

CHAPTER 18 – PART A

ZONING REGULATIONS OF THE CITY OF BEL AIRE, KANSAS

APPROVED BY THE PLANNING COMMISSION

&

ADOPTED BY CITY COUNCIL

December 6, 2016 Edition

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through ordinance of codification

Chapter 18A – Zoning Code
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ARTICLE 1
GENERAL PROVISIONS

1.01 SHORT TITLE

This Code shall be known and may be cited as the Bel Aire Municipal Zoning and Planning Code, December, 2016 Edition, and shall hereinafter be referred to as these Regulations or this Code.

1.02 AUTHORITY AND JURISDICTION

These regulations are adopted under authority established by K.S.A. 12-741 et seq., and as amended, including K.S.A. 12-736, 12-753 to 12-761, 12-763, 12-764, 12-766, 12-3301 - 12-3302, and 12-3009 to 12-3012. These regulations shall apply to all buildings, structures and land within the corporate limits of the City of Bel Aire, Kansas, as presently exist, as may be hereafter established, or as incorporated within by annexation. Nothing herein shall be construed to preclude the City from engaging in extraterritorial planning activities pursuant to K.S.A. 12-743, and amendments thereto.

1.03 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;
- J. To establish and provide procedures for the 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.

1.04 RELATIONSHIP TO OTHER PROVISIONS OF THE MUNICIPAL ORDINANCES

The use of buildings and land within the City shall be subject to all other applicable provisions of Bel Aire municipal ordinances, as well as these regulations, whether or not such other provisions of municipal ordinances are specifically cross-referenced in these regulations. Where the conditions imposed by the provisions of these regulations 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. In case of any difference of meaning or implication between the text of this Subdivision Code and any drawing or figure, the text shall control.

1.05 RELATIONSHIP TO COMPREHENSIVE PLAN AND OTHER POLICIES

It is the intention of the City that these regulations implement the goals, objectives and policies adopted for the City, as reflected in the Comprehensive Plan and other planning policies and documents. Where any nonconformity with the Comprehensive Plan or other planning policy may be perceived, the provisions of these regulations shall control.

1.06 RELATIONSHIP TO DESIGN GUIDELINES

The provisions of these regulations may be supplemented from time to time by design guidelines adopted by the City Council by policy or resolution. Design guidelines shall be considered as an aid in the interpretation or implementation of the provisions of these regulations. Design guidelines shall be considered as policy (except those parts derived from these regulations) and may be modified as provided within such design guidelines to meet the specific needs or requirements of a particular site, structure, or development in order to accomplish higher quality development design. In the event of a conflict between a design guideline and any provision of these regulations, the provision of these regulations shall regulate.

Related Information: Design Guidelines; Residential Neighborhood Design Manual; Traditional Neighborhood Design Manual

1.07 RELATIONSHIP TO PRIVATE RESTRICTIONS

The provisions of these regulations are not intended to abrogate any deed restriction, covenant, easement or any other private agreement or restriction on the use of land. Provided, that where the provisions of these regulations are more restrictive or impose higher standards than any such private restriction, the requirements of these regulations shall govern. The City does not have the responsibility to enforce such private agreements.

1.08 ADEQUATE PUBLIC FACILITIES AND SERVICES

A. In order to prevent the premature development of land which might pose a threat to the health, safety or general welfare of the community at large, it shall be the policy of the City that no application for special use permit, preliminary or final development plan, or preliminary or final plat shall be approved unless public facilities and services are available, or will be provided as a condition of the application, which are adequate to serve the development.

B. Installation of required improvements shall take place in the manner set forth within the Subdivision Code, as incorporated herein.

1.09 SUBDIVISION REGULATIONS INCORPORATED

It is hereby incorporated by reference as if set out fully herein, the Subdivision Regulations adopted by the Governing Body of the City of Bel Aire, Kansas. A minimum of one copy of the Zoning and Planning Regulations shall be filed with the city clerk to be open for inspection and available to the public at all reasonable business hours.

1.10 SEVERABILITY

It is hereby declared to be the intention of the City that the Articles, sections, subsections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any such Article, section, subsection, paragraph, sentence, clause or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining Articles, sections, subsection, paragraphs, sentences, clauses or phrases of this Code since the same would have been enacted without the incorporation into this Code of such unconstitutional or invalid Article, section, subsection, paragraph, sentence, clause or phrase.

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ARTICLE 2

INTERPRETATION, CONSTRUCTION & DEFINITIONS

2.01 RULES OF INTERPRETATION.

A. **Overlapping or Contradictory Regulations.** Where the conditions imposed by the provisions of these regulations 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. . In case of any difference of meaning or implication between the text of this Subdivision Code and any drawing or figure, the text shall control.

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

C. **Cumulative Limitations.** The provisions of these regulations are cumulative and additional limitations upon all other laws and ordinances heretofore passed or which may be passed hereafter governing any subject matter set forth in the provisions of these regulations.

D. **Unlawful Subdivisions.** A subdivision of land which was not lawfully existing at the time of the adoption of these regulations shall not become or be made lawful solely by reason of the adoption of these regulations.

E. **Vesting of Development Rights.** For the purpose of single-family residential developments according to K.S.A. 12-764, as amended, development rights in such land use shall vest upon recording of a final plat of such land after January 1, 1992. If construction of a principle structure is not commenced on such land within five years of recording a final plat, the development rights in such land shall expire and, thus, the platting process must start over, and all revisions to zoning or subdivision regulations that became effective subsequent to the recording of the expired plat shall thereafter apply to the platting of such land.

F. **Computation of Time.** The time within which an act is to be completed shall be computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday or legal holiday, that day shall be excluded. In the computation of time for public hearing notice, both the first day (day of the advertisement) and the last day (day of the hearing) shall be excluded. Time shall be computed to only include business days for computation of time involving ten (10) days or less.

G. **Delegation of Authority.** Whenever a provision appears to require a city officer or employee to do some act or perform some duty, it is to be construed to authorize the city officer or employee to designate, delegate and authorize other City employees, or contracted officials,

including employees associated with other municipalities providing services to the City via interlocal agreement, to perform the required act or duty unless the terms of the provision or section specifically states otherwise.

2.02 RULES OF CONSTRUCTION.

A. The language set forth in these regulations shall be interpreted in accordance with the following rules of construction:

1. The singular number includes the plural and the plural the singular.
2. The present tense includes the past and future tenses and the future the present.
3. The word “shall” is mandatory while the word “may” is permissive.
4. “City” means the City of Bel Aire, Kansas.
5. “County” means Sedgwick County, Kansas.
6. “Clerk” means the City Clerk, unless otherwise identified as the County Clerk.
7. “County Engineer” means the officially appointed engineer for Sedgwick County.
8. “City Engineer” means the officially appointed engineering firm by City Council for day-to-day projects throughout the contract term.
9. “Person” includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
10. “Planning Commission” means the Bel Aire City Planning Commission.
11. “Governing Body” means the Mayor and City Council of the City of Bel Aire, Kansas, unless otherwise identified as the Board of County Commissioners of Sedgwick County, Kansas or the applicable township trustees who are cooperating in the installation of improvements.
12. “Planning Area” means the City plus a perimeter area outside of and around the city limits within Sedgwick County designated by the City in their comprehensive development plan as the official study area for planning purposes.
13. “Comprehensive Plan” means the Comprehensive Development Plan for the Bel Aire Planning Area of Sedgwick County, Kansas, which has been adopted by the Planning Commission, approved by the Governing Body and includes, among other elements, plans for land use, transportation, utilities and community facilities.
14. “Subdivision Jurisdiction” means the area as described in within the Subdivision Code for which the extraterritorial jurisdiction of these regulations is applicable for purposes of subdividing land. Such jurisdiction cannot exceed the boundary of the Planning Area.

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 or by statute, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law (i.e. “terms of art”) shall be construed and understood according to such meaning..

2.03 DEFINITIONS

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

ACCELERATION LANE. An added roadway lane which permits integration and merging of slower moving vehicles into the main vehicular stream of traffic.

ACCESS CONTROL. The limitation of public access rights to and from properties abutting streets or highways. Access control is used on major streets and highways, when necessary, to preserve high-quality traffic service and to improve safety.

ACCESSORY APARTMENT. An accessory use dwelling unit that may be wholly within, or may be detached from, a principal single-family dwelling unit.

ACCESSORY USE OR STRUCTURE. A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure; is subordinate in purpose to the Principal Use or Structure served; contributes to the comfort, convenience or necessity of occupants of the Principal Use or Structure served; and is located on the same Zoning Lot as the Principal Use.

ADMINISTRATIVE EXCEPTION (EXCEPTION). An administrative exception is solely an equitable remedy, within the complete and absolute discretion of the zoning Administrator and the City Manager. When, in the concurrent opinion of the Zoning Administrator and the City Manager, the Strict application of one or more provisions of the zoning regulations will create a manifest injustice to a property owner and variance relief is not applicable to the situation, the Zoning Administrator and the City Manager may jointly issue an administrative exception from said provisions pursuant to the rules of such action as set forth within this Code.

AGRICULTURE. The use of a tract of land under one ownership for growing crops, pasturage, horticulture, nurseries, truck farms, dairying or the raising of poultry or cattle and other livestock, except cattle feedlots, hog lots, poultry and egg production or similarly types of operations and including the structures necessary for carrying out farming operations and the dwelling(s) of those owning and/or operating the premises. The feeding or disposal of community or collected garbage shall not be deemed an agricultural use, nor shall riding academies, livery or boarding stables, dog kennels, or commercial or hydroponic greenhouses; however, forested and non-producing open space land are considered as agricultural.

AIRPORT ZONING. A particular set of controls to reduce the safety and noise hazards associated with aircraft flying within the airport control zone. See K.S.A. 3-703, Authority to Adopt Airport Zoning Regulations.

AIRSPACE. An area from ground up within the general operation area of an airport.

ALLEY. A dedicated public right-of-way, which provides only a secondary means of access to and from streets and lots which is 20 feet or less.

