular area or flood-proofed.

- 3) Storage of material and equipment.
 - i. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
 - ii. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

J. Flood Fringe Overlay Boundaries.

1. Permitted Uses. All permitted uses in the underlying districts provided they meet the standards of Sections 416.H and 416.J.3.
2. Exceptions. All exceptions in the underlying districts provided they meet the standards of Section 416.H and 416.J.3.
3. Standards for Permitted Uses and Exceptions.
 - a. All new construction and substantial improvements of residential structures with basements within Zones A and A 1-30 on the Flood Insurance Rate Map shall be designed so that the lowest opening of the basement is at least three feet above the base flood elevation. The basement area, together with attendant utilities and sanitary facilities, below that level shall be protected by compacted and vegetation-covered fill and be designed so that the structure is watertight with walls that are impermeable to the passage of water without human intervention. Basement walls shall be built with the capability to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from the 100-year frequency flood and shall be designed so minimal structural damage will occur if this design flood is exceeded.
 - b. Basement constructed in accordance with these regulations shall not be used for sleeping purposes.
 - c. Require new construction or substantial improvements of non-residential structures to have the lowest floor, including basement, elevated to or above the regulatory flood protection elevation or, together with attendant utility and sanitary facilities, to be flood proofed up to that level.
 - d. Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings

or devices provided that they permit the automatic entry and exit of floodwaters.

- e. Within "AH" zones, if any, adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.
- f. All manufactured homes shall be required to be anchored to resist floatation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with applicable building codes adopted by the City or F.E.M.A. guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
 - 1) Over-the-top ties be provided at each of the four corners of the manufactured home with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side.
 - 2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side.
 - 3) All components of the anchoring system be capable of carrying a force of 4,800 pounds.
 - 4) Any additions to manufactured homes be similarly anchored.
- g. Require that all manufactured homes to be placed within Zones A1-30, AH and AE on the community's F.I.R.M. be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 416.J.3.f above.

K. Certification and Information.

1. **Flood Proofing.** Applicants shall provide certification by a registered professional engineer or architect the flood proofing designs used in the structure satisfy the standards in these regulations and in particular Sections 416.J.3.a and 416.J.3.b. This certification shall include the specific elevation in relation to mean sea level and/or other datum required by the City to which the structure is flood proofed. The certification shall furthermore certify that the resulting construction has been inspected and meets the requirements of the flood proofing design plan.
2. **Elevation of Property.** Applicants shall provide information identifying the elevation of the property in relation to mean sea level and/or other datum required by the City of the lowest floor (including the basement of the proposed structure). In addition, the applicant shall provide this information for the second lowest floor when the lowest floor is below grade on one or more sides. The applicant shall also be required to submit certification by a registered professional engineer or other qualified person that the finished fill and building floor elevations and other flood

protection measures were accomplished in compliance with the provisions of this district or other applicable regulations.

3. Certification and Permanent Record. The City shall certify that the registered professional engineer or architect has submitted the certification that the structure has been inspected and built in accordance with the design in Section 416.K.1. Certifications and elevation information required by Section 416.K.1 and 416.K.2 above are to be maintained as a permanent record.

L. Variances.

1. Where by reason of exceptional narrowness, shallowness, shape or topography, or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any provision of this district would result in peculiar and exceptional hardship upon the owner of the property as an unreasonable deprivation of use as distinguished from the mere grant of a privilege, the Board of Zoning Appeals may authorize a variance from strict application so as to relieve the demonstrable difficulties or hardships provided that it meets all the provisions of Section 1008, except that the Board is not limited to the instance enumerated in Section 1008(c), and such a variance may only be granted in the following two circumstances:
 - a. For a structure to be reconstructed, rehabilitated or restored which is listed on the National Register of Historic Places or the State Inventory of Historic Places, or
 - b. For new construction and/or substantial improvements to be erected on a zoning lot of one half acre or less in size which is contiguous to and surrounded by lots with existing structures constructed below the regulatory flood elevation and conforms to the following standards:
 - 1) (i) A showing of good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (iii) a determination that the variance issuance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local or State laws or ordinances, and
 - 2) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and
 - 3) A variance shall not be issued for development within any designated regulatory floodway if any increase in flood levels would result during the base flood discharge, and
 - 4) The Board shall notify the applicant in writing that (1) the issuance of a variance to construct a structure below the base (regulatory) flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (2) such construction below the base (regulatory) flood elevation increases risks to life and property.

- 5) Such notification is Section 416.L.1.b.4 above shall be maintained with all the records of variance actions, including justification for their issuance, and report such variances in the annual report to be submitted to the Federal Insurance Administrator.

M. Application for Zoning Permits and Occupancy Certificates.

1. An application for a zoning permit and occupancy certificate shall be made in accordance with Section 9-901, et seq., and notwithstanding other provisions of these regulations, permits for development shall additionally be required only in the F-P District for dredging, filling, grading, paving, excavation or drilling operations which would result in measurably increased flood heights. Such application shall also include the following information where applicable: plans showing the nature, location, dimensions and elevations to the lot; existing or proposed structures, fill or storage of materials; and the location of the foregoing in relation to the channel, the floodway and the regulatory flood protection elevation.
2. The Zoning Administrator may require the applicant to furnish the following additional information as is deemed necessary to evaluate the effects of the proposed use upon flood flows and other factors necessary to render a decision on the suitability of proposed use:
 - a. A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be affected by the proposed development and higher water information;
 - b. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevation of streets, water supply and sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream; soil types; and other pertinent information;
 - c. Profile showing the slope of the bottom of the channel or flow line of the stream; or
 - d. Specification for building construction and materials, flood proofing, filling, dredging, grading, channel improvement, storage of materials, water supply, and sanitary facilities.

ARTICLE 5. OFF-STREET PARKING AND LOADING

500 OFF STREET PARKING

In any zoning district, all structures built and any new uses established shall provide required off-street parking spaces, off-street loading areas and vehicle stacking spaces for drive-through facilities in accordance with the standards of this Article. When an existing structure or use is expanded in area, off-street parking shall be provided for the entire structure or use in accordance with the off-street parking schedule of Section 501. Plans showing the layout and design of all required off-street parking spaces, stacking spaces for drive-through facilities and loading areas must be submitted to and approved by the Zoning Administrator before a zoning permit and/or building permit is issued.

A. General Provisions.

1. **Use of Required Off-Street Parking Areas:** Except for parking required for single and two-family residential uses, required off-street parking spaces shall be reserved for the sole purpose of providing space for temporary parking of operable vehicles used by the occupants, employees, visitors or patrons of the building or lot being served by the parking facility. Such required parking spaces shall not be used for the storage, sale or display of goods or materials, including shopping cart storage corrals, or for the sale, repair or servicing of vehicles. Parking areas providing required spaces shall not be used to satisfy required off-street parking for new structures or additions to existing buildings, structures or uses of land. Required parking spaces for multiple-family residential and non-residential uses shall be maintained and shall not be reduced so long as the main building, structure or use remains, unless an equivalent number of such spaces are provided elsewhere.
2. **Parking Space Dimension:** Except as provided below, a required off-street parking space shall be at least 8 feet 6 inches in width and at least 19 feet in length, exclusive of access drives or aisles, ramps or columns. In any off-street parking facility with 100 or more vehicle spaces, a maximum of 10 percent of the required number of vehicle parking spaces may be designed for compact vehicles only. Such “compact vehicle only” spaces shall be appropriately signed. For purpose of these regulations, a compact vehicle is one whose length does not exceed 14 feet. The required minimum dimensions of a “compact vehicle only” parking space are 8 feet in width and 16 feet in length.

3. **Access:** For non-residential and multiple-family residential developments, each required off-street parking space shall open directly upon a circulation aisle with a width adequate to provide a safe and efficient means of vehicular movement and access. The minimum width of all two way circulation aisles shall be not less than 24 feet. The minimum width of one way circulation aisles shall be as follows:

MINIMUM WIDTH OF ONE WAY AISLES	ANGLE OF PARKING
22 feet	90 degree
17 feet	60 degree
12 feet	45 degree
11 feet	30 degree
13 feet	Parallel

For non-residential and multiple-family residential developments, no vehicular parking space shall be designed to exit or back directly onto a public street. Back out parking within a public right-of-way is prohibited unless specifically approved by the Governing Body. Such arrangements are discouraged, except for unusual circumstances and where the traffic safety of the public can still be protected.

4. **Open and Enclosed Parking:** Required off-street parking spaces open to the sky may be located in any yard, except that in residential districts required parking spaces shall not be located in a required front yard, unless specifically authorized as part of an exception. Vehicle parking structures, such as garages, canopies and carports, which are attached to the principal building, shall observe the required building setbacks identified for the principal building. Detached accessory garages and carports shall be subject to the provisions for accessory uses contained in Section 600 of these regulations and, in particular, the bulk regulations identified in Section 600.C.

5. **Computing Parking and Loading Requirements:**

- a. **MULTIPLE USES:** Lots containing more than one use shall provide parking and loading in an amount equal to the total of the requirements for all uses, unless a shared parking plan is approved pursuant to Section 500.A.8 of this Article.
- b. **FRACTIONS:** When measurements of the number of required parking spaces result in fractions, any fraction of less than one-half shall be disregarded and any fraction of one-half or more shall be rounded upward to the next highest whole number.
- c. **FLOOR AREA:** Unless otherwise noted in these regulations, all square footage based parking and loading standards shall be computed based on gross building area. However, off-street parking shall be adequate to serve the entire site, including outdoor display areas and other outdoor uses.
- d. **EMPLOYEE AND OCCUPANT-BASED STANDARDS:** For the purpose of computing parking requirements based on the number of employees or occupants, calculations shall be based on the largest number of persons

working on any single shift or the maximum occupant capacity as established by the adopted building code of the City, whichever is applicable.

- e. **UNLISTED USES:** Upon receiving a development application for a use not specifically listed in Section 501, the Zoning Administrator shall apply the parking and loading requirements specified for the listed use deemed most similar to the use proposed in the application as determined by the Zoning Administrator.

6. **Design and Maintenance:**

- a. **DESIGN:** Required off-street parking spaces shall comply with design standards relating to curb length, stall depth, driveway width, island width, barriers and ingress and egress as may be established from time to time by the City. Such off-street parking spaces may be open to the sky or enclosed in a structure. Except for the “B-2A” BUCKNER BUSINESS DISTRICT, required off-street parking for single and two-family dwellings shall not be located within a required front yard.
 - 1) Additional accessory off-street parking on driveways for single and two-family dwellings and all types of manufactured and mobile homes is permitted; provided that the parked vehicle does not overhang into the street right-of-way (front lot line) and the total surfaced area within the front yard setback does not exceed eight hundred fifty (850) square feet or fifty (50) percent of the dwelling’s required yard, whichever is less.
 - 2) Required yard areas, except where paved for vehicle parking, loading, and circulation aisles, shall be landscaped with grass, shrubs, trees, or groundcover, and shall be maintained in good condition.
 - 3) In the “B-2A” BUCKNER BUSINESS DISTRICT, required parking for either residential or commercial uses may be located in the required front yard and may be extended 5 feet into adjacent street right-of-way.
- b. **SURFACING:** All required off-street parking spaces and driveways for single-family and two-family dwellings shall be surfaced with either poured in place concrete, asphaltic concrete, brick or similar paving material approved by the Zoning Administrator. All accessory off-street parking located in the front yard of a single or two-family dwelling shall be paved.
 - 1) For driveways existing prior to December 1, 1994, which serve a single-family or two-family dwelling and do not meet the above surfacing standard, one half inch diameter crushed rock or larger may be used as replacement surfacing material provided it is contained by curbs of concrete, brick, wood or similar material. The December 1, 1994 grandfathering date shall also apply to unpaved, all weather surfaced accessory off-street parking spaces located in the front yard of a single-family or two-family residential use. Such unpaved areas shall be maintained in good condition and free from weeds, grass, trash or other debris.

- 2) In the R-1C “Suburban Single-Family Residential District” only, driveways and off-street parking areas located in front of the principal structure existing prior to July 1, 2013 which do not meet the above surfacing standard may utilize one half inch diameter crushed rock or larger as replacement surfacing material provided it is maintained in good condition and free from weeds, grass, trash or other debris. Existing and new accessory off-street parking spaces and drives providing access thereto, which are located in a side or rear yard of the principal structure, may be surfaced with an all weather surface. Owners of properties maintaining permitted crushed rock or all weather driveways shall be responsible for keeping the street right-of-way clear of any debris resulting from accessing the public street from a private drive.
 - 3) All off-street parking lots and loading areas and all driveways serving multiple-family, institutional, commercial or industrial uses shall be surfaced with poured in place concrete, asphaltic concrete or other comparable paving material approved by the Zoning Administrator, and shall be maintained in good condition and free of weeds, dust, trash and other debris. Except as provided below, all such parking lots and loading areas shall be provided 6-inch tall, poured in place, perimeter concrete curbs. In some instances, precast and permanently pinned in place wheel stops or guards may be used along the perimeter of the parking lot instead of poured in place concrete curbing if such alternative is in accordance with the approved drainage plan required by Section 500.A.6.g of these regulations.
 - 4) All portions of a driveway that is within street right-of-way shall be paved and designed to the standards of the City Engineer.
- c. **SCREENING:** Screening for parking spaces and loading areas is incorporated into the general screening and landscaping provisions of Section 304 of these regulations.
 - d. **LIGHTING:** Any lighting used to illuminate off-street parking spaces shall be shaded so that no direct light is cast upon property located in a residential district and so that glare is not a problem to traffic on any public street.
 - e. **LOCATION:** All parking spaces required to serve structures or uses shall be located on the same zoning lot as the structure or use served unless an exception is obtained under Section 502 of this Article.
 - f. **DESIGNATION OF SPACES:** All vehicular parking spaces and associated circulation aisles shall be clearly delineated through the use of pavement markings.
 - g. **DRAINAGE:** All parking facilities shall be graded and/or designed with storm drainage facilities that are in accordance with an approved drainage plan and all applicable federal, state and local laws, rules, regulations, ordinances, resolutions, policies, procedures and permits so that surface water is channeled away from adjoining properties to a storm water detention facility or an approved storm drainage system.

7. **Plans and Approval Required:** Plans showing the layout and design of all required off-street parking, stacking spaces for drive-through facilities and loading areas shall be submitted to and approved by the Zoning Administrator and/or City Engineer or their designated agent(s), prior to issuance of a building permit for the parking lot itself or as part of a building permit application for a larger related project. Before approving any parking layout, the Zoning Administrator and/or City Engineer shall determine that the spaces provided are usable and meet standard design criteria and all parking requirements of these regulations.
8. **Shared Parking:** The Zoning Administrator may authorize a reduction in the number of required parking spaces for multiple use developments which are under a single ownership, and which have different peak parking demands and operating hours. Shared or collective parking for such multiple use developments shall be subject to the following standards.
 - a. **SHARED PARKING ANALYSIS:** A parking analysis acceptable to the Zoning Administrator shall be submitted which clearly establishes that uses will make use of the shared spaces at different times of the day, week, month or year. The study shall:
 - 1) Address the size and type of activities, the composition of tenants, the rate of turnover for proposed shared spaces, and the anticipated peak parking and traffic loads;
 - 2) Provide for a reduction by no more than 30 percent of the combined parking required for each use; and
 - 3) Provide for no reduction in the number of spaces reserved for persons with disabilities.
 - b. **AGREEMENT FOR SHARED PARKING PLAN:** A shared parking plan shall be enforced through written agreement. An attested copy of the agreement, in a form acceptable to the City of Derby, shall be submitted to the Register of Deeds for filing of record. A copy of the recorded agreement shall be submitted to the Zoning Administrator prior to the issuance of a building permit.
 - c. **REVOCATION:** Failure to comply with the shared parking provisions of this section, including any provision of an Agreement for Shared Parking Plan executed in accordance with Subsection 500.A.8.b above, shall constitute a violation of these regulations and shall specifically be cause for revocation of a Certificate of Occupancy.
9. **Parking Spaces for Persons with Disabilities:** A portion of the total number of required vehicular parking spaces in each off-street parking facility shall be specifically designated, located and reserved for use by persons with disabilities in such numbers and according to the requirements of the Americans with Disabilities Act.
10. **Nonconforming Use Status:** Any single-family or two-family land use that was legally established shall not be deemed nonconforming solely as a result of providing fewer off-street parking spaces than required by this Article.

501 REQUIRED PARKING SPACES

Except for properties zoned “B-4” Central Shopping District and “B-2A” Buckner Business District, the minimum number of off-street parking spaces required for the uses designated shall be as shown in the table in Section 5.01A below. When located in the “B-4” District, the provision of a minimum number of off-street parking spaces is not required. When located in the “B-2A” District, the provision of a minimum number of off-street parking spaces shall be as required in Section 501.B.