ALL-WEATHER SURFACE. Includes: 1) asphalt, minimum of 2 inches depth, placed over base material of minimum of 4 inches, 2) concrete, minimum of 4 inches depth, 3) compacted rock/crushed concrete, minimum of 4 inches depth, utilizing a minimum of 1 inch diameter rock with not more than 10% finds for a binder. Utilization of the compacted rock/crushed concrete option shall require borders installed around all four sides, extending 2 to 3 inches above ground and not to impede drainage. Every all-weather surface must be properly maintained and kept free of potholes, weeds, grass, dust, trash, and miscellaneous scattered objects (debris) to qualify as an all-weather surface.

ALTERATION, STRUCTURAL. Any change in the supporting members of a building such as bearing walls, partitions, columns, beams or girders, or any substantial change in roof or exterior walls.

APPLICANT. The owner or owners of land proposed to be rezoned, have a modification of zoning, be subdivided, or the developer or other duly authorized agent of such owner or owners; provided, that any person claiming to represent such owner or owners shall be required to establish his or her authority to act in such representative capacity by an appropriate written instrument submitted with such application for zoning modification/change, subdivision action, or other process requiring an application.

ATTACHED STRUCTURE. Any building or structure that is physically connected to another by means of the walls or roof touching.

AUCTION HOUSE. An enclosed place or establishment that primarily conducts or operates for compensation or profit as a private or public market where items are offered for sale through competitive bidding. The term “auction house” shall not include flea markets, yard sales, livestock markets, or vehicle auctions. The term “auction house” shall not include on premise estate, foreclosure, real estate, or personal property sales conducted, as regulated by Bel Aire City Code – Temporary Sales.

AUTOMOBILE. A vehicle with GVW under 10,000 lbs.

AUTOMOBILE SERVICE CENTER. Buildings and premises where gasoline, oil, batteries, tires and automobile accessories and grease may be supplied and dispensed at retail and where in addition the following services may be rendered and sales made:

1. Sale and servicing of spark plugs, batteries and distributor parts.
2. Tire servicing and repair, but no recapping or re-grooving.
3. Replacement of mufflers and tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, bearings, mirrors, replace shock absorbers, and the like.
4. Radiator cleaning and flushing.

5. Washing and polishing and sale of automobile washing and polishing materials.
6. Greasing and lubrication.
7. Providing and repairing fuel pumps, oil pumps and lines.
8. Minor servicing and repair of carburetors.
9. Adjusting and repairing brakes.
10. Front end alignment.
11. Drivetrain repair or replacement.
12. Sales of cold drinks, packaged foods, tobacco and similar convenience goods for automobile service station customers as accessory and incidental to principal operation.
13. Provision of road maps and other informational material to customers; provision of restroom facilities.
14. Uses permissible at an automobile service center do not include the storage of an automobile not in operating condition for more than 60 days.

AUTOMOBILE WRECKING. The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

BANKING SERVICES. An establishment engaged in deposit banking or consumer lending. Typical uses include commercial banks, savings institutions and credit unions.

BED AND BREAKFAST INN. The use of an owner-occupied or manager-occupied residential structure to provide rooms for temporary lodging or lodging and meals for not more than 15 guests on a paying basis.

BENCH MARK. Surveying mark made in some object which is permanently fixed in the ground showing the height of that point in relation to sea level.

BILLBOARD. Any sign or advertisement, print or electronic, used as an outdoor display for the purpose of making anything known, the origin or point of sale of which is remote from the display.

BLOCK. A series of lots or tract of land bounded by streets, public parks, cemeteries, railway rights-of-ways, waterways, city limits or a combination thereof.

BOARD. Shall mean the Board of Zoning Appeals.

BOARDING HOUSE. A building or portion thereof, other than a hotel or motel, where lodging and meals for four or more persons are provided for compensation.

BOND. Any form of security including a cash deposit, surety bond, collateral, property of instrument of credit in an amount and form satisfactory to the Governing Body. All bonds shall be approved by the Governing Body whenever a bond is required in these Subdivision Regulations.

BUILDING. Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, chattels or moveable property of any kind, and which is permanently affixed to the land.

BUILDING. A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or chattels. When separated by division walls from the ground up without openings, each portion of such building shall be deemed a separate building.

1. **Building, accessory.** A building which is on a foundation that meets the requirements of the adopted building code on the same lot as the main building or principle use, and of a nature customarily incidental and subordinate to the main building or principle use.
2. **Building, community.** A building for social, educational, and recreational activities of a neighborhood or community, provided, that any such use is not operated for commercial gain.

BUILDING, HEIGHT. The vertical distance measured from the adjoining curb grade to the highest point of the roof, provided, that where buildings are set back from the street line, the height of the building may be measured from the average elevation of the finished grade along the front of the building.

BUILDING LINE. The exterior face of a wall of an existing Structure or the limits to which an exterior face of a wall of a proposed Structure may be built, but shall not include the face of one Story unoccupied gable roofed areas over open Porches, entrances or like appendages.

BUILDING OFFICIAL. The City of Bel Aire official assigned the responsibility of issuing building permits and conducting building inspections.

BUILDING LINE. A line that is the distance that is required by these Regulations between a principal structure or accessory structure and the property line of the lot on which the structure is located, and is usually the same as the setback line, except when the building line predates the current setback Regulations. The building line indicates that area beyond which buildings or structures may not be erected or altered and establishing the minimum open space to be provided. Such line may be more, but not less restrictive than any other applicable zoning or other regulations.

B.Z.A. Shall mean the Board of Zoning Appeals.

CEMETARY. Land used for burial, and dedication for cemetery purposes including crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

CITY. The City of Bel Aire, Kansas, a municipal corporation.

CITY MANAGER. The person appointed by the City Council as the City Manager or person acting in the place of the City Manager.

CITY ATTORNEY. The City Attorney or such licensed attorney designated by the City Attorney, or the City Council to furnish legal assistance for the administration of these Regulations.

CITY CLERK. The City Clerk of the City of Bel Aire.

CITY ENGINEER. The City Engineer or such professional engineer authorized by the City Council to provide engineering assistance in administering these and other regulations governing areas of the normal responsibility assigned to the City Engineer and licensed in the State of Kansas.

CITY LIMITS. The established corporate boundary of the City of Bel Aire, Kansas.

CLASS “A” CLUB. A premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans’ club, as determined by the Director of Alcoholic Beverage Control of the Kansas Department of Revenue, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members) and their families and guests accompanying them. No memberships required.

CLASS “B” CLUB. A premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment. Memberships only.

COLLEGE OR UNIVERSITY. An institution of higher education offering undergraduate or graduate degrees and including such accessory uses as dormitories and stadiums.

COLLECTOR STREET. Any street designed primarily to gather traffic from local or residential streets and carry it to arterial streets.

COMMISSION. The Bel Aire Planning Commission.

COMPREHENSIVE PLAN. The duly adopted Comprehensive Plan for the territory of Bel Aire, Kansas and surrounding planning area.

CONDITIONAL USE. A use which may be appropriate within a specific zoning district, but due to the nature of such use and the nature of the effected zoning district, must be approved by recommendation of the Planning Commission and action of the Governing Body. A conditional use runs with the land until the use of the land changes, as set forth within this Code.

CONSTRUCTION SALES AND SERVICE, GENERAL. An establishment engaged in the retail or wholesale sale of materials used in the construction of buildings or other structures, as well as the outdoor storage of construction equipment or materials on lots other than construction sites. Typical uses include lumberyards, home improvement centers, lawn and garden supply stores, construction equipment sales and rental, electrical, plumbing, air conditioning and heating supply stores, swimming pool sales, construction and trade contractors' storage yards and public utility corporation storage yards.

CONSTRUCTION SALES AND SERVICE, LIMITED. An establishment engaged primarily in the retail sale of materials used in the construction and maintenance of buildings or other structures, as well as limited outdoor storage of materials. Typical uses include home improvement

centers, lawn and garden supply stores, electrical, plumbing and heating supply stores and public utility corporation storage yards. For the purposes of this definition, limited open air storage shall be screened by a six foot opaque fence or wall and shall be ancillary to the primary use and may not exceed 15 percent of the main building floor area unless the screening method is an extension of the architecture of the main building. Materials stored within the enclosure shall not be permitted to exceed the height of the fence or wall.

COUNTY. Sedgwick County, Kansas.

CONVENIENCE STORE. An establishment engaged in the retail sale of food, beverages, gasoline and other frequently or recurrently needed merchandise for household or automotive use and which may specifically include a car wash as an accessory use, but shall not include vehicle repair.

CORRECTIONAL PLACEMENT RESIDENCE. A facility for individuals or offenders that provides residential and/or rehabilitation services for those who reside or have been placed in such facilities due to any one of the following situations:

1. prior to, or instead of, being sent to prison;
2. received a conditional release prior to a hearing;
3. as part of a local sentence of not more than one year;
4. at or near the end of a prison sentence, such as a state operated or franchised work release program, or a privately operated facility housing parolees;
5. received a deferred sentence and placed in facilities operated by community corrections; or
6. require court ordered guidance services for alcohol or chemical dependence.

Such facilities will comply with the regulatory requirements of a federal, state or local government agency; and if such facilities are not directly operated by a unit of government they will meet licensure requirements that further specify minimum service standards.

COURT. An open, unoccupied space other than a yard on the same lot with a building or group of buildings, and which is bounded on two or more sides by such building or buildings.

1. **Inner court.** A court other than an outer court. The length of an inner court is the minimum horizontal dimension measured parallel to its longest side. The width of an inner court is the minimum horizontal dimension measured at right angles to its length.
2. **Outer court.** A court which opens onto a required yard, or street or alley. The width of an outer court is the minimum horizontal dimension measured in the same general direction as the yard, street or alley upon which the court opens. The depth of an outer court is the minimum dimension measured at right angles to its width.

CURB CUT. The opening along a curb line at which point vehicles may enter or leave a roadway.

DECELERATION LANE. An added roadway lane that permits vehicles to slow down and leave the main vehicular stream of traffic.

DEDICATION. A gift or donation of property by the owner to a governmental unit. The transfer is conveyed by a plat or a written separate instrument. The act of dedicating is completed with a formal acceptance by the governing body.

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

DESIGN STANDARDS. The basic land planning principles established as guides or requirements for the design and layout of subdivisions as described in these regulations.

DETENTION POND. A storage facility for the temporary storage of storm water runoff. The storm water may be released by gravity or by mechanical means at such time as downstream facilities can handle the flow.

DEVELOPER. The owner, or any other person, firm or corporation, or persons other than the owner that entitles the holder to a specific limited use or right. Ownership of said strip of land shall remain with the property owner.

DEVELOPMENT. A new subdivision; the construction or reconstruction of streets and utilities; the construction, expansion or remodeling of structures, a change in the use of land; or the clearing and grading of land.

DISTRICT. Any section of the city for which the regulations governing the use of buildings and premises and the height and area of buildings are uniform.

DRINKING ESTABLISHMENT. Premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

DWELLING:

1. **One-family dwelling - (Single Family).** A detached building used exclusively for residential purposes having suitable accommodations for only one family.
2. **Two-family dwelling - (Duplex).** A detached building used exclusively for residential purposes and designed for or occupied by two families independently of each other.
3. **Three-family dwelling - (Triplex).** A detached building used exclusively for residential purposes and designed for or occupied by three families independently of each other.
4. **Four-family dwelling - (Fourplex).** A detached building used exclusively for residential purposes and designed for or occupied by four families independently of each other.
5. **Multiple-family dwelling - (Apartment, condominium).** A building or portion of a building having suitable accommodations for five or more families living independently of each other, who may or may not have joint use of utilities, halls, yards, etc. The term includes premises occupied permanently for residential purpose in which the rooms are occupied in apartments, suites or groups such as bachelor apartments, studio apartments,

kitchenette apartments and all other dwellings similarly occupied. The term does not include premises occupied transiently as a temporary abode such as hotel, motel, dormitory and lodging or boarding and rooming houses.

6. **Mobile Home**. A detached privately owned residential dwelling unit, manufactured prior to 1976 or not in conformance with HUD Code, that is designed for transportation on streets or highways on its own wheels or on latter or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations on jacks or other temporary foundations, connections to utilities and the like. A recreational vehicle is not to be considered a mobile home.
7. **Modular Home**. A detached residential dwelling unit which meets existing city building codes and which is built off-site and delivered to site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on permanent foundation, connection to utilities and the like.
8. **Residential-Design Manufactured Home**. A residential-design manufactured home shall be considered a single-family dwelling. (K.S.A. 12-742). A modular, prefabricated or panelized housing unit built according to and meeting the National Manufactured Home Construction and Safety Standards, as may be amended, which meets the following criteria:
 - a. The unit is comparable to site built housing and has a residential rather than recreational appearance;
 - b. The unit has at least 1,200 square feet of living area;
 - c. The unit has a minimum width of 24 feet;
 - d. The roof pitch, siding and roofing materials that are customarily used on site built homes; minimum 12” roof overhang.
 - e. The unit is permanently attached to a basement, crawl space, slab or similar foundation;
 - f. The unit does not have wheels and towing apparatus.
9. **Manufactured Home**. A structure consisting of one or more mobile components manufactured to the standards embodied in the Federal Manufactured Home Construction and Safety Standards Act generally known as the HUD Code. Such units shall be connected to all utilities in conformance with applicable regulations. This shall not include a “residential-design manufactured home.” (K.S.A. 12-742)

DWELLING UNIT. One or more rooms in a dwelling, apartment, condominium, or hotel designed for occupancy by one family for living purposes.

EASEMENT. An interest in land that is held by the public, a corporation, or persons other than the owner that entitles the holder to a specific limited use or right. Ownership of said land shall remain with the property owner.

EDUCATIONAL INSTITUTIONS. An institution which offers general academic instruction equivalent to the standards prescribed by the State Board of Education or Board of Regents.

ENGINEER. A professional engineer licensed by the State of Kansas or licensed to practice in the State of Kansas who designs or engineers and inspects public improvements in connection with the approval of plats and construction of related improvements. (See LAND PLANNER and LAND SURVEYOR.)

ENTERTAINMENT, INDOOR. An establishment offering recreation, entertainment or games of skill to the general public for a fee or charge and wholly enclosed in a building. Typical uses include bowling alleys, bingo parlors, pool halls, theaters, banquet facilities and video game arcades. It does not include buildings typically accessory to a subdivision that are for use by the subdivision's residents and their guests.

ENTERTAINMENT, OUTDOOR. An establishment offering recreation, entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity ranges, miniature golf courses and drive-in theaters. It does not include golf courses, parks, open space and recreational facilities typically accessory to a subdivision that are for use by the subdivision's residents and their guests.

EXCEPTION (ADMINISTRATIVE EXCEPTION). An administrative exception is solely an equitable remedy, within the complete and absolute discretion of the zoning Administrator and the City Manager. When, in the concurrent opinion of the Zoning Administrator and the City Manager, the strict application of one or more provisions of the zoning regulations will create a manifest injustice to a property owner and variance relief is not applicable to the situation, the Zoning Administrator and the City Manager may jointly issue an administrative exception from said provisions pursuant to the rules of such action as set forth within this Code.

FAMILY. An individual or two or more persons related by blood, adoption, or marriage, or a group of not more than five persons (excluding household employees) not related by blood or marriage, living together in a single dwelling unit. This definition may be modified on a case by case basis so as to meet the intent to retain single family zoning areas for families in all their variations and cause larger groups of unrelated individuals, more than five, to seek housing in properties developed to support unrelated individuals such as rooming houses, boarding houses, dormitories, motels, hotels, etc...

FLAG LOT. A lot, tract or parcel of land that provides minimum frontage to a road or street by a narrow strip of land for a driveway and whose main body of land lies to the rear of the property which is adjacent to the road or street. When such lots are permitted, a building setback line must be shown on the recorded plat which is not less than that required by applicable zoning regulations.

FLOODPLAIN. Land which is subject to inundation of water as a result of what is commonly known as the 100-year flood, or land that has at least a 1 percent chance of flooding in any given year. Floodplain boundaries in the City of Bel Aire territory are shown on the Federal Insurance Administration's "Flood Hazard Boundary Maps".

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

FRONTAGE LOT. That portion of the frontage which lies between the side lot lines of a single lot.

GARAGE.

1. **Private garage.** A detached accessory structure or portion of a principal structure for the parking and temporary storage of automobiles of the occupants of the premises, and wherein (a) not more than one space is rented for parking to persons not occupants of the premises; (b) not more than one commercial vehicle per dwelling unit is parked or stored; and (c) the commercial vehicles permitted do not exceed 26,000 pounds gross vehicle weight rating.
2. **Public garage.** A building other than a private garage used for housing, care or repair of automobiles, or where such vehicles are equipped for operation, repaired, parked or stored for remuneration, hire, or sale.
3. **Storage garage.** A Self-Service Storage garage.

GOVERNING BODY. The City Council and Mayor of Bel Aire, Kansas. In the case of unincorporated lands located in Sedgwick County, the term shall refer to the Sedgwick County Board of County Commissioners.

GRADE. The slope of a road, street, or other public way, specified in percent.

GREEN AREA. A landscape area set aside and maintained by the owner for the aesthetic enjoyment of the public.

GREEN BUILDING. The practice of increasing the efficiency with which buildings use resources - energy, water, and materials - while reducing building impacts on human health and the environment, through better design, construction, operation, maintenance, and removal, throughout the complete building life cycle.

GROUP HOME. A residential facility licensed by the state Department of Social and Rehabilitation Services, the Behavioral Service Regulatory Board or the State Board of Healing Arts that is occupied or intended to be occupied by persons with a “disability,” as that term is defined in K.S.A. 12-736 as amended, and staff residents, none of whom need be related by blood or marriage. For purposes of this zoning Code, a group home shall be considered a single-family dwelling and shall be permitted wherever single-family dwellings are permitted.

GROUP HOME, LIMITED. A group home that is occupied by not more than ten persons, including a maximum of eight persons with a disability and a maximum of two staff residents, none of whom need be related by blood or marriage. This term does include homes used for dormitory purposes by schools. Private homes where a legally recognized family resides,

including one or more foster children, or other minor children placed into the legal guardianship of the occupants of the home, are not to be considered limited group homes for purposes of this code.

GROUP RESIDENCE. A residential facility providing cooking, sleeping and sanitary accommodations for a group of people, not defined as a family, on a weekly or longer basis. Typical uses include fraternity or sorority houses, dormitories, residence halls, boarding or lodging houses, children’s homes, children in need of care under the Code for Care of Children and emergency shelters for the homeless and for victims of crime, abuse or neglect and include establishments providing guidance services for persons receiving non-court ordered alcohol or chemical dependence treatment which will comply with all applicable regulatory requirements of federal, state or local government agencies. The term “group residence” does not include “group home” or “correctional placement residence.” This term does include homes used for dormitory purposes by schools. Private homes where a legally recognized family resides, including one or more foster children, or other minor children placed into the legal guardianship of the occupants of the home, are not to be considered group homes for purposes of this code.

GROUP RESIDENCE, GENERAL. A group residence that is occupied by more than fifteen persons, including staff members who reside in the facility.

GROUP RESIDENCE, LIMITED. A group residence that is occupied by six to fifteen persons, including staff members who reside in the facility.

HARD SURFACE. Asphalt, concrete or other similar surface impervious to water and strong enough for the intended use. See “All Weather Surface”

HOMEOWNERS ASSOCIATION. A community association, other than a condominium association, that is organized in a development where individual owners share common interests in open space, facilities, and structures. The homeowners association usually holds title to reserves, manages and maintains common property, and enforces certain covenants and restriction. Condominium associations differ from homeowners associations in that condominium associations do not have common property.