A. Minimum Required Parking

	Land Use	Minimum Number of Parking Spaces
Residential Uses	Single-family dwelling	2 spaces
	Earth-sheltered dwelling	2 spaces
	Residential-design manufactured home	2 spaces
	Mobile home dwelling	2 spaces
	Two-family dwelling	2 spaces
	Multiple-family dwelling	1.25 spaces per efficiency unit, and 1.25 spaces per 1-bedroom unit, and 1.50 spaces per 2-bedroom or larger unit
	Assisted living and retirement centers	0.75 space per unit, plus 1 space per 5 residents
	Bed and breakfast home	1 space per guest room
	Boarding house or rooming house	1 space per guest room
	Dormitories	2 spaces per each 3 occupants
	Fraternity or Sorority	1 space per resident, plus 1 space per house parent, plus 1 visitor's space per 2 residents
	Group home	2 spaces, plus 1 space per each resident permitted to drive, plus 1 space per 5 residents
	Nursing or Convalescent home	1 space per 5 residents, plus 1 space per employee
	Rehabilitation home	2 spaces, plus 1 space per each resident permitted to drive, plus 1 space per 3 residents
Public and Civic Uses	Athletic field or stadium (indoor or outdoor)	1 space per 4 spectator seats
	Child and adult day care facilities	1 space per 300 square feet of building floor area
	Church or place of worship	1 space per 4 seats located in the sanctuary
	Convalescent care facility	1 space per 5 beds, plus 2 space per staff doctor and employee
	Golf course	4 spaces per hole, plus 1 space per practice tee, plus 1 space per 300 square feet of pro shop and concession area
	Hospital	1 space per 5 beds, plus 1 space per staff doctor and employee
	Public assembly uses	1 space per 4 seats
	Schools and Colleges (vocational and business)	1 space per employee, plus 1 space per 4 students
	Swimming pool	1 space per 250 square feet of water area
	Tennis and Racquetball courts	2 spaces per court

Commercial Uses	Animal hospitals	1 space per 300 square feet of building floor area
	Athletic field or stadium (indoor or outdoor)	1 space per 4 spectator seats
	Sale and Rental Lots (automobile, truck, trailer, boat, motorcycle, recreational vehicle, and manufactured/mobile homes)	1 space per 500 square feet of building floor area, plus 2 spaces for the first 10,000 square feet of lot area used for sales display or storage purposes, plus 1 space for each additional 10,000 square feet of lot area used for sales display or storage purposes
	Bed and breakfast inn	1 space per guest room
	Bowling alleys	4 spaces per each lane
	Business and Professional office	1 space per 300 square feet of building floor area
	Cartage, Express, Parcel Delivery and Freight Terminal Establishments	1 space per employee, plus 1 space per delivery vehicle
	Car or Truck Wash	2 holding spaces fore each washing stall, plus 1 drying space for each washing stall
	Child and adult day care facilities	1 space per 300 square feet of building floor area
	Convenience Stores	1 space per 300 square feet of building floor area
	Drinking Establishments	1 space per 3 occupants ¹
	Private Clubs	1 space per 3 occupants ¹
	Pool Hall or Billiard Center	1 space per 3 occupants ¹
	Financial Institutions	1 space per 300 square feet of building floor area
	Fitness Center or Health Club	1 space per 300 square feet of building floor area
	Flea Market	1 space per 300 square feet of exhibition and sales area
	Funeral Homes and Mortuaries	1 space per 4 seats
	Go-cart / Skateboard Track	1 space per 800 square feet of track area
	Golf, Miniature	1 space per hole
	Golf Driving Range	1 space per tee
	Batting Cages	1 space per batting cage
	Hotel or Motel	1 space per guest room, plus 1 space per 300 square feet of building floor area used for retail purposes or service facilities
	Laundromats	1 space per 300 square feet of building floor area
	Medical and Dental Clinics or Offices	1 space per 300 square feet of building floor area
	Monument Sales	1 space per 300 square feet of building floor area
	Public Assembly Uses	1 space per 4 seats
	Recreational Vehicle Campground	1 space per camping space
	Restaurants	1 space per 3 occupants ¹
	Restaurants, Drive-in	10 spaces minimum, plus 1 space per 3 occupants ¹
	Retail Stores (except "Large Items" below)	1 space per 300 square feet of building floor area
Commercial Uses (continued)	Retail Stores, Large Items (furniture, appliances, carpet and machinery)	1 space per 1,000 square feet of building floor area
	Service Stations (Automotive and Truck)	4 spaces minimum, plus 2 spaces for each service bay
	Skating Rinks	1 space per 300 square feet of rink
	Swimming Pool	1 space per 250 square feet of water area
	Theaters, Indoor	1 space per 4 seats
	Vehicle Repair Businesses	4 spaces minimum, plus 2 space per each service bay
	Warehousing	1 space per 2,500 square feet for the first 20,000 square feet of building floor area, plus 1 space per 5,000 square feet of building floor area over 20,000 square feet, plus 1 space per 300 square feet of office area
	Wholesale or Business Services	1 space per 2,500 square feet of warehouse storage, plus 1 space per 300 square feet of office or sales area, plus 1 space for each vehicle maintained on the premises
Industrial Uses	Auto Wrecking or Salvage Yard	1 space per 300 square feet of building floor area
	Manufacturing	1 space per 500 square feet of building floor area

¹ Occupant load as established by the Derby Building Trades Official in accordance with the Building Code adopted by the City.

B. MINIMUM REQUIRED PARKING IN THE “B-2A” DISTRICT:

1. Residential uses in the “B-2A” District shall provide a minimum of 2 off-street parking spaces.
2. Non-residential uses in the “B-2A” District shall provide a minimum of 3 off-street parking spaces.
3. Commercial developments comprised of two or more platted lots and/or unplatted parcels will be required to provide parking in accordance with Section 501.C. of these regulations.

The minimum number of required parking spaces for other permitted uses, which are not listed above, shall be provided in accordance with the determination of the Board of Zoning Appeals. Such determination shall be made with respect to the minimum number of spaces required to serve employees and/or patrons of such use. Required minimum amounts of parking for special uses and exceptions, unless specified in Section 501, shall be established as part of the application review process. For those exceptions where minimum amounts of parking are specified by Section 501, required minimum amounts of parking may be increased above the minimum specified during review of the application for exception.

502 EXCEPTIONS FOR PARKING

In order to provide up to 50 percent of required off-street parking, at a location that is off-site or separated from the lot on which the use being served is located, an exception may be granted for the establishment of such an off-site parking area. Such parking area shall be located on property that is assigned the same zoning district classification as required for the use being served or be located on property zoned a classification which specifically permits, as a part of the district's Use Limitations, outdoor customer and employee parking. Approval of the exception shall be subject to the following standards:

A. NECESSITY.

The applicant shall demonstrate that it is not feasible to locate all required parking on the same lot as the use being served.

B. LOCATION.

Parking provided under this section must be within 300 feet, as measured along the shortest legal and practical walking route, from the boundary of the zoning lot on which the use to be served is located. Off-site parking spaces shall not be separated from the use to be served by an arterial street, expressway or freeway unless a grade-separated pedestrian walkway is provided.

C. USE.

The parking area shall be used for passenger vehicles only, and in no case shall it be used for sales, repair work, storage, dismantling or servicing of any vehicle, equipment, materials or supplies. Only such signs as are necessary for the proper identification and operation of the parking lot shall be permitted. The size and location of such signs shall be established as part of the exception review process.

D. IMPROVEMENTS.

1. Parking areas and driveways providing ingress and egress to parking areas shall be paved with poured in place concrete or asphaltic concrete and shall be provided perimeter curbing as required by Section 500(A)(6)(b) of these regulations. Paved areas shall be maintained in good condition and free of weeds, dust, trash and debris.
2. Parking areas shall be provided adequate guards to prevent the overhanging of vehicles beyond property lines or into landscaping areas. Parking areas shall include permanent pavement markings to delineate individual parking spaces and circulation aisles.
3. If lighting facilities are provided for the parking area, such lighting shall be so arranged and installed to deflect or direct light away from any adjacent residential use or residential district. Such lighting shall also be arranged and installed so that glare is not a problem to traffic on any public street.

4. Solid visual screening (such as a wall or fence constructed of brick, stone, masonry, architectural tile, concrete, wood or a combination of those materials, but not including the use of woven wire, welded wire or metal panels) not less than six feet in height, shall be required to be erected along any property line adjacent to or adjoining any residential district to reduce noise, eliminate the passage of light from vehicles and prevent the blowing of debris. Whenever solid visual screening is required within a required front yard, it shall not be higher than three feet.
5. When located in a residential district or adjacent to a residential district, vehicle parking shall not be located within the required front yard setback and such front yard shall remain unpaved and shall be landscaped.
6. Additional improvements necessary to protect adjacent property owners and the public interest may be established as a part of the exception review process. Such improvements may include, but are not be limited to, proper methods for handling drainage, controlling access to adjacent public rights-of-way, establishment of setbacks, providing screening and landscaping including requirements for the proper maintenance thereof.

E. AGREEMENT FOR OFF-SITE PARKING.

In the event that required off-street parking areas are not located on the same zoning lot as the use being served, a written agreement shall be required. An attested copy of the agreement shall be submitted to the Register of Deeds for filing of record. The agreement shall be on standard forms obtained from the Office of the Zoning Administrator. A copy of the recorded agreement shall be submitted to the Zoning Administrator prior to the issuance of a building permit. Failure to comply with any provision of an Agreement for Off-Site Parking executed in accordance with this Section 502 shall constitute a violation of these regulations and shall specifically be cause for revocation of an occupancy certificate.

F. PARKING FOR RELIGIOUS AND EDUCATIONAL USES.

For religious and educational uses, up to 50 percent of required off-street parking may be separated from the zoning lot on which such use is located by a public street or alley and still be considered as on-site parking, provided that such parking facility is: 1) under the same ownership as the use being served and 2) is within 300 feet of a boundary line of the zoning lot for such use.

503 OFF STREET LOADING AND UNLOADING

In addition to meeting the off-street parking requirements of this Article, certain land use types shall meet the following off-street loading standards.

- A. Off-street loading areas shall be designed and installed in accordance with applicable City standards. Such areas shall include a minimum of 12 feet by 25 feet for loading and unloading operations and shall have a minimum height clearance of 14 feet. The minimum number of off-street loading areas shall be provided according to the following schedule:

OFF-STREET LOADING SCHEDULE

MINIMUM # OF SPACES	LAND USE TYPE
Schools, Hospitals, and Nursing Homes with gross floor area of 10,000 square feet or more.	1 per 200,000 square feet or fraction thereof.
Hotels and Motels with gross floor area of 10,000 square feet or more.	1 per 100,000 square feet or fraction thereof.
Offices with gross floor area of 10,000 square feet or more.	1 per 100,000 square feet or fraction thereof.
Funeral Homes	1 per 5,000 square feet or fraction thereof.
Commercial, Industrial, Manufacturing, Warehousing Uses with gross floor area of 5,000 square feet or more.	1 per 25,000 square feet for 1st 100,000 square feet or fraction thereof. 1 per 50,000 square feet beyond 1st 100,000 square feet or fraction thereof.

- B. Off-street loading areas shall be located on the same building site on which the structure for which they are provided is located. Access, maneuvering area, ramps and other appurtenances shall be furnished off the street right-of-way and so arranged that vehicles are not permitted to back from the property into the street.
- C. Off-street loading areas shall be surfaced with poured in place concrete or asphaltic concrete which is maintained in good condition, free of weeds, dust, trash and debris.
- D. Any off-street loading area shall not be used to satisfy the space requirements for any off-street parking areas or portions thereof.

504 VEHICLE STACKING SPACE REQUIREMENTS FOR DRIVE-THROUGH FACILITIES

In addition to meeting the off-street parking and loading requirements of this Article, drive-through facilities shall provide vehicle stacking spaces according to the following standards.

- A. VEHICLE STACKING SPACE SCHEDULE.** The minimum number of vehicle stacking spaces required shall be as follows. Variations from these minimums may be approved by the City Engineer based on a traffic study submitted to the City for review. Vehicle stacking spaces may not utilize public right-of-way or impair vision triangles.

DRIVE-THROUGH FACILITY VEHICLE STACKING SPACE SCHEDULE

USE TYPE	MINIMUM #OF SPACES	MEASURED FROM
Bank teller lane	4	Teller or Window
Automated teller machine	3	Teller Machine
Restaurant drive-through	5	Order Box*
Car wash stall, automatic	3 per 20 lineal feet of stall	Entrance
Car wash stall, self-service	3	Entrance
Gasoline pump island		30 feet from each end of pump island
Photo processing drive through	2	Window
Dry cleaning drive through	2	Window
Other		To be determined by the City Engineer based on traffic study.

* If there is no order box, the spaces shall be measured from the window or point at which items are ordered.

- B. DIMENSIONS.** Vehicle stacking spaces shall be a minimum of 10 feet by 20 feet in size.

ARTICLE 6. ACCESSORY USES, TEMPORARY USES AND HOME OCCUPATIONS

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).

601 TEMPORARY USES.

A. Permitted Temporary Uses.

The following temporary uses of land are permitted in specific zoning districts, subject to the restrictions established by this Section, and except as specifically modified by this Section, the regulations of the zoning district in which the use is permitted and other applicable provisions of these regulations.

1. Within any zoning district, temporary outdoor **CARNIVALS, CIRCUSES, MUSIC FESTIVALS, COMMUNITY CELEBRATIONS** or other events of a temporary or intermittent nature may be approved, with or without conditions, by the Zoning Administrator. Compliance with the bulk requirements of the applicable zoning district, observed platted setbacks, and other requirements may be waived by the Zoning Administrator in approving such an event provided that, temporary structures or equipment, axle-mounted enclosures, displays and events shall not interfere with the view of operators of motor vehicles on the public streets and shall not be located within 30 feet of the intersection of the curb line of any two streets or at any location near a driveway that may interfere with the view of either motorists or pedestrians. The area occupied by the temporary uses shall not be counted as part of the percentage of outdoor display and sales permitted by specific district regulations.
2. Within the B-3, B-4 and B-5 zoning districts and as provided below for school and church property, **CHRISTMAS TREE, FIREWORKS, PUMPKIN AND SIMILAR NATIONALLY ACCEPTED AND RECOGNIZED CELEBRATION SALES** for a period not to exceed 30 days. Display of such merchandise need not comply with the bulk requirements of the districts or observe platted setbacks; provided that no merchandise, displays, temporary structures or axle-mounted enclosures shall be located within 30 feet of the intersection of the curb line of any two streets or at any location near a driveway that may interfere with the view of either motorists or pedestrians. Merchandise display, temporary structures and axle-mounted enclosures shall not occupy or interfere with any required parking spaces or circulation aisles providing access thereto. The area occupied by nationally recognized celebration sales shall not be counted as part of the percentage of outdoor display and sales permitted by specific district regulations. The temporary use may include the use of temporary signage. This is provided that such signage is limited to not more than two signs with a combined square footage of 32 square feet or less. Such signage may be placed on vehicles or trailers associated with the temporary use and the square footage calculation shall not include signage that may be permanently painted or permanently affixed to such vehicles or trailers.

On property that is a part of a zoning lot for a school or church use, **CHRISTMAS TREE, FIREWORKS, PUMPKIN AND SIMILAR NATIONALLY ACCEPTED AND RECOGNIZED CELEBRATION SALES** are permitted provided the sales and display area for such is located along an arterial, collector or business street. All conditions listed above for nationally accepted and recognized celebration sales in the B-3, B-4 and B-5 zoning districts shall also apply to school or church property.

3. Within any zoning district, **TEMPORARY BUILDING CONTRACTOR'S OFFICE AND EQUIPMENT SHEDS** or a manufactured/mobile home accessory to a construction project for a period not to exceed the duration of the construction project. Such temporary structures need not comply with the bulk requirements of the zoning district in which they are located or observe platted building setbacks, but shall not be located near any driveway which may obstruct the view of either motorists or pedestrians.
4. Within any residential zoning district, use of a site built dwelling or manufactured housing as a **TEMPORARY REAL ESTATE OFFICE** where information about the availability of dwellings or lots within the applicable housing project is discussed with prospective buyers or where sales contracts are executed; provided any manufactured housing used for such purposes shall not be located within any required yard or platted setback and shall be removed from the site once 90 percent of all lots within the subject housing project have been developed. For site built housing, use of the dwelling unit as a temporary real estate office shall be discontinued once 90 percent of all lots within the subject housing project have been developed.
5. Within any residential zoning district, **GARAGE, YARD, ESTATE, RUMMAGE OR SIMILAR SALES**; provided no one sale exceeds a period of more than three days and not more than one sale shall be held at a dwelling during any consecutive six month period.
6. Within the B-3, B-4, and B-5 zoning districts, **PROMOTIONAL ACTIVITIES OF RETAIL MERCHANTS**, involving the display of merchandise outside of enclosed buildings, may exceed the percentage of outdoor display and sales permitted by district regulations, provided that:
 - a. No such promotional sale shall be held for a period longer than 14 days and no more than one such sale shall be held, per zoning lot, per consecutive three month period;
 - b. Outdoor merchandise displays need not comply with the bulk requirements of the applicable district regulations, provided that any temporary structures, axle-mounted enclosures or vehicles with a weight classification of 1 ton or greater, placed for use in conjunction with the promotional activities, shall not encroach upon required yards or platted setbacks;
 - c. Outdoor display of merchandise shall not interfere with the view of operators of motor vehicles on the public streets and shall not be located within 30 feet of the intersection of the curb line of any two streets or at any location near a driveway that may interfere with the view of either motorists or pedestrians;
 - d. Display of merchandise or placement of associated temporary structures or axle-mounted enclosures shall not occupy or interfere with required parking spaces or circulation aisles providing access thereto.
 - e. The temporary use may include the use of temporary signage. This is provided that such signage is limited to not more than two signs with a combined square footage of 32 square feet or less. Such signage may be

placed on vehicles or trailers associated with the temporary use and the square footage calculation shall not include signage that may be permanently painted or permanently affixed to such vehicles or trailers.

7. Within the B-3, B-4 and B-5 districts and as provided below for school and church property, **RECYCLING CENTERS** operating for not more than 10 days during any one period and no more than three times during any consecutive 12-month period. The area occupied by the recycling center shall not be counted as part of the percentage of outdoor display and sales permitted by specific district regulations. The area occupied by the recycling center may be within required yards or platted setbacks, but shall not be located within 30 feet of the intersection of the curb line of any two streets or at any location near a driveway that may interfere with the view of either motorists or pedestrians. The recycling center use shall not occupy or interfere with required parking spaces or circulation aisles providing access thereto. The temporary use may include the use of temporary signage. This is provided that such signage is limited to not more than two signs with a combined square footage of 32 square feet or less. Such signage may be placed on vehicles or trailers associated with the temporary use and the square footage calculation shall not include signage that may be permanently painted or permanently affixed to such vehicles or trailers.

On property that is a part of zoning lot for a school or church use, **RECYCLING CENTERS** are permitted provided such use is located along an arterial, collector or business street. All conditions listed above for recycling centers in the B-3, B-4 and B-5 zoning districts shall apply to the school and church property.

8. Within the B-3, B-4, B-5 and M-1 districts, **TEMPORARY SALES** for not more than 14 days during any one sale and no more than one sale, per zoning lot, per consecutive three month period, provided that:
 - a. The temporary sales use need not comply with the bulk requirements of zoning districts or platted setbacks, except that any vehicle with a weight classification of 1 ton or greater or any axle-mounted enclosure or temporary structure used in conjunction with the temporary sales, shall not be located upon required yards or within platted setbacks;
 - b. The temporary sales use shall not interfere with the view of operators of motor vehicles on the public streets and shall not be located within 30 feet of the intersection of the curb line of any two streets or at any location near a driveway that may interfere with the view of either motorists or pedestrians;
 - c. The temporary sales use shall not occupy or interfere with required parking spaces or circulation aisles providing access thereto;
 - d. The area occupied by the temporary sales use shall not be counted as part of the percentage of outdoor display and sales permitted by specific district regulations.
 - e. The temporary use may include the use of temporary signage. This is provided that such signage is limited to not more than two signs with a combined square footage of 32 square feet or less. Such signage may be placed on vehicles or trailers associated with the temporary use and the

square footage calculation shall not include signage that may be permanently painted or permanently affixed to such vehicles or trailers.

9. For a period not to exceed 90 days, between March 1 and June 30, and for a period not to exceed 60 days, between August 15 and November 15, businesses located on property within districts zoned B-3, B-4 or B-5, or a combination thereof, may have outdoor display and sales areas that are twice the amount permitted by district regulations, provided the area in excess of the area permitted by the district regulations, is used solely for the **DISPLAY AND SALES OF LIVING PLANTS** and, provided that:
 - a. Outdoor display and sales of living plants need not comply with the bulk requirements of the districts, however, any temporary structures, axle-mounted enclosures or vehicles with a weight classification of 1 ton or greater, placed for use in conjunction with the sales and display of living plants, shall not encroach upon required yards or platted setbacks;
 - b. Outdoor display and sales of living plants shall not interfere with the view of operators of motor vehicles on the public streets and shall not be located within 30 feet of the intersection of the curb line of any two streets or at any location near a driveway that may interfere with the view of either motorists or pedestrians;
 - c. Display and sales of living plants or placement of associated temporary structures shall not occupy or interfere with required parking spaces or circulation aisles providing access thereto.
10. Within any residential zoning district, **PORTABLE STORAGE CONTAINERS FOR TEMPORARY ON-SITE STORAGE**; provided, that:
 - a. Only one (1) portable storage container may be located at a residence at any one time, provided that the container is placed on a paved driveway or personal parking area and does not obstruct any City right-of-way or interfere with any vehicular or pedestrian circulation.
 - b. Portable storage containers shall not be utilized as permanent accessory structures in any residential district.
 - c. Portable storage containers shall only be permitted to be located at a residence once during any consecutive 12-month period for not longer than forty-five days during the same period, provided that the Zoning Administrator, or his or her designee, may grant additional time if deemed appropriate.
11. Within any district, **PORTABLE CONTAINERS FOR TEMPORARY ON-SITE STORAGE OF CONSTRUCTION DEBRIS**, provided that:
 - a. Only one (1) portable container for temporary storage of construction debris may be located at the construction site at any one time; provided, that the container does not obstruct any City right-of-way or interfere with any vehicular or pedestrian circulation.