HOME OCCUPATION. A business, profession, occupation or trade conducted in a dwelling unit or accessory structure, for gain or support, by a resident of the dwelling unit and which is accessory to the use of the dwelling unit as a residence.

HOTEL. Any building or portion thereof which contains guest rooms which are designed or intended to be used, let or hired out for occupancy by, or which are occupied by 10 or more individuals for compensation whether it be paid directly or indirectly.

IMPROVEMENTS, PUBLIC. Any street, roadway, alley, sidewalk, planting strip, cross walkway, off-street parking area, sanitary sewer, gas service, storm sewer, drainage ditch, water main or other facility for which a governing body may ultimately assume the responsibility for maintenance and/or operation.

INDUSTRIAL DRY CLEANER. All dry cleaning establishments that derive less than 75 percent of their business from walk-in traffic.

INDUSTRIAL LAUNDRY. All laundries that derive less than 75 percent of their income from self-service customers.

LAND PLANNER. A professional architect, engineer, landscape architect or surveyor licensed by the State of Kansas or licensed to practice in the State of Kansas who is responsible for the design and preparation of a preliminary plat. (See ENGINEER and LAND SURVEYOR.)

LAND SURVEYOR. A licensed land surveyor registered in the State of Kansas or licensed to practice in the State of Kansas who is responsible for the survey and preparation of the final plat. (See ENGINEER and LAND PLANNER.)

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

LAUNDERETTE. All laundries whereby 75 percent of the business is self-service laundry--washers and dryers.

LAUNDRY OR DRY CLEANING, LIMITED. An establishment primarily engaged in providing household laundry and dry cleaning services, classified as low hazard in applicable codes, with customer drop-off and pickup.

LAUNDRY SERVICES. An establishment primarily engaged in the large scale cleaning of laundry or that includes dry-cleaning activities other than those classified as low hazard in applicable codes.

LIVING SPACE. Enclosed finished and unfinished space of a dwelling unit, excluding crawl spaces, attics, garages, and unconditioned spaces.

LOADING SPACE. Space logically and conveniently located for bulk pickups and deliveries, scaled to such vehicles when required off-street parking space is filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

LOT. A portion or basic parcel of a subdivision or other tract of land intended to be the parcel by which such land would be individually developed and transferred. A building site or parcel of land occupied or intended to be occupied by a building and accessory buildings, and including such open spaces as are required under this article, and having its principal frontage upon a public street or officially approved place alternative access per the Subdivision Regulations.

1. **Double Frontage (a.k.a. Through Lot).** A lot, other than a corner lot, two opposite lot lines of which abut upon streets which are more or less parallel.
2. **Reverse Frontage Lot.** A double-frontage lot for which the boundary along one of the streets is established as the front lot line and the boundary along the other street is established as the rear lot line.

3. **Corner Lot.** A lot situated at the intersection of two streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.
4. **Through Lot.** (See Double Frontage.) A lot, not a corner lot, with frontage on more than one street.
5. **Interior Lot.** A lot, other than a corner lot, whose side lot lines do not abut upon any street.
6. **Key Lot.** A lot in such a position that one side is adjacent to the back of other lots. A key lot is also a lot that adjoins the rear property line of a corner lot.
7. **Reverse Corner Lot.** A corner lot, the rear of which abuts the side of another lot.

TABLE: LOT TYPES

| | | | | |
|--------|----------|---------|-----|-------------------|
| STREET | | | | |
| CORNER | INTERIOR | THROUGH | KEY | REVERSE CORNER |
| CORNER | INTERIOR | | KEY | INTERIOR |
| CORNER | INTERIOR | THROUGH | KEY | REVERSE CORNER |
| STREET | | | | |

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

LOT COVERAGE. That percentage of a lot which, when viewed directly from above, would be covered by a structure or structures or any part thereof, including all nonporous asphalt and concrete materials used for recreational activity areas for basketball, racquetball, swimming, tennis in addition to driveways, patios. The list is not all-inclusive.

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

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

LOT LINE. The boundary line(s) of a lot.

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

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

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

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

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

LOT SPLIT. The dividing of a lot in a recorded plat or replat of a subdivision into not more than two parcels which creates an additional lot and meets the criteria established within these regulations. A lot split is not created by the transfer or sale of a lot plus a portion of an adjacent lot or the combining of portions of two lots to form a lot which is equal to or larger than the other platted lots in the block so long as an additional lot is not created.

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

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

MANUFACTURED HOME. A structure consisting of one or more mobile components manufactured to the standards embodied in the Federal Manufactured Home Construction and Safety Standards Act generally known as the HUD Code. Such units shall be connected to all utilities in conformance with applicable regulations. This shall not include a “residential-design manufactured home.” (K.S.A. 12-742)

MANUFACTURED HOME PARK. A tract of land under one ownership that is used or intended to be used by 2 or more manufactured homes and which has sanitary facilities, water, electricity and other similar utilities available to permit residential occupancy of homes. The term ‘manufactured home park’ does not include sales lots on which unoccupied homes, whether new or used, are parked for the purposes of storage, inspection, or sale.

MANUFACTURED HOME PARK BOUNDARY LINE. The outermost property line that encloses the spaces/lots contained within a manufactured home park or subdivision.

MANUFACTURED HOME SPACE. Shall mean a parcel of ground within a manufactured home park that is designated and intended to accommodate one manufactured home or mobile home, that provides service facilities for water, sewer, and electricity. Also referred to as a lot.

MANUFACTURED HOME SUBDIVISION. For the purpose of this Code shall mean two or more lots, created at the same time by division from a larger tract, which are intended to be individually owned and developed manufactured homes and which have sanitary facilities, water, electricity and other similar utilities available to permit residential occupancy of the homes. (*Manufactured homes*, modular homes, residential-design manufactured homes and site-built homes shall also be permitted unless prohibited by covenant or by conditions of the conditional use permit).

MASTER PLAN. Any plan or map adopted by the city for guidance of growth and improvement of the city and its environs including modifications or refinements that may be made from time to time.

METES AND BOUNDS. A system of describing and identifying a parcel of land by measures (metes) and direction (bounds) from an identifiable point of reference.

MOBILE HOME. A detached privately owned residential dwelling unit, manufactured prior to 1976 or not in conformance with HUD Code, that is designed for transportation on streets or highways on its own wheels or on latter or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations on jacks or other temporary foundations, connections to utilities and the like. A recreational vehicle is not to be considered a mobile home.

MODULAR HOME. A detached residential dwelling unit which meets existing city building codes and which is built off-site and delivered to site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on permanent foundation, connection to utilities and the like.

MOTEL OR MOTOR HOTEL. A group of attached or detached dwellings with separate toilet facilities for each unit, and which are provided for transient guests.

MINIMUM PAD ELEVATION. The lowest ground elevation completely surrounding a structure or the lowest flood proofed opening into a structure. This elevation is expressed in city datum or mean sea level.

MONUMENT. A device used to mark and identify the corners in the boundaries of subdivisions, blocks and lots and the points of curves in the street rights-of-way. Usually such devices are made of a metallic bar or tube and may or may not be in concrete.

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.

NONCONFORMING STRUCTURE OR LOT. A structure, or lot, lawfully existing at the time this zoning Code became effective, or as amended, which does not conform with the setback, height, lot size or other dimensional or property development standards applicable to the zoning

district in which the structure or lot is located.

NONCONFORMING USE. Use of any land, building or structure which does not comply with the use regulations of the zoning district in which such use is located but which complied with the use regulations in effect at the time the use was established.

NURSERIES AND GARDEN CENTERS. A place of business where retail and wholesale products and produce are sold to the consumer. These centers, which may include a nursery and/or greenhouses, import most of the items sold, and may include plants, nursery products and stock, and other garden and farm variety tools and utensils.

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 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 by which the Zoning Administrator certifies that upon completion of an applicant's proposed structure and/or use or change in use that it complies with these regulations and, therefore, may be occupied and/or used. When applicable, such a certificate may be combined with the issuance of a certificate of occupancy as required by a building code.

OPEN SPACE. An area of land or water, or combination thereof, planned for passive or active recreation or for protection, conservation or for preservation of natural resources, but does not include areas utilized for streets, alleys, driveways, or private roads, off-street parking or loading areas, or required, front, rear or side yards.

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.

OWNER. Any individual, firm, association, partnership, corporation, trust, or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under these regulations.

PARK. A tract of land that is owned by or under the control of a public agency or homeowner's association that provides opportunities for active or passive recreational activities. Park may include outdoor swimming pools, swimming pool areas and hard surface recreational areas, provided these areas are unenclosed, except for fences, canopies, bathhouses or other minor structures.

PARKING AREA, PRIVATE. An area, other than a Street or Alley, used or intended to be used for the Parking of the Motor Vehicles, boats, Trailers that are exempt from Motor Vehicle registration by the state or are registered or are required by law to be registered with a 2M+ Kansas license plate in the City or 8M in the County, and unoccupied Recreational Vehicles, any of which shall be owned, leased, borrowed, etc. by the occupants of a Dwelling Unit that is located on the

same Zoning Lot, and wherein not more than one Commercial Vehicle per Dwelling Unit is parked and the permitted Commercial Vehicle does not exceed 26,000 pounds gross vehicle weight rating.

PARKING SPACE. (Automobile) An all-weather surfaced area, accessed by an all-weather drive, located on privately owned property within or without a building or on a private or public parking area, and sufficient in size for the parking of one automobile, developed in conformance with the design requirements of this Code.

PARKING STRIP. That portion of street right-of-way that is unpaved and which is located between the back of a curb and the street right-of-way line. Such strip provides right-of-way for the installation of public utilities (typically gas and water lines), street signs, street lights, sidewalks, driveways, traffic control devices, fire hydrants, street furniture, street trees and other ancillary uses. The parking strip should not be confused with parking lanes that are often provided for as part of street pavement.

PARTS CAR. An inoperable motor vehicle, including any vehicle without current registration, which is owned by a collector to furnish parts which will enable the collector to restore, preserve and maintain a special interest vehicle, street rod vehicle or antique.

PEDESTRIAN WAY. A right-of-way for pedestrian traffic.

PEDESTRIAN WAY (CROSSWALK). A right-of-way across a block or providing access within a block to be used primarily by pedestrians.

PERCOLATION TEST. A test designed to determine the ability of ground to absorb water and used in determining the suitability of a soil for drainage or for the use of a septic system.

PERMIT. A signed document issued by the Administrator authorizing development, for any building, structure or use of land, or for development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

PERMITTED USE. A use permitted without the need for special administrative review and approval. (See Conditional Use, Special Use, Variance)

PERSON. Any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

PETITION. A legal instrument which serves as the basis for initiation of a public improvement project. A petition is frequently used during the platting process to guarantee the construction of certain improvements, e.g., street paving, water and sewer lines, drainage, etc. A petition is valid if its signatures are more than 50% either by area within the benefit district or by ownerships. Petitions are also used to initiate the vacation of streets, alleys, easements, other public reservations and plats. (See Subdivision Code for regulations regarding improvement petitions and vacation petitions.)

PLACE. An open unoccupied space other than a street or alley permanently reserved as the principal means of access to abutting property.

PLANNING COMMISSION. The Planning Commission of the City of Bel Aire.

PLANNED UNIT DEVELOPMENT. PUD, a platted parcel, subdivision, or district that contains specific zoning rules as a replacement for the adopted city regulations, such Planned Unit Development must be approved by the governing body. (See Plat, Planned Unit Development)

PLAT. An engineering drawing/map of a tract of land that has been lawfully subdivided meeting the criteria established in the subdivision regulations and duly recorded in the office of the Register of Deeds of Sedgwick County.

1. **Sketch Plan.** A plan as required by a registered land surveyor to describe the precise location and dimension of lots, established easements, dedicate street rights-of-way, and otherwise describe property to be subdivided and requiring approval of the Planning Commission specified in K.S.A. 12-752.
2. **Preliminary Plat.** A map or drawing on which the subdivider's plan of the subdivision is presented and which he submits for approval and intends in final form to record. A preliminary plat for a proposed subdivision of land shows streets, lots and other characters as well as features of the proposed development.
3. **Final Plat.** A formal document prepared by a registered land surveyor to describe the precise location and dimension of lots, established easements, dedicated street rights-of-ways and otherwise described property to be subdivided which are approved by the Bel Aire Planning Commission.
4. **One-Step.** Contains all of the information required for both the preliminary and final plats.
5. **Replat.** A new plat or a revision to a subdivision or portion thereof for which a final plat has previously been recorded. The approval of a replat is processed in the manner as a final plat.

PLANNED UNIT DEVELOPMENT PLAT. A plat containing additional language and depictions unique to one or more parcels contained therein, superseding zoning and sub-division regulations as approved by the planning commission and Governing Body.

PORCH. A roofed structure projecting from a building and separated from the building by the walls thereof and having no enclosing features except roof supports and open railing.

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

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

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

RECREATIONAL VEHICLE. For the purpose of this Code shall mean a unit designed as temporary living quarters for recreational, camping or travel use that has a body width not exceeding eight feet and a body length not exceeding 40 feet. Units may have their own power, or be designed to be drawn or mounted on an automotive vehicle and may or may not include

individual toilet and bath. Recreational vehicle shall include motor homes, travel trailers, truck campers, camping trailers, converted busses, house boats or other similar units as determined by the inspector.

RECREATIONAL VEHICLE CAMPGROUND. For the purpose of this Code shall mean the use of a parcel or tract of land, which provides space for the transient occupancy of recreational vehicles, and which is lawfully permitted to be used for the parking and occupancy of two or more recreational vehicles. Recreational vehicles, whether new or used, which are parked for the purpose of storage, inspection or sale shall not be construed to be a recreational vehicle campground, and must be maintained to comply with all outdoor storage regulations.

REPLAT. The subdivision of a tract of land that has previously been lawfully subdivided and a plat of such prior subdivision duly recorded.

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

RESIDENTIAL CLUSTER. An area to be developed as a single entity according to a plan and containing residential housing units that have a common or public open space area as an appurtenance.

RESIDENTIAL-DESIGN MANUFACTURED HOME. A residential-design manufactured home shall be considered a single-family dwelling. (K.S.A. 12-742). A modular, prefabricated or panelized housing unit built according to and meeting the National Manufactured Home Construction and Safety Standards, as may be amended, which meets the following criteria:

1. The unit is comparable to site built housing and has a residential rather than recreational appearance;
2. The unit has at least 1,200 square feet of living area;
3. The unit has a minimum width of 24 feet;
4. The roof pitch, siding and roofing materials that are customarily used on site built homes; minimum 12” roof overhang.
5. The unit is permanently attached to a basement, crawl space, slab or similar foundation;
6. The unit does not have wheels and towing apparatus.

RESERVE. An area of property within a subdivision which is platted for specific uses, e.g., open space, landscaping, entry monuments, recreational facilities, utilities, drainage, floodway, etc. Typically, future ownership and maintenance responsibilities for a reserve are set forth by a restrictive covenant which provides that a homeowners or lot owners association will hold title to the reserve and therefore be responsible for the reserve's maintenance. The restrictive covenant may provide for ownership and maintenance to be tied to the ownership of an adjacent lot.

RESTAURANT. A public eating establishment in which the primary function is the preparation and serving of food on the premises.

RESTAURANT CLUB. A licensed food service establishment which, as determined by the director (as defined by K.S.A. 41-102), derives from sales of food for consumption on the licensed club premises not less than 50% of its gross receipts from all sales of food and beverages on such premises in a 12 month period.

RESTAURANT DRINKING ESTABLISHMENT. Subject to a food sales requirement under KSA 41-2642 and amendments thereto, a licensed food service establishment which, as determined by the director (as defined by K.S.A. 41-102), derives from sales of food for consumption on the licensed drinking establishment premises not less than 30% of its gross receipts from all sales of food and beverages on such premises in a 12 month period.

RESTRICTIVE COVENANTS. Contracts entered into between private parties which constitute a restriction on the use of private property within a subdivision for the benefit of property owners and to provide mutual protection against undesirable aspects of development which would tend to impair stability of values. Such restrictions may be set forth in a deed. Restrictions are also placed of record by separate instruments including homeowner association agreements. Restrictive covenants usually run with the land.

RESUBDIVISION. The subdivision of a tract of land which has previously been lawfully subdivided and a plat of such prior subdivision duly recorded. Sometime referred to as a "replat."

RIGHT-OF-WAY. A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for other special purposes. The usage of the term "right-of-way" when shown on a final plat is to be an area separate and distinct from the lots or parcels adjoining such right-of-way, and not included within the dimensions of areas of such lots or parcels.

ROADWAY. That portion of a street, alley or highway right-of-way which has been graded, surfaced or otherwise improved for use by vehicular traffic, limited to public property.

ROOMING HOUSE. A building or portion thereof other than a hotel, where lodging for four or more persons is provided in exchange for compensation.

SAFETY SERVICES. A facility for conduct of public safety and emergency services, including fire and police protection services and emergency medical and ambulance services.

SALVAGE YARD. A lot, land or structure, or part thereof, used primarily for the collecting, dismantling, storing and/or salvaging of machinery, equipment, appliances or vehicles that are not in operating condition; and/or for the sale of parts thereof. Typical uses include vehicle salvage yards and junk yards.

SCHOOLS. Elementary or Secondary. The use of a site for instructional purposes on an elementary or secondary level, approved under the regulations of the State.

SETBACK, BUILDING. A line nearest the front of and across a lot or parcel of land establishing the minimum open space to be provided between the front line of a building or structure and the line of the front street

SCREENING. Fencing, evergreen vegetation, or shrubbery maintained for the purpose of concealing from view the area behind such fencing or vegetation.

SETBACK. The distance that is required by this Code between a Principal Structure or Accessory Structure and the property line of the Lot on which the Structure is located. (Note: The term Setback refers to a required minimum area, while the term Yard refers to the actual open area.)

1. **Setback, Front.** A Setback that is to extend across the full width of a Lot, the required depth of which is measured as the minimum horizontal distance between the Street Right-of-Way Line and a line parallel thereto on the Lot.
2. **Setback, Interior Side.** A Setback that is to extend from the Street Right-of-Way Line to the rear Lot Line along the side of a Lot that is Contiguous to or Abutting another Lot, the required depth of which is measured as the minimum horizontal distance between the side Lot Line and a line parallel thereto on the Lot.
3. **Setback, Rear.** A Setback that is to extend across the full width of a Lot, the required depth of which is measured as the minimum horizontal distance between the rear Lot Line and a line parallel thereto on the Lot.
4. **Setback, Street Side.** A Setback that is to extend from the front Lot Line to the rear Lot Line along the side of a Lot that is Abutting a Street or Street Right-of-Way Line, the required depth of which is measured as the minimum horizontal distance between the side Lot Line and a line parallel thereto on the Lot.

SIDEWALK. That portion of a street or pedestrian way, paved or otherwise surfaced, intended for pedestrian use only, a.k.a. Crosswalk.

SIDEWALK PLAN. A comprehensive pedestrian route designed to connect areas within a development to the city sidewalk system meeting ADAGG standards.

SHOPPING CENTER. A group of retail stores, originally planned and developed as a single unit, with immediate adjoining off-street parking facilities.

SIGNS. As defined by the Sign Code of the City of Bel Aire, Kansas.

SPA. Exercise equipment, sauna, pool or steam room.

SPECIAL USE. Public or private use which has not been classified as a permitted or conditional use in a particular district or districts, but due to the existence of exceptional circumstances as identified and accepted by the Planning Commission and Governing Body, such “special use” is permitted for a designated period of time. A special use does not run with the land and may not be transferred to any party except in conformance with these regulations, and the specific terms of the special use permit.