- b. Portable containers used for temporary storage of construction debris shall only be permitted in conjunction with a valid building permit or as otherwise permitted by the Zoning Administrator or his or her designee.

B. Temporary Use Permit Required.

1. Prior to the commencement of a temporary use, except for those temporary uses specified below as not requiring a Temporary Use Permit, the person responsible for the proposed temporary use shall file with the Zoning Administrator, or their designated agent, the following:
 - a. A completed Temporary Use Application;
 - b. A drawing which depicts the perimeter of the zoning lot and where on the zoning lot the temporary use is proposed to be placed;
 - c. If vehicular parking spaces are proposed to be used as the area for the temporary use, information shall be submitted which shows that the number of parking spaces that will remain available on the zoning lot for parking purposes will meet the minimum number of off-street parking spaces required by Section 501 of these regulations;
2. The following temporary uses ARE NOT subject to the requirement for a Temporary Use Permit:
 - a. COMMUNITY CELEBRATIONS and other such activities approved by the Governing Body pursuant to 601.A.1;
 - b. TEMPORARY BUILDING CONTRACTOR'S OFFICE OR SHEDS provided for by 601.A.3;
 - c. The use of site built dwelling as a TEMPORARY REAL ESTATE OFFICE provided for by 601.A.4;
 - d. GARAGE, YARD, ESTATE, RUMMAGE OR SIMILAR SALES, provided for by 601.A.5;
 - e. PORTABLE STORAGE CONTAINERS FOR TEMPORARY ON-SITE STORAGE provided by 601.A.10; and
 - f. PORTABLE CONTAINERS FOR TEMPORARY ON-SITE STORAGE OF CONSTRUCTION DEBRIS provided by 601.A.11.

Nothing in this Section shall be construed to mean that a Temporary Use Permit is required for the temporary display or sales of merchandise, outside of a completely enclosed building, which may be permitted by the regulations of specific zoning districts.

602 HOME OCCUPATIONS AUTHORIZATION.

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

- A. Definition.** A business, profession, occupation or trade conducted for gain or support entirely within a residential building or manufactured/mobile home, or within a permitted structure that is accessory to such a building or home.
- B. Use Limitation.** In addition to all of the use limitations applicable to the district in which it is located, no home occupation shall be permitted unless it complies with the following restrictions:

* Zoning permits are required only when a home occupation sign is displayed. Business registration is required by City Code.

1. In the R-1, R-1B, R-1C and R-2 Residential Districts and the B-2A BUCKNER BUSINESS DISTRICT:

- a. Goods or stock for sale on or off the premises may be stored in enclosed areas, except articles which may constitute a hazard to the safety of adjacent property owners or tenants.
- b. No alteration of the principal residential building shall be made which changes the character thereof as a residence or causes goods to be displayed visibly from the residence or on the premises provided the latter is not otherwise permitted by other sections of these regulations.
- c. No more than 25% of the area of the residence shall be devoted to the home occupation; provided, however, that rooms let to boarders or roomers are not subject to this limitation. (See Section 202 for definition of boarding and rooming house).
- d. No equipment or process shall be used which shall create undue noise, smoke or particulate matter emission, vibrations or odors which are detectable to the normal senses off the lot. In case of electrical interference, no equipment or process shall be used which creates a visual effect or an audible interference off the premises in any radio or television receiver or transmitter or causes fluctuation in power voltage.
- e. There shall be no outdoor storage or display of equipment or materials used in the home occupation, except a swimming pool for instruction.
- f. No more than one person other than a member of the immediate family occupying such residence shall be employed.

- g. The home occupation shall be conducted entirely within the principal residential building or in a permitted garage, storage structure or pool accessory thereto. [See Section 600(B)(3) for limitations on storage structure].
- h. No sign shall be permitted other than that permitted by the applicable regulations in Article 7.

2. In the R-1A, R-3, R-4 and MH-1 Districts:

- a. No person other than a member of the immediate family occupying such residential unit shall be employed.
- b. The home occupation shall be conducted entirely within the principal residential building or manufactured/mobile home and no more than 20% of the area of the dwelling shall be devoted to the home occupation.
- c. No manufacturing or processing of any sort whatsoever shall be done and no stock shall be displayed or sold on the premises.
- d. No sign shall advertise the home occupation unless such sign is required by state statute.

C. Home Occupations Permitted. Customary home occupations include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Section 602(A) and (B):

- 1. Artists, sculptors, authors, composers and photographers.
- 2. Barbers and beauticians; provided that only one operator shall be permitted.
- 3. Adult care centers for not more than four adults, adult care homes, boarding homes for children, day care homes and family and group day care homes.
- 4. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, picture framing, and the like.
- 5. Ministers, rabbis and priests.
- 6. Office facilities for accountants, architects, landscape architects, engineers, attorneys, real estate and insurance agents, building contractors, brokers and members of similar professions, but not physicians or dentists.
- 7. Office facilities for route salesmen or manufacturer's representatives, when no exchange of tangible goods is made on the premises.
- 8. Teachers, including music and dance instructors, provided that instruction shall be limited to five pupils at anytime, except for occasional groups.
- 9. Seamstresses and tailors.

D. Home Occupations Permitted only in the R-1C “Suburban Single-Family Residential District.” In addition to the customary home occupations listed above, in the R-1C District only, home occupations may also include, but are not limited to, the following list of occupations; provided, however, that each listed occupation shall be subject to the requirements of Section 602.A and 602.B:

1. Animal boarding and general care, but not including veterinary services and provided that the number of animals harbored on any zoning lot is compliant with all applicable City of Derby Municipal Codes.
2. Assembly, maintenance and repair of small implements used in the home, office, shop, garage, lawn, garden and farm.
3. Welding and Machine shops.
4. Manufacturing of pottery, statuary, figurines, or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.
5. Automobile restoration conducted entirely within an enclosed structure with no outdoor storage of vehicles, parts or equipment provided that the home occupation does not exhibit regular or continuous sales as identified in Section 602.E.2.

E. Home Occupations Prohibited. Permitted home occupations, for example, shall not in any event be deemed to include:

1. Animal kennels, hospitals or stables, except boarding as permitted by Section 602.D.1.
2. Automobile and other vehicular repair shops or sales of such vehicles which exhibit a pattern of regular or continuous sales. A person holding a State Vehicle Dealer's License may not operate as the same as a home occupation. This shall not prevent the periodic sale of a vehicle which is owned and operated for personal use.
3. Dancing schools, except as provided for in Section 602.C.
4. Child care centers and preschools, unless specifically permitted by the district regulations.
5. Excavating and/or heavy equipment operators.
6. Funeral homes.
7. Grocery stores.
8. Medical or dental clinics.
9. Renting of trailers, motor vehicles, tools or equipment.
10. Restaurants.

ARTICLE 7. SIGNS

700 PURPOSE AND SCOPE

- A. The purpose of this article is to establish comprehensive and reasonable sign regulations relating to the following specific objectives:
1. Ensure signs are designed, constructed, installed and maintained so that public safety, traffic safety and property values are protected;
 2. Promote the desired character and development patterns identified in the City's Comprehensive Plan by designating the type, size, timing and placement of signs within zoning districts;
 3. Recognize aesthetic values and visual enhancement of the community by eliminating visual clutter and preventing overconcentration of signage;
 4. Recognize special sign needs of the business community;
 5. Promote proper sign maintenance and renovation;
 6. Ensure freedom of speech is protected; and
 7. Provide equal treatment under the law through consistent administration and enforcement.
- B. Signs not specifically addressed or identified by these regulations are prohibited, unless authorized by the Board of Zoning Appeals as an exception [See 708 for Sign Exceptions].

701 DEFINITIONS

As used in this article, the following terms shall have these meanings:

BALLOON SIGN: A sign that is filled or inflated with air using captured and contained air or a device that provides a constant flow of air into the device and which is resting on, tethered or attached to the ground, structure or roof of a structure.

BILLBOARD: A sign generally known as outdoor advertising, mounted on a permanent or semi-permanent structure and depicting information not directly related to the property upon which it is placed. Except where a specific distinction is drawn, the term "billboard" includes "poster panel."

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

CANDELA: The basic unit of measurement of light in metric units.

CANDELA PER SQUARE METER (cd/m²): The metric measurement unit used to describe the luminance of a light source or of an illuminated surface that reflects light. Also referred to as Nits.

CHANGEABLE COPY SIGN: A sign whose alphabetic, pictographic or symbolic informational content can be changed or altered by manual, electric, electromechanical or electronic/computer means.

CLEARANCE (OF A SIGN): The smallest vertical distance between the grade of the adjacent public right-of-way and the lowest point of any sign, including framework and embellishments, extending over that grade.

COPY: The graphic content of a sign surface in permanent, removable or electronic letter, pictographic, symbolic or alphabetic form.

DIRECTIONAL/INFORMATIONAL SIGN: A sign giving directions, instructions or facility information and which may contain the name or logo of an establishment but no advertising copy, e.g., parking or exit and entrance signs. Such signs may contain a logo; provided that the logo may not comprise more than 20% of the total sign area.

DISPLAY TIME: The amount of time a message and/or graphic is displayed on an Electronic Message Sign.

DISSOLVE / FADE: A mode of message transition on an Electronic Message Sign accomplished by varying the light intensity or pattern, in which the first message gradually appears to dissipate and lose legibility with the gradual appearance and legibility of the second message.

DYNAMIC FRAME EFFECT: An Electronic Message Sign frame effect in which the illusion of motion and/or animation is used.

ELECTRONIC MESSAGE SIGN: For the purposes of these regulations, the term electronic message sign shall refer to all electrically activated changeable signs whose variable message and/or graphic presentation capability can be electronically programmed by computer from a remote location. Electronic Message Signs also include Video Display Signs.

EXCEPTION (SIGNS): Signs requiring approval as an exception by the Board of Zoning Appeals. Sign exceptions may include applications for signs not otherwise authorized in these regulations [See 708 for Sign Exceptions].

FACADE: The entire exterior elevation of one side of a building, usually, but not limited to the front and including any parapet or mansard.

FACE OF SIGN: The area of a sign on which the copy is placed (See Section 7-704(C) for Gross Surface Area of Sign.)

FESTOONS: A string of ribbons, tinsel, small flags or pinwheels.

FLASHING/BLINKING SIGN: Illuminated signs exhibiting a preprogrammed repetitious cyclical interruption of illumination from one or more sources in which the duration of the period of illumination (on phase) is either the same as or less than the duration of the period of darkness (off phase), and in which the intensity of illumination varies from zero (off) to 100% (on) during the programmed cycle. For the purposes of these regulations, an Electronic Message Sign is considered flashing if the intensity of illumination fluctuates from high to low in a single frame or if copy changes more frequently than 1 frame per 2 seconds.

FRAME: A complete, static display screen on an Electronic Message Sign.

FRAME EFFECT: A visual effect on an Electronic Message Sign applied to a single frame. See also Dynamic Frame Effect.

FREE-STANDING SIGN: A sign commonly referred to as a pole or pylon sign, supported permanently upon the ground by poles or structural braces which are not attached to any building, and where such poles or braces, even if covered are a visible part of the sign.

FRONTAGE: The length of the property line of any one premise along a public right-of-way on which it borders.

FRONTAGE, BUILDING: The length of an outside building wall adjacent to or parallel with public right-of-way.

GOVERNMENT SIGN: Any temporary or permanent sign erected and maintained by a governmental entity for traffic direction, designation of public buildings and property and for other public purposes.

GROUND SIGN: A sign which is anchored to the ground by poles or braces, but which has a monolithic line and which maintains essentially the same contour from grade to top. Structure shall be encased or covered and shall not be visible.

HEIGHT (OF A SIGN): The vertical distance measured from the highest point of the sign, including decorative embellishments, to the surface grade beneath the sign. [See Clearance (of a Sign) and Section 706.]

HOLIDAY DECORATION/SIGN: Temporary decorations or signs that directly relate to or announce an upcoming or current holiday. These may include banners, balloons, festoons and electrical, mechanical or naturally energized animated signs.

HOME OCCUPATION SIGN: An on premise sign identifying a permitted home occupation in a residential district.

ILLEGAL SIGN: A sign which does not meet the requirements of these regulations and has not received legal nonconforming sign approval as a sign exception.

ILLUMINANCE: The amount of light falling upon a real or imaginary surface, commonly called “light level” or “illumination.”

ILLUMINATED SIGN: A sign with an artificial light source, either projecting through its surface (internally illuminated) or reflecting off its surface (externally illuminated).

ILLUSIONARY MOVEMENT SIGN: Illuminated sign exhibiting the illusion of movement by means of a pre-programmed repetitious sequential switching action in which illuminated elements of the sign are turned on or off to visually simulate the impression or motion characteristic of chasing, running, blinking, oscillating, twinkling, scintillating or expanding and contracting light patterns.

LED (Light-Emitting Diode): An electronic light source capable of emitting color across the visible, ultraviolet and infrared wavelengths with brightness from very low to very high.

LUMINANCE: Light that is emitted by or reflected from a surface. Measured in units of luminous intensity (candelas) per unit area (square meters in metric measurement units). Expressed in metric units as cd/m². Commonly referred to as “nits.”

MAINTENANCE: The cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the dimensions or structure of the sign.

MARQUEE SIGN: A permanent roof-like structure of rigid materials supported by and extending from the facade of a building.

MEMORIAL SIGN: A small sign used as a reminder to the memory or to the honor of some person, thing or event.

MESSAGE SEQUENCING: The act of displaying portions or segments of a single message on multiple frames, thus requiring the receiver of the message to hold attention on a sign for a prolonged period of time in order to comprehend the complete message.

MONUMENT SIGN: A low profile sign mounted directly to the ground in a manner that all structural braces and poles are encased or covered and not visible.

MOTION SIGN: A sign or display which creates motion or the visual impression of motion utilizing wind or other atmospheric influence, manual or mechanical based drives, electrical activation or other means.

NIT (NITS): A photometric unit of measurement referring to luminance. One nit is equal to one candela per square meter (cd/m²).

NONCONFORMING SIGN: Refer to Section 709.

OBSOLETE SIGN: Any sign for a business or activity which is no longer operated on the premises, is permanently closed or abandoned.

OFF-SITE SIGN: A sign structure advertising an establishment, merchandise, service or entertainment, which is not sold, produced, manufactured or furnished at the property on which said sign is located.

ON-SITE SIGN: A sign which pertains to the use of the premises and/or property on which it is located.

OUTDOOR ADVERTISING: Also commonly referred to as “billboard” (See Billboard).

OWNER: For the purpose of this article, the owner of property on which a sign is located is presumed to be the owner of the sign, unless factors to the contrary are officially recorded or otherwise brought to the attention of the Zoning Administrator or Designee, e.g., a sign leased from a sign company.

PERMANENT SIGN: A sign which is designed and intended for long-term use which is posted on private property and is attached to a wall, building, roof or to the ground by poles, structural metal braces or masonry.

POLE / PYLON SIGN: Any sign which is free-standing and supported by, from or on top of a vertical pole(s) or beam(s) composed of metal or other substantial support. The term “pole sign” shall also include pylon signs.

PORTABLE SIGN: A sign designed in such a manner as to be readily movable and not permanently attached to the ground, building or other structure and includes, but is not limited to A-frame signs, trailers or wheeled signs.

PROJECTING SIGN: A sign other than a flat wall sign, which is attached to and projects from a building wall or other structure not specifically designed to support the sign and which projects more than 12 inches from such building or structure (includes signs affixed or attached to an awning or canopy).

ROOF SIGN: A sign erected over or on the roof of a building.

SCROLL / TRAVEL: A mode of message transition on an Electronic Message Sign in which the message appears to move across the display surface.

SIGN: Any device, structure, fixture or placard using graphics, symbols and/or written copy for the primary purpose of identifying, providing directions or advertising any establishment, product, goods, or services.

SNIFE SIGN: A temporary sign or poster affixed to a utility pole, tree, fence or other object not intended to display temporary signs which is located or situated on public or private property.

SUBDIVISION SIGN: Any sign displayed for the purpose of advertising or identifying a housing development where undeveloped lots are for sale. Subdivision signs are classified as permanent signs and are subject to a permanent sign permit.

TEMPORARY SIGN: A sign or decoration not intended for long-term use which is posted on public or private property and is constructed from non-durable materials such as paper, cardboard, cloth, plastic and/or wallboard and does not constitute a structure subject to the City's adopted Building Code or other applicable zoning regulations.

TENANT DIRECTORY SIGN: A sign which may be in the form of a ground sign or wall sign whose purpose is to identify all tenants of a building, mall or shopping complex.

TRANSITION: A visual effect used on an Electronic Message Sign to change from one message to another.

VIDEO DISPLAY SIGN: A sign on which the copy changes in a manner or method of display characterized by motion, pictorial imagery or text and depicts action or illusionary movement.

VISION TRIANGLE: (See Section 2-202 for definition of Vision Triangle.)

WALL SIGN: A sign attached essentially parallel to and extending not more than 12 inches from the wall of a building with no copy on the sides or edges. This definition includes painted signs, individual letter signs, and signs on a parapet or mansard.

WINDOW SIGN: A sign painted, lettered or installed inside a window and intended to be viewed from the outside.

702 PERMIT REQUIRED

- A. Except as otherwise provided in this article, no sign shall be erected, enlarged, relocated or altered until an accessory sign permit has been obtained in accordance with procedures set out in Article 9 of these regulations. A permit for a sign shall not be issued unless the sign complies with all of the regulations of this article.
- B. Applications for sign permits shall be filed upon forms prescribed by the Zoning Administrator and shall be accompanied by plans drawn to scale indicating the sign type, size, location, method of illumination, colors and materials of the sign, structure and method of attachment. In addition, the applicant shall submit any other information relating to the placement, construction, design or facade attachment of the sign as may be required by the Zoning Administrator or designee.
 1. After a sign permit has been issued, the content may be changed without obtaining a new permit, provided that no changes shall be made to the type, size or shape of a sign nor shall any structural alterations be made without first obtaining a new sign permit.
 2. Existing signs may be replaced with an electronic message sign or an electronic message sign may be added to an existing sign with the approval of the Zoning Administrator or designee.
 3. Where site plan approval is required prior to the issuance of a building permit, no sign permit shall be issued until the site plan is approved by the Planning Commission.
- C. All permanent signs are to be fabricated and installed in a professional manner by an individual or company normally employed in the business of installing signs.
- D. Temporary signs may be designed, fabricated and installed by a business or property owner, provided that such temporary signs otherwise comply with the standards of Section 705 or other applicable sections of these regulations.
- E. All materials and finishes of permanent signs shall be of high quality and capable of withstanding the forces of wind, rain and other atmospheric conditions.