STORAGE, OUTDOOR. The keeping, storing, placing or locating outside of an enclosed structure for more than 72 consecutive hours any property, goods, products, equipment, trailers, or other similar items not considered accessory uses as listed in this code. This does not include the storage and/or baling of junk, scrap, paper, bottles, rags or similar materials. The term “Outdoor Storage” does not include “Vehicle Storage Yard.”

STREET. The entire right-of-way width between the boundary lines of every way which provides for public use for the purpose of vehicular and pedestrian traffic, and the placement of utilities and including the term "road", "highway", "lane", "place", avenue', "alley" or other similar designation. Types of Streets include:

1. **Alley.** A right-of-way along the side of or in the rear of lots which affords a secondary means of access to and from streets and such lots.
2. **Arterial.** A street of considerable continuity which is primarily a traffic artery for intercommunication among large areas and which provides access to abutting properties only as a secondary function.
3. **Collector.** A street supplementary to the major street system and a means of intercommunication between this system and smaller areas which is used for both through traffic and for access to abutting properties.
4. **Cul-De-Sac.** A short street with one end open to traffic and being permanently terminated by a vehicular turn-around at the other end.
5. **Dead End.** A street having only one outlet for traffic.
6. **Expressway.** Any divided street or highway with no access from abutting property and which has either separate or at-grade access from other public streets and highways. Such streets have a minimum of four traffic lanes.
7. **Freeway.** Any divided street or highway with complete access control and grade separated interchanges with all other streets and highways.
8. **Half-Street.** A portion of the right-of-way of a street, usually along the edge of a subdivision where the remaining portion of the street is intended to be provided in another subdivision.
9. **Local.** A street intended primarily for access to abutting properties and of limited continuity within a neighborhood.
10. **Marginal Access or Frontage Road.** A local street which is parallel with and adjacent to a limited access highway or arterial street and which provides access to abutting properties and protection from fast through traffic on the parallel streets.
11. **Private.** A right-of-way or easement which affords principal means of vehicular access to property abutting thereon, which right-of-way or easement is owned, controlled and maintained by persons other than the public.
12. **Public.** A right-of-way which affords principal means of vehicular access to property abutting thereon, which right-of-way has been dedicated to the public for such use.

13. **Residential Street.** Any street designed primarily to provide access to abutting property to include lanes, drives, circles, boulevards, or any other designation that might be given to such streets.
14. **Road or Roadway.** The paved or improved area existing on the street right-of-way exclusive of sidewalks, driveways or related uses.
15. **Subcollector.** Any street designed to provide passage to residential streets and convey traffic to collector streets or through traffic to lower order streets.

STREET LINES. The right-of-way line of the street.

STREET WIDTH. The shortest distance between lines delineating the right-of-way of a street.

STRUCTURE OR BUILDING. Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, billboards and poster panels. For the purpose of this Code, fences will not be considered structures.

SUBDIVIDE LAND. To partition a parcel of land into two or more parcels, tracts, lots or sites for the purpose of transfer of ownership or development, whether immediate or future, when such parcel exists as a unit or contiguous units under a single ownership.

SUBDIVIDER. The owner, or any other person, firm or corporation authorized by the owner, undertaking proceedings under the provisions of these regulations to subdivide land.

SUBDIVIDER'S AGREEMENT. A contractual agreement signed and notarized by the subdivider and the applicable governing body which is conditioned upon acceptance of the final plat for the dedications thereon with primary concern for the design, installation, inspection and financing or guarantees for public improvements.

SUBDIVISION. Except for a "lot split" as defined in these Subdivision Regulations, any land, vacant or improved, which is divided or re-subdivided into two or more lots, parcels, sites, units, plots, or interested for the purpose of sale or development. The creation of a street, alley or other public way by dedication shall be deemed a subdivision.

SUBDIVISION ADMINISTRATOR/ZONING ADMINISTRATOR. The City Manager or person appointed by the City Manager to carry out the provisions of these Zoning Regulations, including the Subdivision Regulations.

TAVERN. An establishment in which the primary function is the public sale and serving of malt beverages provided there is no dancing.

TURN-AROUND. An area at the closed end of a street with a single common ingress and egress within which vehicles may reverse their direction.

TRACT. Parcels of land with boundaries defined by streets, highways, roads, rivers, lakes, streams, railroad lines county boundaries, township boundaries, or section lines or any combination thereof; whether divided by any lot line or not, under single ownership or not, or

occupied by one or more structures or land uses plus accessory structures and uses; and which may be made up of one or more lots of record, one or more portions of a lot or lots of record, or any combination.

USE, PRINCIPAL. The main and primary purpose for which land or a structure is designed, arranged or intended, or for which it may be occupied or maintained under this Code.

UTILITY, MAJOR. Generating plants; electrical switching facilities and primary substations; water and wastewater treatment plants; water tanks; and radio, television and microwave transmission towers; and similar facilities or agencies that are under public franchise or ownership to provide the general public with electricity, gas, heat, steam, communication, rail transportation, water, sewage collection or other similar service. The term “utility” shall not be construed to include corporate or general offices; gas or oil processing; manufacturing facilities; postal facilities or other uses defined in this Code.

UTILITY, MINOR. Services and facilities of agencies that are under public franchise or ownership to provide services that are essential to support development and that involve only minor structures, such as lift stations, poles and lines, which do not generate discernable noise, odor or vibration within any nearby residential district, and which comply with the setback requirements of the district in which they are located.

VARIANCE. To authorize in specific cases a deviation from the specific terms of the zoning Code not associated with the use of the property, which will not be contrary to the public interest and where owing to special conditions, a literal enforcement of the provisions of the zoning Code will, in an individual case, result in unnecessary hardship, and provided the spirit of the zoning Code shall be observed, public safety and welfare secured and substantial justice done. Such variance shall not permit any use not permitted by the zoning Code in such district. For modification of use, see Conditional Use.

VEHICLE AND EQUIPMENT REPAIR. An establishment primarily engaged in the major repair or painting of motor vehicles or heavy equipment, including auto body repairs, installation of major accessories and transmission and engine rebuilding services. Typical uses include major automobile repair garages, farm equipment repair and paint and body shops.

VEHICLE RESTORATION, GENERAL. An establishment primarily engaged in painting of, restoration of, or body work to, motor vehicles or heavy equipment. Typical uses include paint or body shops. “Parts cars” may be stored on premises in conjunction with a general vehicle restoration business. Such inoperable vehicles must comply with the outdoor storage regulations, and those portions of the health and welfare code pertaining to their storage and maintenance.

VISION TRIANGLE. A triangular area at the intersection of streets maintained in such a manner as to provide a safe and open line of vision for drivers of vehicles approaching the intersection. Within the vision triangle, no one shall install, construct, plant, park or maintain any sign, fence, hedge, shrubbery, tree, natural growth or other obstruction which would materially impede vision between the heights of 24 inches and eight feet above the street level. Such restrictions shall not apply to official traffic signs, signals and utility poles. (See Subdivision Regulations for regulations concerning VISION TRIANGLE.)

VOCATIONAL SCHOOL. A use providing education or training in business, commercial trades, language, arts or other similar activity or occupational pursuit.

WATERCOURSE. A stream of water having a course, current and cross section.

WETLAND. A land area that is saturated by surface water or ground water at frequencies and durations sufficient to support a prevalence of plant life typically adapted for life in saturated soil conditions and as defined in Section 404, Federal Water Pollution Control Act of 1972 as amended, and delineated on maps prepared by the U.S. Fish and Wildlife Service and as field verified by on-site inspection.

WHOLESALE AND WAREHOUSING, GENERAL. An establishment that is primarily engaged in the storage and sale of goods to other firms for resale, as well as activities involving significant movement and storage of products or equipment. Uses include truck terminal or bus servicing facilities, major mail distribution centers, frozen food lockers, motor freight terminals, moving and storage firms, and warehousing and storage facilities.

WHOLESALE AND WAREHOUSING, LIMITED. An establishment that is engaged in the small scale storage and sale of goods to other businesses for resale, excluding major distribution centers, motor freight terminals, moving and storage firms and similar high volume, high turnover facilities. Limited wholesale and warehouse area will generally be less than 50,000 square feet in area and operate during conventional business hours.

YARD. An open space, other than a court, on the same lot with a building or group of buildings, which open space lies between the building or group of buildings and the nearest lot line, is unoccupied and unobstructed from the ground upward, except as provided in this Code.

1. **Front yard.** A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front property line and the front exterior of the primary structure located upon the lot.
2. **Rear yard.** A yard extending across the full width of the lot between the nearest rear main building and the rear lot lines. The depth of the required rear yard shall be measured horizontally from the nearest part of a main building toward the nearest point of the rear lot lines. In case of through lots and corner lots there will be no rear yards, but only front and side yards.
3. **Side yard.** From the front yard to the point of intersection of the rear yard or property line, when no rear yard exists.
4. **Street yard.** The area of a lot, which lies between the property line abutting a street and the street wall line of the building. If a building has a rounded street wall or if the building is on an irregular-shaped lot, wall lines extending parallel to the street wall from the points of the wall closest to the side property lines shall be used to define the limits of the street yard.

ZONING ADMINISTRATOR (a.k.a. SUBDIVISION ADMINISTRATOR). The City Manager or person appointed by the City Manager to carry out the provisions of these Regulations.

ZONING REGULATIONS. The adopted Bel Aire Zoning Regulations or Code, referred to herein as these Regulations or this Code.

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ARTICLE 3

ADMINISTRATION AND ENFORCEMENT

3.01 ZONING ADMINISTRATOR AS ADMINISTRATIVE OFFICIAL

Except where otherwise specifically provided in these Regulations, the Zoning Administrator, or his/her designee, shall be the administrative official charged with interpreting, carrying out, and enforcing the provisions of these Regulations.

3.02 PLANNING COMMISSION

A. **Establishment.** A Planning Commission is hereby created and continued in accordance with the authority of K.S.A. 12-744 and amendments thereto.

B. **Membership, Terms and Vacancies.**

1. **Membership.** The Planning Commission shall have seven (7) members, of which two (2) members shall reside in the unincorporated area outside of the City, but within three (3) miles of the planning area of the city as defined in the Comprehensive Plan for the City. The remaining members shall be residents of the City of Bel Aire.
2. **Appointment.** The members of the Planning Commission shall be appointed by the Mayor, by and with the consent of the city council, in all respects as required by law.
3. **Term of Office.** The term of office of the members of the Planning Commission shall be for three years. At the end of the three year term, a member may be reappointed to the planning commission with the approval of the city council.
4. **Vacancies.** Vacancies on the Planning Commission shall be filled by appointment of the Mayor with the consent of the City Council for the remainder of the unexpired term of the Planning Commissioner whose position has been vacated.
5. **Removal.** Members may be removed for due cause shown including, but not limited to, non-attendance of either regular or special meetings, arriving late to meetings or leaving meetings early, a pattern of non-participation in the decision making process, failure to become familiar with the city zoning regulations and/or subdivision regulations, or failure to familiarize oneself with the cases brought before the Commission.

C. **Officers.** The Planning Commission shall elect one (1) of its members as chairperson who shall serve one (1) year and until their successors have been selected. A City staff member shall serve as secretary and provide staff support for the Planning Commission.

D. **Meetings.** The members of the Planning Commission shall meet as determined necessary to perform its duties. Meetings may be called at any time by the chairperson or the Zoning Administrator, with twenty-four (24) hours written notice to the membership, and notification

provided to the public in conformance with the Kansas Open Meetings Act. A majority of the Commission shall constitute a quorum for the transaction of business. City staff shall keep minutes of the Commission's proceedings and official actions, including its examinations and findings. Following approval and adoption by the Planning Commission, such minutes shall be filed with the City Clerk.

E. **Powers and Duties.** The powers and duties of the Planning Commission shall be those authorized by Article 7 of Chapter 12 of the Kansas Statutes Annotated (KSA 12-741, et seq.), and amendments thereto, these zoning regulations, and any other powers and duties as set forth within State or local law.

F. **Procedures.** Procedures not set forth within Statute or these Regulations may be defined within the by-laws adopted by the membership of the Planning Commission. Such by-laws may be revised in accordance with the established procedures set forth within such by-laws.

3.03 BOARD OF ZONING APPEALS CREATED

A. **Establishment.** Board of Zoning Appeals (BZA or Board) for the City of Bel Aire is hereby created under the authority of K.S.A. 12-713. 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 an administrative official in the enforcement of these Regulations.

B. **Members.** The membership of the Board is hereby fixed at three members, all of whom shall be residents of the City. None of the members shall hold any other office of the City, except the Chair of the Board shall also be the Chair of the Planning Commission.

C. **Appointment.** The two at-large members of the Board shall be appointed by the Mayor by and with the consent of the city council in all respects as required by law.

D. **Removal.** Members may be removed from the Board for due cause shown including, but not limited to, non-attendance of either regular or special meetings, arriving late to meetings or leaving meetings early, non-participation in the decision making process, failure to become familiar with the city zoning regulations and/or subdivision regulations, or failure to familiarize oneself with the cases brought before the Board.

E. **Same; Term of Office.** The term of office of the Chair shall be consecutive with that individual's term as Chair of the Planning Commission. The term of office of the at-large members of the Board shall be for three years. At the end of the three year term, the at-large member may be reappointed with the approval of the city council. Vacancies shall be filled for unexpired terms only.

F. **Organization and Responsibilities.** The Board shall adopt rules and/or regulations for the conduct of its business in the form of by-laws in accordance with the provisions of the Zoning Regulations. Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine, with public notice in conformance with the Kansas Open Meetings Act. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings which document the evidence presented, findings of fact by the Board, decision of the Board, the vote of each member upon each question, and whether a member was absent or

failed to vote. Records of all official actions of the Board shall be filed with the City Clerk and shall be public record. The Zoning Administrator shall serve as Secretary and staff to the Board, and provide the Board with staff reports and such other information as required by the Board. The Secretary shall have no vote in the matters before the Board. .

G. **Dissolution.** The Mayor, with the approval of the City Council, may dissolve a duly appointed Board.

H. **Final Decision.** Unless otherwise stated herein, any decision of the Board of Zoning Appeals shall be final, and may be appealed to the Sedgwick County District Court in conformance with State law. The decision of the Board shall not be stayed pending appeal unless directed by the District Court.

3.04 VIOLATIONS OF THESE REGULATIONS

Any of the following shall be considered a violation of any permit, approval, certificate or other form of authorization granted by the City, and shall be subject to the enforcement remedies provided by these Regulations and by Kansas State law.

A. Development or use without, or inconsistent with, permit or approval. To erect, construct, reconstruct, remodel, alter, maintain, move or use any building, structure or sign, or to use, alter or maintain any land without, or in any way inconsistent with, all of the required permits, approvals, certificates and other forms of authorization required by these Regulations.

B. Development or use inconsistent with these Regulations or the terms of a Permit or License. To erect, construct, reconstruct, remodel, alter, maintain, move or use any building, structure or sign or to use, alter or maintain any land in violation of any zoning, subdivision or general regulation of these Regulations or any Permit or License issued pursuant to these Regulations.

C. Development or use inconsistent with conditions. To violate, by act or omission, any term, condition or qualification placed by the City upon a required permit, certificate, rezoning, plan approval or other form of authorization granted by the City to allow the use, development or other activity upon land or improvements thereon. This includes occupying any building or structure which requires a Certificate of Occupancy for which there is not a valid Certificate of Occupancy.

D. Making lot or yard nonconforming. To reduce or diminish any lot area so that the yards or open spaces shall be smaller than prescribed by these requirements or the final plat or plan.

E. Increasing use intensity. To increase the intensity and/or density of use of any land or structure, except in accordance with the procedural and substantive requirements of these Regulations.

F. Remove, deface, obstruct, or prevent notice. To remove, deface or obscure any sign required by these Regulations, or otherwise interfere with any notice required by these Regulations.

3.05 ENFORCEMENT

It shall be the duty of the Zoning Administrator and/or Building Inspector, or any designee, to serve as the enforcement officer for these Zoning Regulations. Such enforcement officer shall enforce the provisions of these Regulations and refuse to issue any permit allowing any building or structure to be constructed or to use any premises in violation of any of the provisions hereof, and to cause any building, structure, place, or premises to be inspected and examined, and to order in writing the remedying of any condition found to exist therein in violation of any provision of these Regulations. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of these Regulations, the building inspector is hereby authorized and directed to institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation and to prevent the occupancy of the building, structure, or land, or to prevent any illegal act, conduct, or use in or about such premises in any manner provided for in these Regulations or in State law.

3.06 VIOLATION ENFORCEMENT PROCEDURES

A. **Written Notice.** In the case of violations not involving continuing construction, expansion of the violation, or emergency situation, the City shall give written notice of the nature of the violation to the owner, occupant or agent of the property at the last known address in conformance with K.S.A. 12-1617e. The contents of the notice shall give a description of the nature of the violation that would reasonably allow the property owner or other responsible person, representative or tenant to determine the nature of the violation to allow for self-abatement, and provide for a minimum of five (5) days to perform such abatement.

B. **Expanding Violation.** If an authorized agent of the City makes a reasonable determination that a violation of either these Regulations or the approved plan, license, or permit has occurred, and such violation involves continuing construction or is otherwise expanding the nature of the violation or the harm, the City may take immediate action so as to limit or reduce the harm, cost, or extent of the violation. The Enforcement Officer may issue a notice to immediately stop, either temporarily or permanently, the identified continuing or expanding violation through any available remedy, , including, but not limited to: permit revocation, stop work, withdrawal of Certificate of Occupancy, and/or filing a complaint in conformance with Section 3.09, and/or seeking civil remedy.

C. **Emergency Abatement.** Any party submitting, applying for, or accepting any plan, license or permit associated with construction within the City acknowledges and accepts the City's authority to take immediate enforcement action to abate emergency situations deemed a hazard to the health, safety, and welfare of the community, or any individual thereof. No other notification procedures are required as a prerequisite to such immediate enforcement action.

3.07 VIOLATIONS OF PRIOR REGULATIONS

All violations of prior zoning regulations of the City, or any Sedgwick County, or township regulations that have accrued in the City as of the effective date of these Regulations, shall continue to be violations. Additionally, the City may secure civil remedies for any such violations of such Regulations.

3.08 CIVIL AND ADMINISTRATIVE REMEDIES IN RESPONSE TO VIOLATIONS

The City shall have the following remedies and enforcement powers:

A. **Withhold permits or approvals.** The City's enforcement officer may deny or withhold all permits, certificates, plan or plat approvals or other forms of authorization on any building, structure or land, or improvements thereon, upon which there is an uncorrected violation of any provision of these Regulations or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the City. Alternatively, the City may grant such authorization subject to the condition that the violation be corrected. The provisions of this subsection shall apply regardless of whether the current owner or applicant is responsible for the violation in question.

B. **Revoke permit(s).**

1. A permit may be revoked by the Zoning Administrator, or his/her designee, at any time, when it appears to such official that one (1) or more of the following conditions are present:
 - a. There is departure from the plans, specifications or conditions as required under the terms of the permit.
 - b. That the permit was procured by false representation.
 - c. That the permit was issued by mistake, or
 - d. That any of the provisions of these Regulations are being violated.
2. Written notice of such revocation shall be served upon the owner, the owner's agent or contractor, or upon any person employed in the building or structure for which such permit was issued, or shall be posted in a prominent location on the property. Where notice of revocation has been served or posted, no further construction or use of the property shall proceed. Failure to abide by a Stop Work Order issued in association with a revocation of a permit is a violation of this section and is subject to prosecution in conformance with Section 3.09.
3. Any revocation of a permit may be appealed in writing to the City Manager within five (5) days of any such revocation. The City Manager shall make a written response to such appeal. Such written response shall be appealable to the BZA.