703 SIGNS EXEMPTED FROM THESE REGULATIONS

- A. The following types of signs shall not require permits and shall be exempt from the requirements of this article:
1. Flags or emblems of a governmental body or of a political, civic, philanthropic, educational or religious organization displayed on private property. These flags or emblems shall not be displayed as part of a commercial promotion or advertising, and not more than three flags or emblems shall be displayed at the same time on any property.
 2. Holiday decoration signs whether public or private.
 3. Signs required by law containing address numerals or related information needed for convenience of the public.
 4. Integral decorative or architectural features of buildings so long as such features do not contain letters, trademarks, moving parts or lights.
 5. Official signs of a noncommercial nature erected by public or private utility companies.
 6. Signs erected by or on behalf of or pursuant to the authorization of a duly constituted governmental body, including legal notices, identification and informational signs and traffic, directional or regulatory signs.
 7. Memorial signs displayed on private property.
 8. Scoreboards in athletic fields or stadiums, with the exception of commercial scoreboards where their location is subject to site plan approval requirements.
 9. Signs that do not exceed two (2) square feet in maximum gross surface area, are not commercial in nature, and which are displayed on private property for the convenience of the public, including but not limited to, signs to identify entrance and exit drives, parking areas, one-way drives, rest rooms, freight entrances, and other similar features.
 10. Signs on or adjacent to doors at the rear of commercial or industrial buildings displaying only the names and address of the occupant and/or the hours of operation or instructions for deliveries. Such signs shall not exceed six (6) square feet in maximum gross surface area. Where multiple tenants share the same rear door, the sign may display the names of each tenant with an additional surface area of two (2) square feet allowed per tenant.
 11. Signs painted on or otherwise permanently attached to currently licensed motor vehicles, which vehicles are not primarily used as signs.
 12. Window signs.
 13. Portable signs as permitted by Chapter 5.12 “Mobile Food Vending Registration” of the Derby Municipal Code.
 14. Signs installed at ball fields, including baseball and softball fields only when such facilities involve publicly-owned parks and/or public school ball fields, provided that:
 - a. Prior to the installation of such signs at a ball field, a conceptual plan showing the general type of construction and materials used for the signs, sign sizes, and the proposed locations of the signs shall be submitted for review by the Planning Commission;
 - b. Such signs in public parks shall be subject to approval and other conditions as determined appropriate by the City Manager or the manager’s designee; and
 - c. Public school facilities shall be subject to those conditions established by the school district.

704 PROHIBITED SIGNS AND LIGHTS

- A. The following signs and lights are prohibited in all zoning districts:
1. Off-site signs, except certain temporary signs as may be permitted by this article or as approved as an exception by the Board of Zoning Appeals for signs located in business and industrial districts only [See Section 708 for sign exceptions].
 2. Search Lights.
 3. Signs that imitate, resemble or interfere with official traffic control devices or governmental signs, including, but not limited to: signs that impair intended operation of traffic control signals; signs using red, yellow and green lights; signs using the words "stop, look, danger," etc.; and signs that give the appearance of a traffic control device or otherwise constitute a safety and/or traffic hazard.
 4. Snipe Signs, as defined herein.
 5. Flashing, Blinking, and Strobe Lights.
 6. Signs that advertise real estate or commercial activities or events located outside of city limits.
 7. Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying said sign. This does not apply to signs or lettering on buses, taxis or vehicles operating during the normal course of business.
 8. Balloon Signs.
 9. Pole Signs.
 10. Billboard Signs.
 11. Obsolete Signs.
 12. Electronic Message Signs on moving vehicles.
 13. Signs which employ sound projecting devices or audio content.

705 TEMPORARY SIGNS

- A. Reasonable regulations for the posting of temporary signs are necessary to ensure that temporary signs do not become a threat to public safety as a traffic hazard and to protect aesthetic values and visual enhancement of the community by eliminating visual clutter and preventing the overconcentration of signage.
- B. Temporary signs shall be subject to the following regulations, in addition to any other regulations of this article:
1. Temporary signs, generally:
 - a. Placement of temporary signs on private property shall require the consent of the property owner.
 - b. Temporary signs shall not be illuminated in any manner.
 - c. Temporary signs placed in conjunction with an event shall be removed within 72 hours of the conclusion of the event. Temporary signs remaining after 72 hours from the conclusion of the event may be removed by the Zoning Administrator or designee.
 - d. Temporary signs shall be constructed of materials and installed in a manner capable of withstanding the forces of wind, rain and other atmospheric conditions.
 - e. Temporary signs which are or become damaged, tattered or unreadable may be removed by the Zoning Administrator or designee.
 - f. Nothing in this section shall be construed to allow off-site commercial signs.

2. Temporary signs on private residential property:
 - a. Two (2) temporary signs which are six (6) square feet or less may be displayed on private residential property.
 - b. One (1) additional temporary sign not exceeding six (6) square feet may be displayed on private residential property for the purpose of advertising events which may commonly occur in a residential zoning district, such as, but not limited to garage sales, estates sales, construction or remodel activities, and yard maintenance activities. Said sign may be placed up to three (3) days prior to the event and must be removed at the conclusion of the event or at the time the contractor leaves the site.
3. Temporary signs on nonresidential property:
 - a. One (1) on-site temporary sign which is sixteen (16) square feet or less may be displayed on nonresidential property upon issuance of a permit in accordance with Section 702. Said temporary sign may be displayed for a maximum of thirty (30) days from the date a permit is issued.
 - b. One (1) temporary sign which is 48 square feet or less may be displayed on nonresidential property that is currently being offered for sale or for lease. Said temporary sign shall be removed once the property is sold or leased.
 - c. Temporary signs located on nonresidential property may display messages of a commercial or non-commercial nature, provided that temporary signs meeting the definition of “off-site sign” as defined in this article are not permitted.
4. Temporary signs in the public right-of-way:
 - a. Temporary signs greater than three (3) square feet shall not be placed in the public right-of-way without obtaining a permit for such placement in accordance with Section 702.
 - b. Temporary signs which are three (3) square feet or less may be placed in the public right-of-way without the need for a permit.
 - c. Temporary signs allowed in the public right-of-way shall be set back a minimum of eight (8) feet from the curb of any street, or as specified for the placement approved as part of a permit issued in accordance with Section 702 of these regulations.
 - d. No temporary signs shall be permitted in K-15 Highway right-of-way.

706 GENERAL STANDARDS

- A. **Message Substitution:** For any sign authorized or permitted, a noncommercial message may be substituted for any allowed commercial message or any allowed noncommercial message, provided that the sign is otherwise legal. The purpose of this provision is to prevent inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This provision does not allow substitution of an on-site commercial message for an off-site commercial message.
- B. **Construction and Electrical Codes:**
 1. All signs shall be installed in compliance with adopted City building and electrical codes.
 2. Electrical supply lines to all signs shall be installed underground.
- C. **Gross Surface Area of Sign:**
 1. Gross surface area of a sign shall be calculated as the entire area within a single continuous perimeter enclosing the extreme limits of such sign and in no case

passing through or between any adjacent elements of same. Such perimeter shall not include any structural elements lying outside the limits of such sign and which do not form an integral part of the display.

2. Area shall be calculated for only the larger of the two sides if both sides of a structure are utilized for sign purposes.
3. Gross surface area of signs shall be in accordance with the applicable district regulations within which a sign is located, or as may otherwise be permitted by these regulations.

D. Height of Signs:

1. The maximum height of signs shall be measured from the base of the sign to the highest element of the sign.
2. Minimum clearance of signs shall be measured from the grade of the adjacent public right-of-way to the lowest point of the sign projecting over the public right-of-way.
3. Height of signs shall be in accordance with the applicable district regulations within which the sign is located, or as may otherwise be permitted by these regulations.

E. Illuminated Signs:

1. Residential Restriction: Illuminated signs located in any residential district shall be shaded as necessary to avoid casting bright light upon adjacent property.
2. Electronic Message Signs: The following provisions shall apply to all existing and new electronic message signs:
 - a. Electronic message signs may comprise all or part of a sign up to a maximum gross surface area of 50 square feet.
 - b. No electronic message sign shall be installed, nor shall any existing sign be replaced by or modified by the addition thereto of an electronic message sign within 100 ft. of a property zoned R-1, R-1A, R-1B or R-1C, as measured from the nearest edge of the sign to the nearest property line of the residential zoned property.
 - c. No electronic message sign or portion of a sign with an electronic message feature shall be located closer than 50 linear feet to an existing electronic message sign.
 - d. Brightness limits shall be set at a maximum of 5,000 nits between sunrise and sunset, and at a maximum of 500 nits between sunset and sunrise. Each electronic message sign shall be equipped with a light sensing device to automatically adjust the brightness in accordance with these standards.
 - e. Frames shall have a minimum display time of two (2) seconds per frame. Display times less than two (2) seconds per frame shall be considered flashing.
 - f. The owner of an electronic message sign shall provide contact information for a person who is available to be contacted at any time and who is able to turn off the electronic sign promptly if a malfunction occurs.
 - g. If at any time, the display of an electronic message sign malfunctions or is no longer working, said electronic message sign shall be subject to the maintenance provisions of Section 704.G.
 - h. Should any electronic message sign be found by the Zoning Administrator to compromise the safety of vehicular or pedestrian traffic, or otherwise be injurious to surrounding properties, the owner of the sign shall reduce the intensity of the sign to a level acceptable to the City.

F. Location:

1. No part of any permanent sign shall be placed closer than 50 feet to an existing permanent sign on an adjacent lot.

2. No sign shall be erected so as to project over a public right-of-way, except as an exception approved by the Board of Zoning Appeals, in which case the clearance of such sign is at least eight feet above the public sidewalk area and is based on a necessity to properly advertise a business location.
3. All temporary signs that are allowed to be placed in the public right-of-way must be a minimum of eight (8) feet from the back of the curb unless otherwise specified in the district regulations.

G. Maintenance and Inspection:

1. The Zoning Administrator or designee shall make periodic sign inspections. All signs shall be properly maintained. Exposed surfaces shall be cleaned and painted if paint is required. Defective parts shall be replaced. The Zoning Administrator or Designee shall have the right to order the repair or removal of any sign which is defective, damaged or substantially deteriorated. An order to repair or remove a sign shall not require a sign permit.
2. The owner or permittee of any sign found to be in violation because of needed repairs, maintenance or violation of these regulations or other codes will be cited by the Zoning Administrator or Designee in written notice specifying the violation. If the owner or permittee fails to repair or remove it within 45 days after such notice, the City may remove the sign at the expense of the permittee or owner of the property on which it is located.
3. Inspection Upon Completion: Any person installing, structurally altering or relocating a sign for which a permit has been issued shall notify the Zoning Administrator or Designee upon completion of work. The Zoning Administrator or Designee shall make a final inspection and issue an occupancy certificate. The Zoning Administrator or Designee may require, at the time of issuance of a permit, that written notification for an inspection be submitted prior to the installation.

H. Traffic Safety:

1. No sign shall be located such that it interferes with the view necessary for motorists to proceed safely through intersections or to enter onto or exit from a public street or private drive.
2. No sign shall be erected such that due to location, color, size, shape or message it would tend to obstruct the view or be confused with traffic signals or other traffic control signs erected by governmental agencies.
3. No sign shall be located in any vision triangle as defined herein in such a manner that will impair vision through the restricted area, except traffic signs. (See Section 2-202)

I. Number of Signs:

1. Except for the following situations, the number of signs allowed for a specific site (lot, zoning lot, etc.) shall be as set forth in other sections of this article.
 - a. Corner and through lot sign restrictions: on corner and through lots, each lot line that abuts a street or highway shall be considered a separate street frontage. On corner and through lots, restrictions that are phrased in terms of "signs per zoning lot" shall be deemed to authorize the allowable number of signs facing each street or highway that abuts the lot.
 - b. Sites (parcel, zoning lot, etc.) with frontages of more than 1,000 feet and under one ownership: 1 sign authorized for each 1,000 feet or fraction thereof along each street frontage.
 - c. Commercial developments under single or multiple ownerships, where signs are located within the boundaries of such development but may be considered "off-site" for a business within that development; Number of signs shall be approved by the Planning Commission after submittal of a Sign Plan.

707 SIGNS PERMITTED IN SPECIFIC ZONING DISTRICTS

- A. **R-1, R-1A, R-1B, R-1C, R-2, R-3, R-4 Residential and MH-1 Manufactured Home Park Districts:** Display of signs in these districts will generally offer identification, instructions for the public and limited business information. These signs are not intended for extensive advertising.
1. **Number of Signs Authorized:** One of any authorized type per zoning lot, or per 1,000 lineal feet for large lots, and as otherwise provided for by Section 706.I.
 2. **Types, Size and Maximum Gross Surface Area of Signs Authorized:**
 - a. **Home Occupation Sign:** Maximum gross surface area of two (2) square feet which is affixed flush to the wall of a building.
 - b. **Monument Sign:** Maximum height of six (6) feet, maximum width of two (2) feet and a maximum length of ten (10) feet for location on apartments, manufactured home parks and for nonresidential uses as may be authorized in residential districts.
 - c. **Portable Sign:** Portable signs will be allowed in residential areas for not more than 72 hours. The sign must be placed on the property of the owner and a permit must be issued in accordance with Section 702 for each occasion.
 - d. **Subdivision Sign:** One (1) sign with a maximum gross surface area of 64 square feet may be located at each entrance to a subdivision where undeveloped lots are for sale in said subdivision. Such sign shall be removed when 90% of the lots in the subdivision have been sold.
 3. **Illumination:** No sign shall be illuminated with the exception of bulletin board signs and portable signs, which may be indirectly illuminated with incandescent or fluorescent light [See Section 706.E].
- B. **B-1, B-2, and B2-A Business and I-1 Institutional Districts:**
1. **Number of Signs Authorized:**
 - a. One monument, ground, or tenant directory sign per platted or zoning lot, and as otherwise provided for by Section 706.I.
 - b. And any permitted wall, projecting, marquee, directional/informational, bulletin board, or portable sign.
 2. **Types, Size and Maximum Gross Surface Area of Signs Authorized:**
 - a. **Ground Sign:** Maximum height of 20 feet, maximum width of three feet, and maximum length of 15 feet.
 - b. **Directional / Informational Sign:** Six square feet.
 - c. **Monument Sign:** Maximum height of six feet, maximum width of two feet and maximum length of 15 feet.
 - d. **Portable Sign:** Each licensed business will be limited to four (4) 15-day permits per calendar year, one (1) in each quarter with no two permits being allowed consecutively without an intervening period of at least 30 days during which the sign is not displayed.
 - e. **Tenant Directory Sign:** Maximum height of 20 feet, maximum width of three feet, and maximum length of 15 feet.
 - f. **Wall, Projecting, or Marquee Sign:** Not to exceed 25% of aggregate square footage of the wall area upon which it is installed; provided, however, that the total surface area of all signs on a given wall shall not exceed 400 square feet.
 3. **Illumination:** Illuminated signs shall be authorized in accordance with Section 706.E of these regulations.
- C. **B-3 Business District and B-5 Restricted Commercial, Warehousing and Limited Manufacturing:**

1. **Number of Signs Authorized:**

- a. One of either monument, ground, or tenant directory sign per platted or zoning lot, and as otherwise provided for by Section 706.I.
- b. And any authorized wall, projecting, marquee, directional/informational or bulletin board sign.
- c. The number of “off-site” ground, monument and tenant directory signs allowed, when requested as part of a specific, overall commercial development, shall be determined by the Planning Commission after review of a Sign Plan.

2. **Types, Size and Maximum Gross Surface Area of Signs Authorized:**

- a. Ground Sign: Maximum height of 25 feet, maximum width of three feet and maximum length of 15 feet.
- b. Directional/Informational Sign: Six square feet.
- c. Monument Sign: Maximum height of six feet, maximum width of two feet and maximum length of 15 feet.
- d. Portable Sign: Each licensed business will be limited to four (4) 15 day permits per calendar year, one (1) in each quarter with no two permits being allowed consecutively without an intervening period of at least 30 days, during which the sign is not displayed.
- e. Tenant Directory Sign: Maximum height of 25 feet, maximum width of three feet and maximum length of 15 feet.
- f. Wall, Projecting, or Marquee Sign: Not to exceed 30% of aggregate square footage of the wall area upon which it is installed; provided, however, that the total surface area of all signs on a given wall shall not exceed 400 square feet.

3. **Illumination:** Illuminated signs shall be authorized in accordance with Section 706.E of these regulations.

D. **B-4 Business District:**

1. The B-4 Central Shopping District is unique in that it includes areas of North K-15 Highway and older areas of Derby originally developed under different standards. Special and unusual conditions must be considered due to its layout relating to minimum setbacks, smaller lots, vision triangle problems and other existing conditions. It is the intent of this section to note these preexisting conditions and to recognize the legal nonconforming status of many signs so as not to create undue hardships in this older business trade area. Business properties will be strongly encouraged to continually upgrade signage in the older B-4 District.

2. **Number of Signs Authorized:**

- a. One of either a monument, ground, or tenant directory sign per platted or zoning lot, and as otherwise provided for by Section 706.I.
- b. And any authorized wall, projecting, marquee, directional/informational or bulletin board sign.

3. **Types, Size and Maximum Gross Surface area of Signs Authorized:**

- a. Ground Sign: Maximum height of 25 feet, maximum width of three feet, and maximum length of 15 feet.
- b. Directional/Informational Sign: Six square feet.
- c. Monument Sign: Maximum height of six feet, maximum width of two feet and maximum length of 15 feet.
- d. Portable Sign: Each licensed business will be limited to four (4) 15 day permits per calendar year, one (1) in each quarter with no two permits being allowed consecutively without an intervening period of at least 30 days, during which the sign is not displayed.

- e. Roof Sign: The maximum height of a roof sign may not exceed the roofline of the principle building by more than five (5) feet, unless approved as an exception in accordance with Section 708.
 - f. Tenant Directory Sign: Maximum height of 25 feet, maximum width of three feet and maximum length of 15 feet.
 - g. Wall, Projecting, or Marquee Sign: Not to exceed 30% of aggregate square footage of the wall area upon which it is installed; provided, however, that the total surface area of all signs on a given wall shall not exceed 400 square feet.
4. **Illumination**: Illuminated signs shall be authorized in accordance with Section 706.E of these regulations.
- E. **M-1 Industrial District**:
- 1. **Number of Signs Authorized**:
 - a. One of either a monument, ground, or tenant directory sign per platted or zoning lot, and as otherwise provided by Section 706.I.
 - b. And any authorized wall, projecting, marquee, directional/informational or bulletin board sign.
 - 2. **Types, Size and Maximum Gross Surface Area of Signs Authorized**:
 - a. Ground Sign: Maximum height of 30 feet, maximum width of three feet and maximum length of 15 feet.
 - b. Directional/Informational Sign: Six square feet.
 - c. Monument Sign: Maximum height of six feet, maximum width of two feet and maximum length of 15 feet.
 - d. Portable Sign: Each licensed business will be limited to four (4) 15 day permits per calendar year, one (1) in each quarter with no two permits being allowed consecutively without an intervening period of at least 30 days, during which the sign is not displayed.
 - e. Roof Sign: The maximum height of a roof sign may not exceed the roofline of the principle building by more than 10 feet, unless approval for a sign is approved as an exception by the Board of Zoning Appeals.
 - f. Tenant Directory Sign: Maximum height of 30 feet, maximum width of three feet and maximum length of 15 feet.
 - g. Wall, Projecting, or Marquee Sign: Not to exceed 35% of aggregate square footage of the wall area upon which it is installed; provided, however, that the total surface area of all signs on a given wall shall not exceed 400 square feet.
 - 3. **Illumination**: Illuminated signs shall be authorized in accordance with Section 706.E of these regulations.

708 SIGN EXCEPTIONS

There may be proposed signs that will not satisfy all requirements of these regulations. An application for such proposed sign may be submitted for approval of the Board of Zoning Appeals as an exception. In approving such signs, the Board shall take into consideration the following criteria:

- A. A literal application of these regulations would create a particular hardship for the sign applicant, and the hardship caused does not apply generally to the City;
- B. Granting the exception would not be materially detrimental to the property owners in the vicinity;
- C. Granting the exception would not be contrary to the general objectives of these regulations and any approved site plan; and
- D. The Board may attach additional conditions necessary to carry out the spirit and intent of these regulations.

709 NONCONFORMING SIGNS

- A. Legal nonconforming signs are signs existing prior to the approval of these regulations which do not now conform to the specific provisions of these regulations and, thus, may be eligible for the designation "Legal nonconforming sign" provided that:
 1. The Zoning Administrator or designee determines such signs are properly maintained and do not in any way endanger the public; and the sign was installed in conformance with a valid permit, and/or erected legally, but which does not comply with subsequently enacted sign regulations.
 2. In districts except the B-4 zone, a legal nonconforming sign shall lose this designation if:
 - a. The legal nonconforming sign is relocated or replaced.
 - b. The structure or size of the legal nonconforming sign is altered in any way except toward compliance with these regulations. This does not refer to change of copy or normal maintenance.
 - c. A sign which loses its legal nonconforming sign designation shall be removed and replaced in compliance with these regulations.
 3. Legal nonconforming signs are subject to all requirements of these regulations regarding safety, maintenance and repair.
- B. Illegal nonconforming signs are signs which were previously installed without a permit or not in conformance with a permit, or erected illegally and do not comply with these regulations after their effective date.

710 OBSOLETE SIGNS

- A. In cases where a sign or signs are evident and the business, tenant or advertising entity is determined to be nonexistent, permanently closed, abandoned or otherwise obsolete, the property owner shall be held responsible for the maintenance, painting over or removal of signs on the property.
- B. Within 45 days from the date of business closing, the property owner shall maintain, repair or paint over signs on the property as indicated below or as approved by the Zoning Administrator.
 - 1. Signs that have been painted or applied directly to the building exterior walls or façade shall be painted over.
 - 2. Smooth surface metal or wood faced signs shall be painted over.
 - 3. Signs with applied raised letter or logos shall have letters and/or logos removed and the surface painted over.
 - 4. Signs with faces of sheet plastic, laminated plastic or molded plastic may remain as erected; provided, they comply with all maintenance and repair provisions of these regulations.
 - 5. Individual signs or sign panels that are part of a tenant directory sign may remain until a new tenant is secured.
- C. If it is deemed advisable by the Zoning Administrator or designee to remove the total sign for reasons of safety, health or public welfare, the owner shall remove or repair said sign after notification. When such sign is replaced, it shall conform to these regulations. If the sign is not removed or repaired within 48 hours of receipt of notification, the City will remove it and the owner will be billed for the cost of removal.

711 PENALTY FOR VIOLATION OF ARTICLE 7

- A. The Code Enforcement Officer or designee shall make such investigations and issue notices of violation as are necessary for enforcement of the provisions of this Article.
- B. Any person violating any of the provisions of this article or causing, permitting or suffering the same to be done is guilty of a misdemeanor and shall be punished by a fine of not more than \$500.
- C. The issuance or granting of a permit shall not be deemed or construed to be a permit for an approval of any violation of any of the provisions of this chapter.
- D. In addition to all other penalties for violation of this article, signs deemed to be in violation of the article by Code Enforcement may be removed and held until they are either redeemed by their owner upon payment of a fee set by City resolution or a period of 30 days expires, at which time the City may dispose of the signs.

ARTICLE 8. NONCONFORMING LOTS, STRUCTURES AND USES

800 PURPOSE

This Article provides for the regulation of nonconforming lots, structures and uses and specifies those circumstances and conditions under which such nonconformities shall be permitted to continue. The ability to continue a nonconforming lot, building, structure or use shall not be affected by a change in ownership or operator of the structure or use, unless such ownership or operator is a condition attached to an approval for a special use or exception. For the purposes of these regulations, nonconformities are defined as follows:

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

801 NONCONFORMING LOTS OF RECORD

A. In Any Residential District.

1. Notwithstanding the regulations imposed by any other provisions of these regulations, a single-family detached dwelling or a residential design manufactured home which complies with the restrictions in Section 801.A.2 may be erected on a lot(s) in the same ownership that is not less than 50 feet in width and that consists entirely of a tract of land that:
 - a. Has less than the prescribed minimum lot area, width or depth, or all three, and that
 - b. Is shown by a recorded plat or deed to have been owned separately and individually from adjoining tracts of land at a time when the creation of a lot of such size and width at such location would not have been prohibited by any zoning regulations.
2. Construction permitted by Section 801.A.1 shall comply with all of the regulations except lot area, width and depth applicable to single-family dwellings and residential design manufactured homes in the zoning district in which the lot in question is located; provided, however, that the following side yard requirements shall apply in place of the side yard requirements otherwise applicable:
 - a. The structure shall be placed on the lot so as to provide a yard on each side of the dwelling.
 - b. The sum of the widths of the two side yards on each lot shall not be less than the smaller of:
 - 1) 20% of the width of the lot, or
 - 2) the minimum total for both side yards prescribed by the bulk regulations for the applicable zoning district.
 - c. In any case, neither side yard resulting from the methods permitted in Section 801.A.2 shall be less than three feet wide.

B. In Districts Other Than Residential Districts.

1. Notwithstanding the regulations imposed by any other provision of these regulations, a structure designed for any permitted use may be erected on a lot of the type described in Section 801.A.1.
2. Construction permitted by Section 801.B.1 shall comply with all of the regulations except lot area, width and depth applicable in the zoning district in which the lot in question is located; provided, however, that the width of any side yard must not be less than that derived by applying the following formula (wherein the width of any side yard required = w):

802 NONCONFORMING STRUCTURES

- A. Authority to Continue.** Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or the applicable bulk regulations, may be continued, so long as it remains otherwise lawful, subject to the restrictions in Sections 802.B through 802.D.
- B. Enlargement, Repairs and Alterations.** Any such structure described in Section 802.A may be enlarged, maintained, repaired or structurally altered; provided that (1) no such enlargement, maintenance, repair or alteration shall create any additional nonconformity and/or (2) no such enlargement, maintenance repair or alteration shall increase the degree of existing nonconformity of all or any part of such structure, with the specific exception that the side yard requirements of structures located on a lot that does not comply with the applicable lot size requirements shall be determined by Sections 801.A or 801.B, whichever is applicable.
- C. Damage.**
1. In the event any structure described in Section 802.A is damaged by any means except flooding, to the extent of more than 50% of its fair market value, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided, that structures located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements in Sections 801.A.2 or 801.B.2, whichever is applicable.
 2. In the event any structure is damaged to the extent of 50% or less, no repairs or restoration shall be made unless a zoning certificate is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.
 3. Any applicant aggrieved by the decision of the Zoning Administrator in approving the percent of damage to the value of the structure based on data submitted by the applicant may appeal such determination to the Board of Zoning Appeals. (See Section 805.)
- D. Moving.** No structure described in Section 802.A shall be moved in whole or in part for any distance to any other location on the same or any other lot, unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved. (See Section 303.M for Moving Structures and City code on moving buildings.)

803 NONCONFORMING USES

- A. Authority to Continue.** Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land not involving a structure or only involving a structure which is accessory to such use of land, may be continued, so long as the use is otherwise lawful and subject to the regulations contained in Sections 803.B through 803.J.
- B. Ordinary Repair and Maintenance**
1. Normal maintenance, incidental repair or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use; provided, however, that this subsection shall not be deemed to authorize any violation of Sections 803.C through 803.J.
 2. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition provided that such restoration will not be in violation of Section 803.F of these regulations.
- C. Structural Alteration.** No structure that is devoted in whole or in part to a nonconforming use shall be structurally altered unless the entire structure and use thereof shall thereafter conform to all regulations of the zoning district in which it is located.
- D. Extension.**
1. Extension of a nonconforming use is permitted within a nonconforming structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of the original City Zoning Regulations or a subsequent amendment to these regulations that caused such use to become nonconforming; provided, however, that no structural alterations shall be made unless such changes, and the use thereof, conform to the regulations of the district in which the structure is located.
 2. Extension of a nonconforming use of a part of a structure is not permitted if all or substantially all of the structure is designed or intended for a use which is permitted in the district in which the structure is located. Additionally, except as specifically provided for in Section 803(H), the use of all or a part of such a structure shall not be changed to any other nonconforming use.
 3. Extension of a nonconforming use is not permitted to any structure or land area other than the one actually occupied or used by such nonconforming use on the effective date of the original City Zoning Ordinance or a subsequent amendment to these regulations that caused such use to become nonconforming.

- E. Enlargement.** No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the district in which it is located.
- F. Damage.**
1. In the event that any structure devoted in whole or in part to a nonconforming use is damaged by means except flooding, to the extent of more than 50% of its fair market value, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located.
 2. In the event that any such structure is damaged to the extent of 50% or less of the fair market value, no repairs or restoration shall be made unless a zoning permit is obtained and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.
 3. Any applicant aggrieved by the decision of the Zoning Administrator in approving the percent of damage to the value of the structure based on data submitted by the applicant, may appeal such determination to the Board of Zoning Appeals. (See Section 805.)
- G. Moving.** No structure that is devoted in whole or in part to a nonconforming use shall be moved in whole or in part for any distance to any other location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. No nonconforming use of land shall be moved in whole or in part for any distance to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. (See Section 303.M for moving structures and City ordinance on moving buildings.)
- H. Change in Use.** If no structural alterations are made other than those necessary to repair or maintain the structure as described in Section 803.B.1, a nonconforming use of a structure may be changed to another nonconforming use of the same or similar type as the existing nonconforming use or to a more restrictive nonconforming use. Similarly, a nonconforming use of land not involving a structure or involving only an accessory structure may also be changed to another nonconforming use of the same or similar type as the existing nonconforming use or to a more restrictive nonconforming use. When a nonconforming use has been changed to a more restrictive nonconforming use, it shall not thereafter be changed back to a less restrictive nonconforming use. Additionally, when a nonconforming use has been changed to any permitted use, it shall not thereafter be changed back to a nonconforming use. In determining whether a change in use is the same, similar or more restrictive, the Zoning Administrator shall consider the changes in environmental factors such as outdoor storage, loading, traffic, parking, noise, lighting, air pollution, hours of operation, screening and other factors, as well as the provisions available in Section 805 of these regulations.

I. Abandonment or Discontinuance

1. When a nonconforming use of land, not involving a structure, or involving only a structure which is accessory to the nonconforming use of land, is discontinued or abandoned for a period of six consecutive months, such nonconforming use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such land shall comply with the regulations of the zoning district in which such land is located. The period of discontinuation or abandonment of a nonconforming use shall apply regardless of any reservation or intent not to abandon or to resume such use.
2. When a nonconforming use of a part or all of a structure which was or was not designed and intended for a use which is permitted in the zoning district in which such structure is located is discontinued or abandoned for a period of 12 consecutive months, such use shall not thereafter be reestablished or resumed, and any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such land is located. The period of discontinuation or abandonment of a nonconforming use shall apply regardless of any reservation or intent not to abandon or to resume such use.

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

804 NONCONFORMING RESIDENTIAL USES.

Notwithstanding the provisions of Sections 803.C, 803.D, and 803.E, any structure which is devoted to a residential use and which is located in a business or industrial district may be structurally altered, extended, expanded and enlarged; provided, however, that after any such reconstruction, such structure shall not be used to accommodate a greater number of dwelling units than such structure accommodated prior to any such work unless specifically permitted by the district.

805 NONCONFORMING NONRESIDENTIAL STRUCTURES AND USES.

Notwithstanding any other provisions of these regulations and, in particular, Sections 802.B and 802.C and 803.C, 803.D, 803.E, and 803.F, owners of nonconforming nonresidential structures and uses that existed on the effective date of the original City Zoning Ordinance or a subsequent amendment to these regulations that caused such use to become nonconforming may apply, on a one time only basis, to the Board of Zoning Appeals for an exception to reconstruct, structurally alter, enlarge after damage, or make extensions to structures or uses including the use of additional land when properly zoned for the use, so long as in the opinion of the Board under stated conditions that the effect upon adjacent areas is protected to the extent possible and the public interest served (See Section 1007.C.6 for Authorization).

806 STATUS OF EXISTING SPECIAL USES AND EXCEPTIONS¹.

- A.** Any use previously established as an exception by prior zoning regulations of the City may continue in such status with any conditions attached thereto which may have been the basis of their prior approval, unless application is made for such change in status as may be permitted by these regulations or such uses have now been classified as permitted uses under these regulations.
- B.** Where a use existed prior to the effective date of these regulations and any prior regulations and was or is now classified as a special use or exception, it shall be considered to be a lawful conforming special use or exception. Enlargement, extension or alterations to existing structures or uses for expansion of such lawful uses may be made within the area of the lot included in the ownership existing as of the effective date of these regulations, and shall be subject to all requirements set forth in these regulations as if they were permitted uses.
- C.** Whenever land is annexed that has been used for a quarry or sand pit operation which has previously been zoned by Sedgwick County as a conditional use, it shall be considered to be a lawful conforming special use in any district provided the same conditions attached to its approval as a conditional use under the County Zoning Resolution remain in effect and enforceable by the City.

¹ Previously called “conditional uses” under prior version of these regulations.

ARTICLE 9. ADMINISTRATION AND ENFORCEMENT

900 OFFICE OF THE ZONING ADMINISTRATOR

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

A. DUTIES OF THE ZONING ADMINISTRATOR. (See Section 902 for Enforcement and Liability)

1. Approve and issue all zoning permits and occupancy certificates and make and maintain records thereof.
2. Conduct inspections of structures and uses of land to determine compliance with the provisions of these regulations.
3. Maintain a set of administrative forms to assist applicants and to process zoning cases considered by the Planning Commission, Board of Zoning Appeals and Governing Body.
4. Receive, file and forward to the Planning Commission applications and records for all amendments and special uses which are initially filed with the Zoning Administrator.
5. Receive, file and forward to the Board of Zoning Appeals applications and records for all variances and exceptions which are initially filed with the Zoning Administrator and forward all records of appeals to the Board upon request of the Board's Secretary.
6. Maintain permanent and current records of the City's zoning regulations, including but not limited to the City's zoning map(s), amendments, special uses, appeals, variances, exceptions and applications thereof and records of hearings thereon.
7. Provide such technical and clerical assistance as may be required by the Planning Commission, the Board of Zoning Appeals, the Governing Body, and other agencies and officials in the exercise of their duties relating to these regulations.
8. Maintain for distribution to the public a supply of the current zoning regulations, the zoning map(s) and any rules of the Planning Commission and Board of Zoning Appeals. A fee may be charged to defray the cost of printing and distribution as established by resolution of the Governing Body of the City.

9. Maintain the City's official copy of the zoning map(s) showing the district boundaries. Such map(s) shall be marked "Official copy of zoning district map(s) incorporated into zoning regulations by original adoption of Ordinance No. 1436 by the Governing Body of the City of Derby on the 3rd day of November, 1992, as said Ordinance is replaced or amended thereafter including the adoption of Ordinance No. 2254 by the Governing Body of the City of Derby on the 10th day of November, 2015" and shall be open to inspection and available to the public at all reasonable business hours. Each map shall be signed by the Mayor and attested to by the Clerk. Periodic changes to the map(s) shall be noted by the revision date.

B. DUTIES OF THE CLERK. The Clerk shall maintain certain official model records and carry out certain responsibilities in the administration of these regulations as follows:

1. Maintain not less than three copies of these regulations and mark the same as "Official Copy as Incorporated by Ordinance No. ____ (i.e., the ordinance approved by the Governing Body), with all sections or portions thereof intended to be omitted clearly marked to show any such omissions and all articles, sections or portions that are incorporated clearly identified with a copy of the incorporating ordinance attached thereto. Such copies shall be open to inspection and available to the public at all reasonable business hours.
2. Supply the Zoning Administrator, police department, municipal court and all other administrative departments of the City charged with enforcement of these regulations with official copies similarly marked as described in Section 900(B)(1), as well as any amendments to these regulations which shall be appended to these copies.
3. Provide the Governing Body with clerical assistance that facilitates and records the actions of the Governing Body in the exercise of their duties relating to these regulations.

901 ZONING PERMITS AND OCCUPANCY CERTIFICATES**

A. Zoning Permits

1. A zoning permit issued by the Zoning Administrator is required prior to the construction, reconstruction, moving or structural alteration of any building or structure or the improvement of land within the City of Derby, Kansas. Such permits shall not be issued by any other official, employee, department, board or agency of the City. Any zoning permit issued in conflict with the provisions of these regulations shall be null and void.
2. Zoning permits must meet the requirements of the City's Subdivision Regulations except in circumstances concerning the continuation of an existing use or occupancy, accessory structures or uses, or additions to existing structures or uses. The City will not issue permits on land which is not shown on a recorded plat, replat, lot split or exempted from the platting requirements of the City of Derby, Kansas. If platting is not required, all of the public improvements necessary to carry out the requested permit may nevertheless be required, including dedication in lieu of platting for easements and additional right-of-way.
 - a. Except as otherwise provided in this subsection, no principal or accessory building or structure shall be located on, within, or project over any platted or dedicated public or other utility easement and/or known utility improvement or installation.
 - b. An accessory structure that is movable or will not, in the judgment of the Zoning Administrator, significantly obstruct a public or utility easement or effect the maintenance, repair, replacement or reconstruction of a public or utility improvement or installation located within any such easement, including any authorized future use thereof, may be located within or project over such utility easement, improvement or installation; provided that the owner thereof shall post and continuously maintain in a conspicuous place upon such building or structure the following notice:

“This structure is located within a public utility easement. Neither the City of Derby nor any utility company entitled to use this easement is liable for damage to or destruction of this structure as a result of maintenance, repair or replacement activities, or installation of new facilities, within this easement.”
3. A zoning permit is not initially required for grading and/or excavating a proposed construction site, unless the site is located in the Flood Plain District and/or could result in an increase in flood levels. (See Section 416 for flood plain district.)
4. **Application.** Every application for a zoning permit shall be accompanied by the following:
 - a. A drawing or copy of the plat of the piece or parcel of land, lot(s), or block(s), or parts or portions thereof, drawn to scale showing the actual dimensions of the zoning lot(s), including any easements thereon.

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

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

5. **Issuance.** A zoning permit shall be either issued or disapproved by the Zoning Administrator within 10 days after the receipt of an application therefore by the Zoning Administrator or within such further period as may be agreed to by the applicant. When the Zoning Administrator refuses to issue a zoning permit, he shall advise the applicant in writing of the reasons for the disapproval.
6. **Period of Validity.** A zoning permit shall become null and void 60 days after the date on which it is issued, unless within said period construction, reconstruction, moving, or structural alteration of a structure is commenced or a use is commenced. An application for an extension of time to continue the project is required when the construction or work is abandoned or suspended for any 120 day period after such permit is issued. The Zoning Administrator may grant reasonable extensions of time provided no changes have been made in any applicable regulations. In the event changes have occurred, application must be made for a new permit based on the provisions of the new or amended regulations in order to continue the project, unless Section 200.G applies pertaining to vesting of residential developments. [See Section 200.F for Effect of Existing Permits].

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

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

1. **Application.** Every application for a zoning permit shall be deemed to be an application for an occupancy certificate. Every application for an occupancy certificate for a new or changed use of land or structure where no zoning permit is required shall be filed with the Zoning Administrator. Applications shall be in the form and contain all the information requested by the Zoning Administrator.

2. Issuance.

- a. No occupancy certificate shall be issued for a structure or addition thereto constructed, reconstructed, moved, or structurally altered after the effective date of these regulations until such work has been completed and the premises inspected and certified by the Zoning Administrator to be in full and complete compliance with the plans and specifications upon which the Zoning permit was issued.
- b. Prior to issuance of a permanent occupancy certificate, a temporary occupancy certificate authorizing temporary and/or partial occupancy of the premises may be issued for a period not to exceed six months pending completion of any permitted addition and/or improvements to the property/structure; provided, satisfactory guarantees are submitted including the possible use of performance bonds and/or escrow accounts.
- c. An occupancy certificate will be issued or written notice will be given to the applicant stating the reasons why a certificate cannot be issued within 10 days after the Zoning Administrator's receipt of an application therefore or within 14 days after the Zoning Administrator is notified in writing by the City's inspector that the structures or premises are ready for occupancy.

902 ENFORCEMENT AND LIABILITY

- A. The Zoning Administrator, in consultation with the City Attorney, shall have the authority to enforce the provisions of these regulations in the following manner:
 1. To refuse to issue any zoning permit or occupancy certificate for any building structure or use of any premises which would violate any of the provisions of these regulations.
 2. To revoke a zoning permit and issue a stop order at any time for a building, structure or use for which the same was issued when (1) there is a departure from the plans, specifications or conditions stated within and/or required under terms of the permit; (2) the permit was procured by false representation; (3) the permit was issued by mistake; and/or (4) the permit violates any provisions of the zoning regulations.
 3. To cause any building, structure, place or premises to be inspected and examined as required by these regulations and to order in writing the remedying of any threat or condition found to exist therein that is in violation of any provision of these zoning regulations.
 4. To institute any appropriate action or proceeding to prevent, restrain, correct and/or abate any unlawful action, use or violation of any land, premises and/or structure which is constructed, reconstructed, moved, altered or used in violation of these zoning regulations.

903 VIOLATIONS

- A. Penalties.** Pursuant to K.S.A. 12-761, as amended, any violation of these regulations shall be deemed to be a misdemeanor. The owner or agent of a building, structure or premises in or upon which a violation of any provision of these regulations has been committed or exists; the lessee or tenant of an entire building or entire premises in or upon which a violation has been committed or exists; and/or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building, structure or premises in or upon which a violation has been committed or exists shall be punished by a fine not to exceed \$500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each day's violation shall constitute a separate offense.
- B. Remedies.** In the event any building or structure is erected, constructed, reconstructed, structurally altered, converted or maintained; or any building, structure or land is used or is proposed to be used in violation of these regulations, the appropriate authorities of the City of Derby, Kansas, in addition to other remedies available according to law, may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or to correct or abate such structure or land.
- C. Flood Plain Violations.** Any person, company, corporation, institution, municipality or state agency that violates any provision of the flood plain provisions of these regulations shall be subject to the penalties and remedies as provided in Sections 903.A and 903.B above. In addition to the appropriate authorities of the City of Derby, Kansas, the Kansas Attorney General and/or the Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture may also institute the remedies stated in Section 903(A) and (B) above in relation to a violation of the flood plain provisions of these regulations.

904 FEES

An applicant shall pay the Clerk a fee upon filing an application for an amendment, special use, appeal, variance, exception, zoning permit, occupancy certificate, and/or any other permit or approval provided for in these regulations. The required fee shall be established according to a fee schedule approved by the Governing Body of the City of Derby, Kansas. No part of such fee shall thereafter be refunded or waived unless authorized by the City Manager.

905 REPORTS.

The Zoning Administrator shall periodically report verbally or in writing to the Governing Body and the Planning Commission a summary of all zoning permits issued during the preceding period, giving details of any permitted variations, as well as the current status of all applications in process for amendments, special uses, appeals, variances and exceptions. Said report shall include comments on any problems encountered in the administration or enforcement of these regulations which may be important to consider during the annual review established by Section 1105.

ARTICLE 10. BOARD OF ZONING APPEALS

1000 AUTHORIZATION.

A Board of Zoning Appeals shall be established by the Governing Body as prescribed by K.S.A. 12-759, as amended, and hereinafter in these regulations will be referred to as the "Board".

1001 MEMBERSHIP.

The Board shall consist of five members all of whom shall be residents of the City and shall serve without compensation, but may be reimbursed for expenses when authorized by the Governing Body. No member shall hold any other public office in the City; however, any member of the Planning Commission may serve. The members of the Board shall be appointed by the Mayor by and with the consent of the Governing Body. The members first appointed shall serve respectively for the following terms or until their respective successors are appointed and qualify; one for one year, two for two years, and two for three years. Each member succeeding the first five members appointed, except those appointed to fill an unexpired term, shall serve for a term of three years. Vacancies upon the Board shall be filled for the unexpired term of the member whose office has become vacant in the same manner as is provided for the appointment of such member. The Governing Body shall have the power to remove any member of the Board in accordance with the ordinances of the City.

The Board shall annually elect one of its members, as chairperson and one as vice-chairperson and such other officers as the Board shall consider necessary. The Board shall appoint a secretary, who need not be a member of the Board, to maintain its records and keep minutes of all proceedings before the Board.

The board shall adopt rules in the form of bylaws in accordance with the provisions of the ordinance or resolution creating the board. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decisions of the board and the vote upon each question. Records of all official actions of the board shall be filed at City Hall and shall be a public record.

The Board shall establish a scale of reasonable fees to be paid in advance by the appealing party subject to subsequent approval of such fees by the Governing Body in the form of a fee schedule.

1002 APPEALS.

Appeals to the Board may be taken by any person aggrieved, or by any officer of the city, county or any governmental agency or body affected by any decision of the Zoning Administrator. Such appeal must be taken within thirty (30) days after a decision has been made by the Zoning Administrator, by filing a notice of appeal specifying the grounds thereof and the payment of the fee required therefor. The Zoning Administrator, when notified by the Board or its agent, shall transmit to the Board all the papers constituting the record upon which the action appealed from was taken. The Board shall then fix a reasonable time for the hearing of such appeal. Notice of the time, place and subject of such hearing shall be published once in the official City newspaper at least 20 days prior to the date fixed for hearing. A copy of the notice shall be mailed to each party to the appeal and to the Planning Commission. The Board shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of these regulations. In exercising the foregoing powers, the Board, in conformity with the provisions of K.S.A. 12-741 *et seq.*, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit.

1003 VARIANCES.

When deemed necessary by the Board, the Board may also grant variances and exceptions from these regulations, in accordance with the requirements of K.S.A. 12-759(e), to authorize in specific cases a variance from the specific terms of these regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of these regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done.

- A. **Application.** An application for a variance by a property owner shall be filed with the Zoning Administrator, provide the legal description of the property involved with the variance, be accompanied by a certified ownership list of property owners for notification as required by subsection B below and the filing fee, and contain the following information as well as such additional information as may be requested by the Board:
1. The particular requirements of these regulations which prevent the proposed use or construction;
 2. The characteristics of the requested property which prevent compliance with the requirements of these regulations;
 3. The reduction of the minimum requirements of these regulations which would be necessary to permit the proposed use or construction; and
 4. The particular hardship which would result if the non-varied requirements of these regulations were applied to the subject property.

- B. Notice and Hearing.** Upon receipt of a complete application, the Board shall then fix a reasonable time for the hearing concerning such application for a variance. Notice of the time, place and subject of such hearing, and the legal description or a general description sufficient to identify the property under consideration shall be published once in the official newspaper so that at least 20 days shall elapse between the date of such publication and the date for the hearing. Additionally, for land inside the city limits, the Board shall also provide notice to all owners of record of lands located within 200 feet of the exterior boundary of the property under consideration. If the applicant's property is located adjacent to but within the city limits, the area of notification in addition to the 200 feet inside the City, shall be extended to 1,000 feet in the unincorporated area. Such notice shall be mailed so that at least 20 days shall elapse between the mailing date and the hearing date. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available when only a general description of the property is provided in the notice. Failure to receive such notice after it has been properly addressed and deposited in the mail shall not invalidate any subsequent action taken by the Board.
- C. Standards.** A request for a variance may be granted in compliance with subsection A above, upon a finding by the Board that all of the following conditions have been met: (A) That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant; (B) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents; (C) that the strict application of the provisions of these regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application; (D) that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and (E) that granting the variance desired will not be opposed to the general spirit and intent of these regulations.
- D. Conditions.** In granting a variance, the Board may attach such conditions upon the property and/or the applicant benefited by the variance it deems necessary to address issues raised during the application and hearing process. The variance is subject to ongoing compliance with these conditions and shall lapse and become ineffective if such conditions are not continually complied with.
- E. Decision.** The Board shall render and issue a written decision to the applicant in the form of a variance to be filed with the Sedgwick County Register of Deeds Office or a written denial of the requested permit containing specific findings of fact to be filed with the application within 45 days from the close of the hearing.
- F. Period of Validity.** A variance issued pursuant to these regulations shall lapse and become ineffective if the variance is not commenced upon the property within 180 days and/or continuously maintained on the property thereafter; provided, that the Board may grant additional extensions not exceeding 180 days each, upon written application, without further notice or hearing.

1004 EXCEPTIONS.

The Board may grant, in accordance with the provisions of these regulations, an exception by permit allowing the use of property as authorized in the requested property's applicable zoning district.

- A. Application.** An application for an exception by permit shall (1) be filed with the Zoning Administrator, (2) provide the legal description of the property involved with the exception, (3) be accompanied by a filing fee established by the City, and (4) contain the following information as well as any additional information that may be requested by the Board:
1. A statement or diagram showing compliance with any use limitations and/or special conditions or requirements imposed upon the exception by this Section and/or applicable district regulations;
 2. A statement as to why the proposed exception will not cause substantial injury to the value of other property in the neighborhood;
 3. A statement as to how the proposed exception is to be designed, arranged and operated in order to permit the development and use of neighboring property in accordance with the applicable district regulations; and
 4. Present data in support of the standards specified in Section 1004(E).

B. Uses. The following exceptions are eligible to be applied for within the identified zoning district(s) for each exception:

Table of Exceptions

Exception	Zoning Districts														Supplemental Regulations		
	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
Accessory Apartments.				E													See 1004.C.1
Adult and child care centers and preschools.	E				E	E	E										
Animal Hospitals, including incidental grooming of small animals.										E	E				E		See 1004.C.2
Automobile Service Stations.											E						
Automobile, Truck, Boat, Trailer and Recreational Vehicle Sales.													E				See 1004.C.3
Bed and breakfast inn.			E	E													
Car Washes, automatic or self-service.										E							See 1004.C.4
Churches, chapels, temples and synagogues.	E				E	E	E										
Commercial Outdoor Recreational Uses that are private and operated for profit													E*	E*	E		See 1004.C.5; *Only if located outside of APZ I or APZ II
Communication structures, antennas or towers owned or operated by a commercial communication company for the dwelling's sole use.	E		E	E	E	E	E										
Concrete Mixing Facilities which are incidental to a Home Improvement Center or Equipment Rental Business.													E*	E*	E		*Only Home Improvement Centers in this zone
Dog Kennels, which provide, outside of a completely enclosed building, exercise runs or areas for the harboring of animals.															E*	E	*May include accessory incineration facilities which provide for the disposal of dead animals
Earth-sheltered dwellings.	E		E	E	E												Design must be compatible with adjacent properties including such items as aesthetics, drainage, parking and accessory structures.
Fraternity and Sorority Houses.																E	
Garden Centers.													E	E			See 1004.C.6
Incidental sales of gasoline at convenience stores.											E						See 1004.C.7
Limited Equipment Rental and Sales Businesses, which, if specifically authorized by the exception, may include provision for an Incidental Concrete Mixing Facility.													E	E			See 1004.C.8
Mini Storage Warehouses.															E		See 1004.C.9
Mortuaries and Funeral Homes.									E	E	E						
Multiple dwelling units for elderly persons over 55 years of age and handicapped persons for which the lot size, bulk and parking requirements may be varied to increase the density.							E										
Multiple family dwelling units constructed in conjunction with and above the first floor of business establishments.													E	E			See 1004.C.10
Other uses not specifically listed as an exception, but which, in the opinion of the Zoning Administrator and/or the Board of Zoning Appeals, are in keeping with the intent of and compatible with the uses listed in the applicable zoning district and the other exceptions for the applicable zoning district listed in this section.											E		E*	E	E	E	*In compliance with this zone's Use Limitations concerning the APZ II
Outdoor Storage Yards for temporary storage of operable vehicles.															E		See 1004.C.11; Operable vehicles includes automobiles, trucks, commercial trucks or trailers, recreational vehicles or equipment, boats, and campers
Outdoor Storage Yards for temporary storage of inoperable vehicles.																E*	*Only as part of a business whose principal use is the storage of operable vehicles including automobiles, trucks, commercial trucks or trailers, recreational vehicles or equipment, boats, and campers
Plant nurseries, but not including on-site retail sales. If specifically authorized by the exception, plant nurseries may include greenhouses.			E	E													
Private Clubs and Drinking Establishments that do not exceed 3,500 square feet of floor area and which do not permit amateur or professional dancing for public or private viewing.											E						
Privately owned parks and playgrounds, intended to serve a given residential neighborhood.*			E	E													*Includes accessory buildings and structures for recreational activities such as clubhouses, swimming pools, tennis courts, racquetball courts, children's playground equipment, gazebos, and similar accessory buildings or structures.

Exception	Zoning Districts															Supplemental Regulations	
	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
Public utility uses as follows: electric and telephone substations and distribution centers; gas regulator stations; pumping stations; and water towers and standpipes.	E				E	E	E										
Replacement of single-family dwellings within one year of the date the nonconforming dwelling was removed or destroyed.																	E
Research Laboratories, limited to non-hazardous medical and statistical research.										E							
Salvage Yards.																	E
Shops, whose operation involves having not more than 10 employees on the use's zoning lot during any given work shift, for the manufacturing or assembling of items for either on-site wholesale sales or sales off-site.																	E
Swimming, tennis, racquetball and similar recreational club activities and related clubhouses, including clubhouses accessory to golf courses.	E		E	E	E	E	E										
Truck Service Stations and Vehicle Body and Fender Repair Shops.														E	E*		
Truck Washes.																	E

C. Supplemental Regulations.

1. **Accessory Apartments:** A maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling unit subject to the following standards.
 - a. The accessory apartment may be attached or detached from the principal structure. If detached, the accessory apartment shall be limited to no more than 50% of the area of the principal structure;
 - b. The appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood;
 - c. Accessory apartments shall remain accessory to and under the same ownership as the principal dwelling unit. Ownership shall not be divided or sold as a separate dwelling unit;
 - d. Utility services provided to the accessory structure shall not be provided as separate service from the principal dwelling unit. Accessory apartments may be connected to the same septic system as the principal structure; provided the septic system is designed with enough capacity to adequately serve the total number of occupants residing in both the principal structure and the accessory apartment, as determined by the City's Building Trades Official; and
 - e. Accessory apartments shall not be rented or leased to anyone not related by blood, marriage or adoption to the occupant of the principal structure, except that where a person related by blood, marriage or adoption to the occupant of the principal structure has rented or leased an accessory apartment, one (1) additional person not related by blood, adoption, or marriage that is living and cooking together with such a related person as a single housekeeping unit shall be allowed to rent or lease an accessory apartment with such a related person.

- 2. Animal Hospitals:** Such Animal Hospitals shall be subject to the following conditions:
- a. All animals shall be harbored, treated, and groomed in a completely enclosed building;
 - b. The practice of the hospital shall be limited to the care and treatment of dogs, cats, and other small animals; and
 - c. There shall be no on-site incineration, except accessory facilities which provide for the disposal of dead animals shall be allowed within the B-5 Restricted Commercial, Warehousing and Limited Manufacturing District.
- 3. Automobile, Truck, Recreational Vehicle, Trailer and Boat Sales:** Such exceptions may have storage and display areas for vehicle sales inventory outside of a completely enclosed building equivalent to a number of vehicles that does not exceed the sum of the following:
- a. Three (3) vehicles per 200 square feet of enclosed building area devoted to the vehicle dealership use;
 - b. Three (3) vehicles per each off-street parking space required for the open vehicle sales lot and use by the employees of the vehicle dealership; and
 - c. Three (3) vehicles per 200 square feet of permanent perimeter landscaped area which is located on the zoning lot and which is within 35 feet of the front lot line;
- provided that:
- d. All such outside vehicle storage and display areas are provided solid visual screening and landscaping to block their ground-level view from adjacent residential, institutional, B-1, and B-2 zoning districts; and
 - e. Any area used for outdoor storage or display of vehicles shall be paved with concrete or asphaltic concrete.
- 4. Car Washes, automatic or self-service.** Such Car Washes shall be subject to the following conditions:
- a. All vehicle washing, drying and cleaning equipment shall observe at least a 60-foot setback from any lot line that is adjacent to property zoned in a residential zoning district or is designated for use for residential purposes; and
 - b. Solid visual screening shall be provided along any side or rear property line which is adjacent to a residential use, residential zoning district or I-1 or B-1 zoning district.

- 5. Commercial Outdoor Recreational Uses:** Such exceptions may be located outside of a completely enclosed structure provided that:
- a. Recreational use areas shall not be located within a required FRONT YARD SETBACK and shall observe at least a 20-foot setback from any perimeter property line, however, no such setback need be observed if the adjacent property is zoned B-3, B-4, B-5 or M-1. If the 20 foot setback is required, at least 10 feet of the required setback shall be landscaped;
 - b. If it is determined by the City that the nature of the outdoor use is of the type that warrants solid visual screening, when adjacent to any residential or institutional zoning district, such screening shall be provided within the required use setback;
 - c. Any permitted outdoor recreational use shall be of the type and variety as to be compatible with the uses permitted in the applicable zoning district as well as with surrounding zoning districts and land uses. The following is a partial list of the types and variety of outdoor recreational uses that may be permitted:
 - 1) Adventure Parks
 - 2) Archery ranges,
 - 3) Batting cages,
 - 4) Bicycle motocross tracks,
 - 5) Carnival rides,
 - 6) Golf driving ranges,
 - 7) Miniature golf,
 - 8) Practice pitch and putt golf greens,
 - 9) Remote control model car racing tracks,
 - 10) Sports fields and diamonds,
 - 11) Skating and skateboard facilities,
 - 12) Swimming pools and beaches,
 - 13) Tennis and basketball courts,
 - 14) Tracks for electric powered go carts,
 - 15) Water slides.
 - d. Such an exception is not intended to include outdoor recreational uses which may cause excessive noise and/or general disruption of areas adjacent to or near them, such as: motor vehicle racing, motorcycle motocross, drive-in theaters, tractor pulls, demolition derbies, skeet or trap shooting, rifle ranges, dog or horse racing, etc.; and
 - e. Outdoor recreational uses that, in the sole judgment of the Board, would attract large numbers of spectators and/or participants are not allowed within the B-5 District when the proposed area of use is located in APZ I or II.

- 6. Garden Centers:** Such exceptions may have display areas for plant materials and merchandise, which are outside of a completely enclosed building, equivalent to not more than 20% of the total floor area of the completely enclosed portion of the Center and, if provided for as a part of an exception, may have OUTDOOR USE AREAS FOR THE CULTIVATION OF PLANT MATERIALS and/or GREENHOUSES; provided that:
- a. OUTDOOR PLANT NURSERY AREAS, provided for as a part of an exception, shall be fenced and, when adjacent to residential, institutional, B-1 or B-2 zoning districts, shall be provided perimeter landscaping to partially screen their ground-level view from such districts. When such use areas are across a street from a residential district or use, the nursery area shall be provided landscaping to partially screen its ground-level view from such districts or uses. When computing the Garden Center's percentage of merchandise display outside of a completely enclosed building, OUTDOOR PLANT NURSERY AREAS shall not be counted, unless during review of the required exception permit, it is decided that such outside use areas should be a factor in determining the percentage of outside display;
 - b. Outside merchandise display areas shall not be located within a required FRONT YARD SETBACK and shall observe at least a 10-foot setback from any perimeter property line, however, no side or rear yard setback need be observed if the adjacent property is zoned B-3, B-4, B-5 or M-1;
 - c. When the zoning lot is bordered by any residential zoning district or use, the outside merchandise display area shall be provided solid visual screening to block its ground-level view from such districts or uses. When the zoning lot is bordered by any non-residential zoning district, other than B-3, B-4, B-5 or M-1 Districts, the outside merchandise display area shall be provided landscaping to partially screen its ground-level view from such districts;
 - d. Outside merchandise display areas, in front of the principal building, shall be paved with concrete or asphaltic concrete. If the outdoor display area is located behind the front wall of the principal building, the use area may be surfaced with hard aggregate instead of with concrete or asphaltic concrete paving. The arrangement of display items shall not obstruct handicapped accessibility or impede pedestrian movement;
 - e. GREENHOUSES, provided for as a part of an exception, shall observe at least a 40-foot setback from any perimeter property line, however, only a 10-foot side or rear yard setback is required if the adjacent property is zoned B-3, B-4, B-5 or M-1; and
 - f. Outside merchandise display areas shall not be a factor in determining the Garden Center's overall off-street parking requirement. OUTDOOR PLANT NURSERY AREAS shall not be a factor in determining the amount of required off-street parking, unless during review of the required exception permit, it is decided that such outdoor use areas should be a factor in determining required off-street parking.

- 7. Incidental Sales of Gasoline at Convenience Stores:** Such exceptions may also include the temporary display of items for sale outside of the enclosed building provided such outside display area is beneath a permanent awning or roof, permanently attached to the principal building, and is adjacent to and along the front of the convenience store.

No parking space shall be occupied or interfered with and the arrangement of display items shall not obstruct handicapped accessibility or impede pedestrian movement.

- 8. Limited Equipment Rental And Sales Businesses:** Such exceptions may have storage and display areas, located outside of a completely enclosed building for merchandise inventory equivalent to not more than 20% of the total floor area of the completely enclosed portion of the equipment rental and sales business; provided that:

- a. Outside storage and display areas for merchandise, including but not limited to rental vans, trucks and trailers, shall not be located within a required FRONT YARD SETBACK and shall be located behind the front wall of the principal building. Such outside use areas shall observe at least a 10-foot setback from any perimeter property line, however, no side or rear yard setback need be observed if the adjacent property is zoned B-3, B-4, B-5 or M-1;
- b. When the zoning lot is bordered by any residential district or use, or when the zoning lot is across a street from a residential zoning district or use, the outside storage or display area for merchandise or INCIDENTAL CONCRETE MIXING FACILITY shall be provided solid visual screening and landscaping to block its ground level view from such districts or uses. When the zoning lot is bordered by any non-residential zoning district, other than the B-5 or M-1 Districts, outside storage or display areas for merchandise and any INCIDENTAL CONCRETE MIXING FACILITY shall be provided landscaping to partially screen its ground-level view from such districts;
- c. Outside storage or display areas for merchandise shall be paved with concrete or asphaltic concrete;
- d. Outside storage or display areas for merchandise shall not be a factor in determining the business' overall off-street parking requirement, unless during review of the required exception permit, it is decided by the City that such outdoor storage or display areas should be a factor in determining required off-street parking; and
- e. Any INCIDENTAL CONCRETE MIXING FACILITY, approved as a part of the exception for the Equipment Rental and Sales Business, shall not be located within a required FRONT YARD SETBACK and shall be located behind the principal building. Such incidental use shall observe at least a 40-foot setback from any perimeter property line, however, only a 10-foot side or rear yard setback is required if the adjacent property is zoned B-3, B-4, B-5 or M-1. Partial screening or solid visual screening and landscaping of the Concrete Mixing Facility shall be provided in accordance with subsection (b) above.

9. Mini-Storage Warehouses:

- a. Any side of a Mini-Storage Warehouse providing doorways to individual storage areas shall observe at least a 25-foot setback from any perimeter property line that is adjacent to either a residential zoning district or residential use; and
- b. Mini-Storage Warehouses are not permitted to front onto or be accessed from K-15 / Baltimore Street between Wedgewood Street to the north and Kay Street to the south in the B-4 District.
- c. Mini Storage Warehouses are limited to the storage of personal household goods, but not including the storage of fireworks, firearms, or any hazardous substance of product.

10. Multiple Family Dwelling Units: Such exceptions may be constructed above the first floor of a business establishment provided that:

- a. A parking layout plan shall be submitted to the City which indicates the location of minimum amounts of required vehicular parking for the multiple family dwelling units; and
- b. Plans shall be submitted to the City in compliance with all applicable federal, state and local laws, rules, regulations, ordinances, resolutions, policies, procedures and permits which also identify the location of stairwells and/or elevators providing access to the multiple family dwelling units.

11. Outdoor Storage Yards:

- a. Unless specifically authorized as part of the exception, the storage of wrecked or otherwise inoperable vehicles or equipment outside of a completely enclosed building is prohibited;
- b. All such storage areas must be paved with asphalt, concrete or asphaltic concrete or be surfaced with minimum three quarter inch diameter crushed rock or approved alternate material, such as asphalt millings, to a depth of at least four inches. If a crushed rock or alternate material surface is selected, the subgrade of such areas shall be treated to the specifications of the City Engineer. Areas surfaced with crushed rock shall be treated with dust retardants, as needed and stored equipment, construction materials or similar items shall be kept free of weeds. Appropriate fire-lane aisles and, if required, fire hydrants shall be provided in the storage area;
- c. The area used for outdoor vehicle and equipment storage shall not be a factor in determining the principal use's overall off street parking requirement, unless during review of a required exception permit, it is decided that such outdoor storage areas should be a factor in determining required off street parking; and

- d. All vehicular parking areas for customer and employee vehicles and for the parking of vehicles used in conjunction with the business occupying the zoning lot, as well as parking and storage areas for rental vehicles and rental equipment, shall be paved with concrete, asphalt or asphaltic concrete.

12. Truck Service Stations and Vehicle Body and Fender Repair Shops: Such exceptions may have storage areas located outside of a completely enclosed building for vehicles undergoing active repair; provided that:

- a. Any area used for outside storage of vehicles or equipment shall be paved with concrete or asphaltic concrete;
- b. Except for required customer and employee parking and the parking of vehicles used in conjunction with the Service Station or Vehicle Repair Business, any area used for outside vehicle storage shall not be located within a required FRONT YARD SETBACK and shall be located behind the front wall of the principal building;
- c. Any area used for outside vehicle storage shall observe at least a 10-foot setback from any perimeter property line when the adjacent property is zoned a residential district;
- d. Except for required customer and employee vehicle parking and the parking of vehicles used in conjunction with the Service Station or Vehicle Repair Business, all vehicles being stored outside shall be provided solid visual screening and landscaping to block ground level view of such vehicles by persons occupying residential uses adjacent to or across a street from the business and along the zoning lots direct boundary with any residential district. When bordered by any non-residential zoning district, other than the B-3, B-4, B-5 or M-1 Districts, the outside vehicle storage area shall be provided landscaping to partially screen its ground-level view from such districts;
- e. The use area for the outside vehicle storage shall not be a factor in determining the business' overall off-street parking requirement, unless during review of a required exception permit, it is decided that such outdoor use areas should be a factor in determining required off-street parking;
- f. Outside storage of inoperable vehicles and equipment that are not undergoing active repair or which are being salvaged or "parted out" is not permitted in the B-3 and B-4 Districts; and
- g. Vehicle Body and Fender Repair Shops are not be permitted to front onto or be accessed from K-15 / Baltimore Street between Wedgewood Street to the north and Kay Street to the south in the B-4 District.

- D. Hearing and Notice.** Upon receipt of a complete application, the Board shall then fix a reasonable time for the hearing concerning such application for an exception by permit. Notice of the time, place and subject of such hearing shall be published once in the official City newspaper at least 20 days prior to the date fixed for hearing. A copy of the notice shall be mailed to each party with a legal interest in the requested property and to the Planning Commission.
- E. Standards.** The Board may grant an exception by permit based upon specific written findings of fact made after consideration of the request and any comments and/or evidence presented to the Board before and during the hearing provided in accordance with subsection D above in light of relevant factors, including but not limited to the following:
1. The proposed exception complies with all applicable regulations, including lot size requirements, bulk regulations, use limitations and performance standards, unless a concurrent application is in process for a variance.
 2. The proposed exception will not cause substantial injury to the value of other property in the neighborhood.
 3. The location and size of the exception, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the exception will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the exception will so dominate the immediate neighborhood, consideration shall be given to:
 - a. The location, nature and height of buildings, structures, walls and fences on the site; the hours of operation; and
 - b. The nature and extent of landscaping and screening on the site.
 4. Off-street parking and loading areas will be provided in accordance with the standards set forth in Article 5 of these regulations. Such areas may be screened from adjoining residential uses and located so as to protect such residential uses from injurious effects.
 5. Adequate utility, drainage, sidewalks and other such necessary facilities have been installed or will be provided by platting, dedications and/or guarantees.
 6. Adequate access roads, entrance and exit drives and/or access control is available or will be provided by platting, dedications and/or guarantees and shall be designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
 7. Adequate fire and police protection will be provided which promotes the safety of individuals and property.
 8. Orderly land use planning will be achieved in keeping with the goals and proposals of the Comprehensive Plan.

- F. **Conditions.** In granting an exception by permit, the Board may attach such conditions upon the property and/or the applicant benefited by the exception it deems necessary to address issues raised during the application and hearing process. The exception by 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; 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. In addition to the guarantees referred to below for parking and/or screening, covenants which run with the land or the property to guarantee that conditions will be carried out at a future date may be required to be filed with the Sedgwick County Register of Deeds.

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

- G. **Decisions and Records.** The Board shall render and issue a written decision to the applicant in the form of an exception by permit to be filed with the Sedgwick County Register of Deeds Office or a written denial of the requested exception by permit containing specific findings of fact to be filed with the application within 45 days from the close of the hearing.
- H. **Period of Validity.** An exception by permit issued pursuant to these regulations shall lapse and become ineffective if the exception is not commenced upon the property within 180 days and/or continuously maintained on the property thereafter; provided, that the Board may grant additional extensions not exceeding 180 days each, upon written application, without further notice and hearing

1006 FINALITY AND JUDICIAL REVIEW OF DECISIONS.

Any order or determination of the Board on an appeal of a decision, variance or exception shall be final. However, in accordance with K.S.A. 12-764, within 30 days of the final decision of the Board, any person aggrieved thereby may maintain an action in the Sedgwick County District Court to determine the reasonableness of such final decision.

ARTICLE 11. AMENDMENTS AND REVIEWS

1100 GENERAL PROVISIONS FOR AMENDMENTS

The Governing Body of the City, from time to time, may supplement, change or generally revise the boundaries or regulations contained in these regulations by amendment, in accordance with the terms, conditions and procedures established in K.S.A. 12-757, as amended.

- A. Proposal for Amendments.** A proposal for such amendment may be initiated by the Governing Body or the Planning Commission. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the amendment may be initiated by application of the owner of the property affected, filed with the Zoning Administrator and placed in such form and including such information as shall be prescribed from time to time by the Planning Commission. Any such amendment, if in accordance with the land use plan or the land use element of a comprehensive plan, shall be presumed to be reasonable.
- B. Public Hearing.** Prior to voting on an application for an amendment to the Zoning Map (or issuance of a special use permit), the Planning Commission shall hold a public hearing on the application and notice shall be provided in accordance with K.S.A. 12-757, as amended.
- C. Matters for Consideration.** When approving or disapproving a rezoning request affecting specific property, consideration may include, but is not limited to, the following matters:
1. The character of the neighborhood.
 2. The zoning and uses of properties nearby.
 3. The suitability of the subject property for the uses to which it has been restricted.
 4. The extent to which removal of the restrictions will detrimentally affect nearby property.
 5. The length of time the subject property has remained vacant as zoned.
 6. The gain to the public health, safety, and welfare by the possible diminution in value of the applicant's property as compared to the hardship imposed on the applicant if his requests were denied.
 7. The impact of the proposed development on community facilities.
 8. The opposition or support of neighborhood residents.
 9. The conformance of the requested change to the City's master or comprehensive plan.
 10. The recommendations of a permanent or professional planning staff.

The above-listed factors are only suggested factors which may be important for consideration when approving or disapproving a rezoning request affecting specific property. The above-listed factors are not exclusive and other factors which may be important for consideration of a rezoning request may be considered.

- D. Protest Petitions.** Regardless of whether or not the Planning Commission approves or disapproves a zoning change, a written protest petition against a proposed amendment for a specific property or special use may be filed in accordance with the provisions of K.S.A. 12-757, as amended.
- E. Vote by Extraordinary Majority Required.**
- 1. Protest Petition.** If a valid protest petition against an application for amendment or special use is filed in the office of the City Clerk in accordance with the provisions and meeting the requirements of K.S.A. 12-757, as amended, any ordinance adopting such amendment shall not be passed except by at least a 3/4 vote of all of the members of the Governing Body.
 - 2. Adoption Without Remand.** In accordance with the provisions and meeting the requirements of K.S.A. 12-757, as amended, if the action of the Governing Body is to approve a proposal for which the Planning Commission recommended denial or to deny a proposal for which the Planning Commission recommended approval, then the Governing Body may override the Planning Commission recommendation, without a remand, by at least a 2/3 vote of all members of the Governing Body.
- F. Fees.** The required fees shall be paid in advance by the owner of any property at the time of making application for a zoning amendment in accordance with the established fee resolution approved by the Governing Body.

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:

Special Use Regulation Schedule

Special Use	Zoning Districts														Notes		
	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
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.

1102 PROJECT REVIEW.

In accordance with K.S.A. 12-748, whenever the Planning Commission has adopted and certified the Comprehensive Plan or one or more major sections or functional subdivisions thereof, no public improvement, public facility or public utility of a type embraced within the recommendations of the Comprehensive Plan or portion thereof shall be constructed without first being submitted to and being approved by the Planning Commission as being in conformity with the Plan. If the Planning Commission does not make a report within 60 days, the project shall be deemed to have been approved by the Planning Commission. If the Planning Commission finds that any such proposed public improvement, facility or utility does not conform to the Plan, the Commission shall submit, in writing to the Governing Body, the manner in which such proposed improvement, facility or utility does not conform. The Governing Body may override the Plan and the report of the Planning Commission, and the Plan for the area concerned shall be deemed to have been amended.

Whenever the Planning Commission has reviewed a capital improvement program and found that a specific public improvement, public facility or public utility of a type embraced within the recommendations of the Comprehensive Plan or portion thereof is in conformity with such Plan, no further approval by the Planning Commission is necessary under this section. In the event that certain public improvements, facilities or utilities of a type embraced within the recommendations of the Comprehensive Plan are classified as special uses or are the subject of a change in zoning classification or district boundary, the consideration of such uses by the Planning Commission in conjunction with a zoning application may also constitute the project review of such proposed use if concurrently processed under procedures required by K.S.A. 12-748, as amended.

1103 ANNUAL REVIEW.

At least once each year, the Planning Commission shall review or reconsider the Plan or any part thereof and may propose amendments, extensions or additions to the same. The procedure for the adoption of any such amendment, extension or addition to any Plan or part thereof shall be the same as that required for the adoption of the original Plan or part thereof.

1104 JUDICIAL REVIEW.

Judicial Review of the City's decision shall be pursuant to K.S.A. 12-760, as amended.

ARTICLE 12. SEVERABILITY AND EFFECTIVE DATE

1200 SEVERABILITY

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

1201 SAVINGS CLAUSE

Neither the adoption of these regulations nor the repeal or amendment of any regulations, ordinance or part or portion thereof or part of portion of these regulations shall in any manner affect the enforcement of ordinances or regulations, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee, or penalty at said effective date due and unpaid under such ordinances or regulations, nor be construed as affecting any of the provisions of such ordinances or regulations relating to the collection of any such license, fee, or penalty or the penal provisions applicable to any violation thereof, and all rights and obligations thereunder appertaining shall continue in full force and effect.

1202 EFFECTIVE DATE

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

APPENDIX A: TABLE OF COMPARABILITY OF ZONING DISTRICTS

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

When considering zoning district amendments, the Planning Commission and the Governing Body may recommend and approve a lesser change in zoning districts for the property already advertised for a public hearing without republication of a notice or redistribution of notices to property owners. This is the case provided such change is more restrictive than the district which is applied for as shown on the table below; provided, however, that such recommendation and approval shall not be for a lesser classification than the existing zoning district. If the applicant at the Governing Body meeting, at which a zoning amendment is being considered desires to amend the application and/or the Governing Body desires to consider a 'lesser' zoning change, then such a proposed change shall be returned to the Planning Commission for reconsideration and further recommendation to the Governing Body without further publication or notice as provided for in K.S.A. 12-757(c) and in Section 1104 of the Zoning Regulations.

MOST RESTRICTIVE

- R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT
- R-2 TWO-FAMILY RESIDENTIAL DISTRICT
- R-3 MULTIPLE-FAMILY RESIDENTIAL DISTRICT
- R-4 MULTIPLE-FAMILY RESIDENTIAL DISTRICT

- I-1 INSTITUTIONAL DISTRICT

- B-1 OFFICE BUSINESS DISTRICT
- B-2 NEIGHBORHOOD BUSINESS DISTRICT
- B-3 GENERAL BUSINESS DISTRICT
- B-4 CENTRAL SHOPPING DISTRICT
- B-5 RESTRICTED COMMERCIAL, WAREHOUSING AND LIMITED MANUFACTURING DISTRICT

LEAST RESTRICTIVE

- M-1 INDUSTRIAL DISTRICT

NOTE: Because of the uniqueness and special purpose for which the "R-1A" Single-Family Zero Lot Line Residential District, "R-1B" Low-Density Residential District, "R-1C" Suburban Single-Family Residential District, "MH-1" Manufactured/Mobile

Home Park District, "B-2A" Buckner Business District, "PUD" Planned Unit Development District and "F-P" Flood Plain District serve, these districts are excluded from the Table of Comparability.

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

EXAMPLE: If an application is advertised for public hearing requesting a change from "R-1" Single-Family Residential District to "M-1" Industrial District, the Planning Commission may recommend the lesser, i.e., more restrictive "B-5", "B-4," "B-3," "B-2," "B-1," etc., districts without republication or mailing of new notices.

If an application, however, is advertised for a public hearing requesting a change from the existing "B-1" Office Business District to the "M-1" Industrial District, the recommending of the lesser "R-3" or "R-2" Districts shall not be valid without republication and the mailing of new notices.

APPENDIX B: PREFERRED AND PROHIBITED PLANT MATERIALS

The following list of preferred plant materials has been adapted from the “Water-Wise Plants, Trees and Ornamentals for South Central Kansas” as developed by Sedgwick County K-State Research & Extension. This list is subject to change and may be amended from time to time.

Trees and plants which are proposed to meet the minimum requirements of Section 304 of the Zoning Ordinance that are not included on this list may be approved at the discretion of the Planning Commission. In no case should any tree or plant from the prohibited list be considered for meeting the minimum requirements of Section 304 of the Zoning Ordinance.

PROHIBITED TREES:

<u>Botanical Name</u>	<u>Common Name</u>
<i>Acer saccharinum</i>	Silver Maple
<i>Ailanthus altissima</i>	Tree of Heaven / Paradise
<i>Maclura pomifera</i> (fruit bearing)	Osage Orange (fruit bearing)
<i>Populus deltoides</i> (female)	Eastern Cottonwood (Female)
<i>Populus nigra</i>	Lombardi Poplar
<i>Pinus sylvestris</i>	Scotch Pine (Scots Pine)
<i>Fraxinus</i> spp.	Ash

PREFERRED TREES:

SMALL DECIDUOUS TREES (under 20 feet at maturity):

<u>Botanical Name</u>	<u>Common Name</u>
<i>Acer tataricum</i>	Tatarian Maple
<i>Acer tataricum</i> subsp. <i>ginnala</i>	Amur Maple
<i>Amelanchier</i> spp.	Serviceberry
<i>Cercis Canadensis</i>	Redbud (Eastern & Oklahoma)
<i>Chionanthus</i> spp.	Fringe Tree
<i>Cotinus</i> spp.	Smoketree
<i>Crataegus ambigua</i>	Russian Hawthorn
<i>Crataegus viridis</i> ‘Winter King’	Green Hawthorn ‘Winter King’
<i>Malus</i> spp.	Crabapple
<i>Syringa reticulata</i>	Japanese Tree Lilac
<i>x Chitalpa tashkentensis</i>	Chitalpa

MEDIUM DECIDUOUS TREES (20 to 40 feet at maturity):

<u>Botanical Name</u>	<u>Common Name</u>
<i>Acer buergerianum</i>	Trident Maple
<i>Acer campestre</i>	Hedge Maple
<i>Acer truncatum</i>	Shantung Maple
<i>Catalpa bungei</i>	Globe Catalpa
<i>Koelreuteria paniculata</i>	Goldenrain Tree
<i>Maclura pomifera</i>	Osage Orange
<i>Morus</i> spp.	Fruitless Mulberry
<i>Pistacia chinensis</i>	Chinese Pistache
<i>Pyrus calleryana</i>	Ornamental Pear
<i>Quercus muehlenbergii</i>	Chinkapin Oak
<i>Sapindus drummondii</i>	Western Soapberry
<i>Ulmus propinqua</i> 'JFS-Bieberich'	Emerald Sunshine Elm

TALL DECIDUOUS TREES (over 40 feet at maturity):

<u>Botanical Name</u>	<u>Common Name</u>
<i>Acer saccharum</i>	Caddo Maple
<i>Acer saccharum</i>	'Legacy' Sugar Maple
<i>Acer x freemanii</i>	Freeman Maple
<i>Celtis occidentalis</i>	Common Hackberry
<i>Ginkgo biloba</i>	Ginkgo
<i>Gleditsia triacanthos inermis</i>	Honeylocust
<i>Gymnocladus dioicus</i>	Kentucky Coffeetree
<i>Liquidambar styraciflua</i>	Sweet Gum
<i>Platanus x acerifolia</i>	London Planetree
<i>Quercus acutissima</i>	Sawtooth Oak
<i>Quercus bicolor</i>	Swamp White Oak
<i>Quercus imbricaria</i>	Shingle Oak
<i>Quercus nigra</i>	Water Oak
<i>Quercus nuttallii</i>	Nuttall Oak
<i>Quercus phellos</i>	Willow Oak
<i>Quercus robur</i>	English Oak
<i>Quercus rubra</i>	Northern Red Oak
<i>Quercus shumardii</i>	Shumard Oak
<i>Taxodium distichum</i>	Bald Cypress
<i>Tilia americana</i>	American Linden
<i>Tilia cordata</i>	Littleleaf Linden
<i>Ulmus</i> spp.	American Elm
<i>Ulmus parvifolia</i>	Lacebark Elm
<i>Zelkova serrata</i>	Japanese Zelkova

EVERGREEN TREES:

<u>Botanical Name</u>	<u>Common Name</u>
<i>Calocedrus decurrens</i>	Incense Cedar
<i>Cedrus atlantica</i>	Atlas Cedar
<i>Cupressus arizonica</i>	Arizona Cypress
<i>Juniperus chinensis</i>	Juniper
<i>Juniperus virginiana</i>	Juniper
<i>Magnolia grandiflora</i>	Southern Magnolia
<i>Pinus bungeana</i>	Lacebark Pine
<i>Pinus cembroides var. edulis</i>	Pinyon Pine
<i>Pinus flexilis</i>	Limber Pine
<i>Pinus nigra</i>	Austrian Pine
<i>Pinus ponderosa</i>	Ponderosa Pine
<i>Pinus strobiformis</i>	Southwestern White Pine
<i>Pinus taeda</i>	Loblolly Pine
<i>Thuja</i> spp.	Arborvitae

PREFERRED SHRUBS:

PARKING LOT SCREENING:

<u>Botanical Name</u>	<u>Common Name</u>
<i>Berberis thunbergii</i> atro.	Red Leaf Barberry
<i>Berberis x mentorensis</i>	Mentor Barberry
<i>Buddleia davidii</i>	Butterfly Bush
<i>Callicarpa dichotoma</i>	Beautyberry
<i>Chaenomeies speciosa</i>	Quince
<i>Cornus alba</i>	Red Barked Dogwood
<i>Cotoneaster divaricatus</i>	Spreading Cotoneaster
<i>Euonymus alatus</i>	Compact Burning Bush
<i>Euonymus kiautschowicus</i>	Euonymus (Manhattan & Pauli)
<i>Forsythia xintermedia</i>	Forsythia
<i>Juniperus chinensis</i>	Chinese Juniper
<i>Lagerstroemia</i> hybrids	Crapemyrtle
<i>Lonicera fragrantissima</i>	Winter Honeysuckle
<i>Pyracantha</i>	Pyracantha
<i>Rhus aromatic</i>	Fragrant Sumac
<i>Spiraea</i> cultivars	Spirea
<i>Syringa meyeri</i>	Korean Lilac
<i>Viburnum</i> spp.	Viburnum
<i>Weigela florida</i>	Weigela

PREFERRED ORNAMENTAL GRASSES (for screening):

<u>Botanical Name</u>	<u>Common Name</u>
<i>Arundo donax</i> var.	Variegated Giant Reed
<i>Miscanthus sinensis</i>	Miscanthus (cultivars)
<i>Panicum virgatum</i>	Switchgrass (cultivars)
<i>Pennisetum alopecuroides</i>	Foxtrot Fountain Grass

PREFERRED GROUNDCOVERS:

FOR SHADE:

<u>Botanical Name</u>	<u>Common Name</u>
<i>Bergenia cordifolia</i>	Bergenia
<i>Convallaria majalis</i>	Lily-of-the-Valley
<i>Euonymus fortunei</i> 'Coloratus'	Wintercreeper Euonymus
<i>Hedera helix</i>	English Ivy
<i>Liriope</i> spp.	Liriope
<i>Lonicera japonica</i> 'Halliana'	Hall's Honeysuckle
<i>Mahonia repens</i>	Mahonia, Creeping
<i>Phlox divaricata</i>	Woodland Phlox
<i>Polygonatum odoratum</i>	Solomon's Seal
<i>Vinca minor</i>	Periwinkle

FOR FULL SUN:

<u>Botanical Name</u>	<u>Common Name</u>
<i>Artemisia schmidtiana</i> 'Silvermound'	Silvermound
<i>Callirhoe involucrate</i>	Poppy Mallow
<i>Cerastium tomentosum</i>	Snow in Summer
<i>Euonymus fortunei</i> var. <i>coloratus</i>	Wintercreeper Euonymus
<i>Euphorbia cyparissias</i>	Spurge, Cypress
<i>Euphorbia epithymoides</i>	Spurge, Cushion
<i>Hemerocallis</i> spp.	Daylily
<i>Juniperus</i> spp.	Creeping Junipers
<i>Liriope</i> spp.	Liriope
<i>Lonicera japonica</i> 'Halliana'	Hall's Honeysuckle
<i>Nepeta x faassenii</i>	Catmint
<i>Oenothera</i>	Missouri Primrose
<i>Phlox subulata</i>	Phlox (Creeping)
<i>Rhus aromatic</i> 'GroLow'	Gro-Low Fragrant Sumac
<i>Sedum</i> spp.	Sedum, Stonecrop
<i>Thymus serpyllum</i>	Thyme, (Creeping)

APPENDIX C: DESIGN CRITERIA

From time to time the Planning Commission may adopt design criteria in the form of policy statements to assist in reviewing site plans.

The following such policy statements as adopted by the City of Derby on June 7, 2007 shall, as specified below, be employed in the development of all non-residential (but not to include industrial or manufacturing uses located in the "M-1" zoning district) uses in the City of Derby. As part of the Site Plan review process, building elevations, site layout plans, material lists or descriptions, and other documentation shall be included with the site plan submittal which provides sufficient detail by which the Planning Commission can determine that the intent of these requirements is being satisfied.

While it is not the intent of the City to restrict design freedom unduly when reviewing project architecture in connection with a site and building plan, it is in the best interest of the City to promote high standards of architecture design and compatibility with surrounding structures and neighborhoods. In that regard, the following policy statements and design criteria shall be used as guidelines in the preparation of required site and building plans.

1. APPLICABILITY:

These requirements shall apply to all new commercial, office and institutional use and if located in other than the "M-1" industrial district any such allowed manufacturing form of use. These requirements shall also apply to any major renovation, restoration, modification, addition or retrofit of a structure or site that exceeds fifty percent (50%) of the current appraised value of any structure or site as established by Sedgwick County. Such costs shall be aggregated over a five-year period to determine if such development is subject to these requirements. Such costs shall not, however, include routine maintenance and repair of a structure or other feature on the surrounding site, such as roof replacement or general repairs to a parking area or other site feature. In no case are redevelopments within the "M-1" Industrial District to be made subject to these requirements.

2. POLICY STATEMENT/PRINCIPALS:

To implement and define criteria for the purpose set forth in this Chapter, the following principals are established:

- a) No building shall be permitted; the design or exterior appearance of which is of unorthodox or abnormal character in relation to its surroundings as to be unsightly or offensive to generally accepted taste and community standards.
- b) No building shall be permitted, the design or exterior appearance of which is so identical with those adjoin as to create excessive monotony or drabness.
- c) No building shall be permitted where any exposed façade is constructed or faced with a finished material which is aesthetically incompatible with the other facades and which presents an unattractive appearance to the public and to surrounding properties.

- d) No building or sign shall be permitted to be sited on the property in a manner which would unnecessarily destroy or substantially damage the natural beauty of the area, particularly insofar as it would adversely affect values incident to ownership of land in that area, or which would unnecessarily have an adverse effect on the aesthetics and general enjoyment of existing structures on adjoining properties.
- e) Accessory structures shall be of a similar architectural design and material as the primary building on the property.
- f) In addition to design issues involving buildings, accessory structures, signage and other such structural features, site plans should also incorporate in the design, features that address criteria involving pedestrian access and circulation, parking lot layout, open space and amenities and the preservation of natural features such as vegetation, topography, streams and other natural drainage ways. Attention to criteria such as above shall especially be provided for developments involving large tracts (5 or more acres), multiple buildings/uses and/or originally platted under a unified ownership.

3. DESIGN CRITERIA FOR BUILDINGS AND RELATED STRUCTURES:

- a) All buildings shall be finished on all sides with permanent finished materials or consistent quality. Major exterior surfaces of all primary structures shall be face brick, architectural concrete, glass, stucco, synthetic stucco, decorative block, or stone. Pre-cast panels and concrete block may be acceptable if incorporated in a building design that is compatible with other development throughout the district. The determination if pre-cast panels and concrete block are acceptable is in the sole discretion of the Planning Commission. A wall surface may use wood, vinyl, or metal, as accent material, provided they are appropriately integrated into the overall building design (see item "1" below).
- b) All rooftop or ground mounted mechanical equipment, satellite dish antennas, and exterior trash storage areas shall be screened with materials compatible with the principal structure.
- c) Underground utilities shall be provided for all new and substantially renovated structures.
- d) Accessory structures, either attached or detached from the primary structure, shall be constructed of identical materials, style, quality, and appearance as the principal structure.
- e) Design building entrances as prominent and easily identifiable. Create transition between the exterior and interior. Provide building entries with adequate lighting.

For restaurants or other uses with drive-thru facilities, entrances and exits shall be designed, located or otherwise positioned so as to eliminate or at least minimize possible safety conflicts between persons using such entrances (exits) and vehicular traffic. Exits (entrances) for example shall not be located or positioned in such a manner that patrons could walk directly into a drive-thru lane or other parking lot aisle or such that a patron or driver of a vehicle had an obstructed or insufficient view so as to impair the patron's ability to safely enter or exit the facility. (See also 5 i).

- f) Elements of architecture including window and door placement to be designed to add variety and interest to the project.
- g) Design all buildings in group commercial, office, and industrial/manufacturing uses (located outside of the **M-1** district) developments, including service station, convenience stores, chain restaurants, car dealerships, and auto maintenance facilities, in a complementary architectural style, and incorporate similar materials and colors throughout the development. This requirement or criteria is not, however, intended to preclude the use of unique designs, mixed forms of development or other development concepts that while atypical to these criteria can still be demonstrated to achieve the intent of these requirements.
- h) Architecturally integrate canopies for gas station, car washes, or similar uses with the building they serve in terms of material, color, texture, roof style and proportional relationship.
- i) Incorporate elements into the design of large structures which provide a transition to the human scale, particularly at the ground. Such elements may be provided through, but not limited to, covered walkways, building arcades and trellises.
- j) Provide architectural interest and style by varying horizontal and vertical elements of exterior walls in height and projection. Such interest and style may be provided through, but not limited to, the imaginative treatment of windows, doors, eaves, roof lines, parapets, wainscots, columns, and beams.
- k) Incorporate building trim, accents, color, materials and style into primary design themes to promote architectural visual interest.
- l) The design of the project shall be expressed on all exterior elevations of the building. The Planning Commission may waive this requirement if in their opinion the project backs up to a similar project, such as where there is an alley between or other condition to the rear of the project would reasonably preclude the need for a building elevation to be to adhere to this requirement.
- m) Design details of all building elevations to continue the character or theme of the project.
- n) Screen non-building elements such as but not limited to, vending machines, and ice lockers from street and parking lot view.
- o) Design patio enclosures visible from the street similar to the architectural character of the project.
- p) Integrate design and placement of building entry and exposed stairs with the design of the project through the use of similar building material, detail, shapes and colors.
- q) Use roofline variations to provide architectural style or character for buildings that are limited in wall configuration due to functional constraints.
- r) Design vertical scale of a project to be proportional to adjacent land uses.

4. DESIGN CRITERIA FOR SIGNS:

- a) The use of monument, tenant directory or ground signs is encouraged with pole or free standing signs being intended only in those situations where such a sign can, due to site condition, traffic concerns or other acceptable situation, be determined to be a more acceptable sign than the above noted types. The request for a pole, pylon or freestanding sign is subject to approval by the Board of Zoning Appeals as a condition use sign.
- b) Provide monument, tenant directory or ground sign structures with a base of metal, concrete, or masonry construction. Use sign cabinets and sign faces mounted atop a base bordered by the architectural features, materials, and embellishment of the entire sign.
- c) Use exterior materials, finishes, and colors in harmony with, or an upgrade to, those of the buildings or structures on site.
- d) Reflect distinctive elements of the general architectural style or design theme of the development in the sign structure.
- e) Use embellishment to incorporate the primary design elements or unique architectural features of the buildings or structures.

5. DESIGN CRITERIA FOR OTHER SITE PLAN ELEMENTS:

- a) Respect the existing topography and landscaping: Maintain the unique and identifiable topography and/or landscaping of a site. Respond to the unique terrain by blending with the natural shapes and texture of the land while minimizing disturbance to the natural environment.
- b) Art in Private Development: Encourage the creation of more attractive, unique and aesthetically pleasing public spaces. Artwork may be integrated into public and private development projects where appropriate.
- c) Trash and Refuse Collection Areas: Areas which generate noise and odors are to be located where they will not disturb the occupants within the project or adjacent uses.
 - 1) Minimum requirements for screening of trash and refuse areas are specified in Section 304.
- d) Outside Storage: Outside storage areas are to be screened from street view and adjacent residential, office and commercial districts as specified in Section 304.
- e) Outdoor lighting: Lighting is to provide security and visual interest. Lighting is to be placed and shielded to limit glare and to limit the emission of light beyond the development.
- f) Noise Impact: Include in site design provisions for limiting noise from one development interfering with the use of adjacent properties. The occupants of a development are to be protected from noise from both outside and within the site

- through screening, setbacks and building materials. Locate noise generating equipment to minimize impact on adjacent residential and pedestrian uses.
- g) Pedestrian Circulation/Waiting: Provide a network of convenient and safe pedestrian paths to connect areas within the project to adjacent properties and public right-of-way. Provide directness, continuity, street crossings, visual interest, shade, site furnishings, and safety for pedestrians within and entering the project. Provide a pedestrian pathway network linking the project together and provide a continuous pathway to surrounding developments with at least one (1) pedestrian walkway connection to adjacent streets.
 - h) In addition to required landscaping, consider landscaping to compliment the architecture, to minimize the impact of incompatible land uses, and to establish a transition between adjacent developments. Plant materials can absorb sound, filter air, curtail erosion, provide shade and maintain privacy.
 - 1) Provide landscaping to break up bland walls, shade pedestrians, accent entries and soften the connection of paving for vehicles to buildings.
 - 2) Design retention / detention basins as an integral part of the landscape theme. Basins shall not appear to be a ditch or pit. Such landscaping should help soften the visual appearance of the basin and integrate it into the landscape for the overall area.
 - 3) Provide a variety of tree species at the interior and perimeter of projects.
 - 4) Landscaping variety, innovative design, transition between plant material and ground cover, dispersal and grouping of plant material, and other recognized landscape architecture practices is encourage.
 - 5) Developments should provide additional buffering to address compatibly issues.
 - 6) Design foundation base to incorporate such elements as seat walls, decorative pavement, water features and decorative bollards. Where landscaping is included, design planters to accommodate mature height and width of landscaping.
 - 7) Design for public access to adjacent streets, bus loading areas, and pedestrian areas as required by ADA.
 - i) In addition to the action noted in 3 e. above, concerning the provision of safe entrances and exits, certain design features may, or should also be employed that aid that goal. The use of railing, other such barriers, landscaping, the alignment of sidewalk, etc. should be used to prevent direct access into a traffic lane. Traffic lanes and drive-thru lanes should be designed so as to direct vehicles away from exits / entrances. Signage, ground graphics, defined pedestrian crosswalks, etc. shall also be used to clearly identify paths connecting parking areas and facility exits and entrances.