C. **Stop work.** With or without revoking permits, the enforcement officer may stop work on any development, building, or structure on any land on which there is an uncorrected violation of a provision of these Regulations or a violation of a condition or qualification of a permit,

certificate, approval or other authorization previously granted by the City. Failure to abide by a Stop Work Order is a violation of this Section and is subject to prosecution in conformance with Section 3.09.

D. **Revoke plan or other means of approval.** Where a violation of these Regulations involves a failure to comply with all terms of approved plans, including conditions upon which the approval of such plans was made contingent, the City shall, upon notice to the applicant, revoke the plan. Subsequent reinstatement of such plan shall be conditioned upon strict compliance with all terms of such plan, including such additional terms as the City may reasonably impose to assure compliance with the terms of the plan or other approval.

E. **Civil remedies.** The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of these Regulations and to abate nuisances maintained in violation thereof. In the event that any building or structure is proposed to be erected, constructed, altered, converted, occupied, or maintained in violation of these Regulations, any appropriate authority of the City may institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, occupation, or use or to correct or abate such violation or to prevent the occupancy of such building, structure or land.

F. **Cumulative.** These remedies shall be cumulative.

G. **Flood Plain Violations.** Any person, company, corporation, institution, municipality, or agency of the state that violates any provision of the flood plain provisions of these regulations shall be subject to the penalties and remedies as provided in these Regulations, in accordance with K.S.A. 12-761. Such remedies may also be instituted by the Attorney General and the Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture.

H. **Other remedies.** In addition to the enforcement powers and remedies specified in this title, the City may exercise any and all enforcement powers and remedies granted to it by Kansas State law, as it may be amended from time to time.

3.09 JURISDICTION OF MUNICIPAL COURT

In addition to any other civil or criminal response to violations, violations of any provision of these Regulations may be prosecuted in the municipal court of the City.

All real and personal property owners, developers, individuals obtaining licenses to complete any plan or project, and contractors/subcontractors performing work within the City in conformance with such plan shall be liable for any violation of these Regulations associated with their property, license, job, project, or work performed, and may be cited for such violation in their individual capacity.

Any violation of the provisions of these regulations shall be an unclassified misdemeanor and shall be punishable by a fine of not to exceed \$500 or by imprisonment for not more than thirty (30) days for each offense, or by both such fine and imprisonment. Each day's violation shall constitute a separate offense.

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ARTICLE 4

PERMITS AND CERTIFICATES OF OCCUPANCY

4.01 APPLICATIONS FOR LAND USE AND/OR BUILDING PERMITS

A. The existing character of structures and the use and occupancy of premises shall not be changed, nor shall any building, the use of which is proposed to be altered or changed, be hereafter erected or altered until a permit shall have been approved by the building inspector and issued by the city clerk stating that the proposed uses of such building or premises complies with all the provisions of these Regulations.

B. Application for permits shall be on forms prescribed by the Governing Body and shall be filed with the city clerk. Applications of land use or building permits shall be filed upon forms prescribed by the City, setting forth the legal description of the lot, tract or parcel of land, together with a general description of any building or structure proposed to be constructed, erected or structurally altered thereon, including the approximate height, bulk and shape, gross and net square footages, the principal materials of construction, location of the building or structure upon the lot, tract or parcel, the intended use of the land or building, and such other information as may be required by the City.

C. A record of all applications and permits shall be kept on file with the City. If an application for a permit is made after the work for which the permit is sought has begun, then if such application is approved the cost of the permit shall be double the cost of a permit that is obtained prior to the time work has begun.

D. No permit shall be issued unless the application shows that the proposed structure and use will conform to the provisions of these Regulations.

E. In addition to conformance with these Regulations, permits must meet the requirements of the City Subdivision Regulations. Generally, to meet the provisions of the Subdivision Regulations, permits shall not be issued on land which is not shown on a recorded plat or replat, or a lot split, except for a continuation of an existing use or occupancy, accessory structures or uses, or additions to existing structures or uses. If platting is not required, all of the public improvements necessary to support the application request may be required at the applicants' expense, including, but not limited to, dedications in lieu of platting associated with roadway easements, utility easements, drainage easements, and additional rights-of-way.

4.02 PERMITS – CONFORMANCE OF CONSTRUCTION

No permit shall be issued for any building, structure or use of land unless the same shall be in conformance in every respect with all provisions of these Regulations and any other applicable provisions of City ordinances and plans approved by the Governing Body. No development on any tract shall begin until permits have been issued by the City verifying approval of zoning, site development plan, final plat, or applicable permit/approval has been granted by the City.

4.03 ISSUANCE OF PERMITS

No person in the employ of the City or acting on behalf of the City is authorized to issue any building permit or grant a certificate of occupancy if the building or use would be in violation of this Code. Any certificate or permit issued upon a false statement by the appellee of a fact(s) material to the issuance thereof or in violation of this Code shall be void.

4.04 ACTION ON PERMIT APPLICATIONS

Action on permit applications shall take place no later than thirty (30) days after the date the completed application is filed with the Zoning Administrator.

4.05 NUMBER OF PERMITS

When construction of groups of buildings and/or accessory buildings for a principal building is to be simultaneous, and when all the buildings are to be constructed on land zoned for one (1) classification and use, the City may either issue one (1) permit for such group of buildings, or may require a separate permit for each building or structure to be constructed, as determined applicable by the Zoning Administrator on a case-by-case basis.

4.06 APPEAL OF INSPECTOR'S DECISION.

An appeal may be taken to the City Manager from the action of the Zoning Administrator or building inspector denying any permit by filing a written appeal within five (5) working days of notification of such denial, specifying the grounds for appealing the inspector's decision, and submitting all relevant evidence in support of such appeal. The City Manager will review all evidence provided by both the appellant and the administrative official. A written response to the appeal will be provided to the appellant within five (5) business days of receipt of the written appeal and associated evidence, by the City Clerk, unless otherwise notified. Such decision may be appealed by applicant to the Board of Zoning Appeals.

4.07 REVOCATION OF PERMITS

A permit may be revoked by the Official issuing the permit, or his/her designee, pursuant to the procedures set forth within these Regulations.

4.08 CERTIFICATES OF OCCUPANCY

A. No new or existing building or structure shall be occupied, and no change in the character or use of land or of a building shall occur, without a valid certificate of occupancy issued by the City with a signature by the Zoning Administrator certifying that such building or use is in compliance with all provisions of these regulations, city codes and ordinances, including structure

location, foundation, and pad elevations contained in applicable PUD documents or on the face of the final plat.

B. A Certificate of Occupancy may be withdrawn at any time if such building or use is found in noncompliance with the regulations of these regulations, city codes and ordinances.

C. Withdrawal of a Certificate of Occupancy may be appealed in writing to the City Manager by filing a written appeal to the City Clerk within five (5) working days of notification of such denial, specifying the grounds for appealing the inspector's decision, and submitting all relevant evidence in support of such appeal. The City Manager will review all evidence provided by both the appellant and the administrative official. A written response to the appeal will be provided to the appellant within five (5) business days of receipt of the written appeal and associated evidence, and such decision shall be final.

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ARTICLE 5
AMENDMENT PROCESS, CONDITIONAL USE, SPECIAL USE,
APPEALS TO BZA, VARIANCES

5.01 STATEMENT OF INTENT OF THE PROVISIONS OF THIS ARTICLE

These Zoning Regulations recognize that specific uses are usually appropriate within a given zoning district. These uses are identified and listed as Permitted Uses. Additionally, these zoning regulations provide for review of those certain uses of land, buildings or structures which may not be appropriate under all circumstances in any given zoning district, but may be appropriate where adequate precautions can be taken to assure compatibility with surrounding uses, public need, and the City as a whole. Generally, these more challenging uses are identified and listed as Conditional Uses. Occasionally, however, a proposed use not generally allowable as Permitted or Conditional may be modified to a degree that permits it to be considered within a district in which such use would generally not be permitted. It is also possible that a small area of a zoning district has unique attributes which can meet the needs of a use not generally permitted within the zoning district as a whole. These “unique” or “exceptional” uses may qualify for approval as a Special Use. Conditional and Special Uses typically have additional and site specific requirements attached to the approval of the use upon the site. Such requirements may be listed within this Article or included within the enabling Ordinance. Additionally, Bel Aire recognizes that more intensive uses, such as certain commercial uses and all manufacturing and industrial uses, will best fit within the City’s comprehensive plan if developed as part of a Planned Unit Development which provides for a greater degree of flexibility in designing a development to appropriately incorporate a broader range of uses.

5.02 AMENDMENTS TO ZONING CODE, ZONING DESIGNATION, OR DISTRICT BOUNDARIES

A. **Amendment of Regulations.** The Governing Body may, from time to time, on its own motion or on petition, after public notice and hearing thereon as provided herein, amend, supplement, change, modify, or repeal these Regulations and restrictions as established herein and may change, restrict, or extend the boundaries of the various districts established herein.

B. **Application for Zoning Changes Initiated by Individual, Group, or Private Entity.** An application in writing for a zoning amendment affecting only a specified lot, tract, or parcel shall be filed with the Commission, accompanied by such data and information as may be prescribed by the Commission so as to assure the fullest possible presentation of facts for the permanent record.

1. **Property Description and Application.** The Zoning Administrator shall adopt an application for zoning change which includes all information necessary to process the request, including information identifying the property, the property owner, the

applicant, the reason(s) for the request, and those sections of the zoning code implicated by the request. On the application, the property for which the zoning amendment is sought shall be designated by legal description and general street location.

2. Notification Area and Abstractor's List. All property located within 200 feet of the designated property (excepting public streets and ways) are included within the area of notification. A certified list of the names and addresses of all owners of property located within the notification area shall be provided with the zoning change application to the Zoning Administrator by the petitioner. If a proposed zoning change impacts property which is located adjacent to the city's limits, the area of notification of the action shall be extended to at least 1,000 feet in the unincorporated area.

C. **Filing Fee.** A filing fee and a publication fee shall be paid to the city clerk upon the filing of each application for each lot, tract, or parcel included in the application for the purpose of defraying the costs of the proceedings prescribed herein. A written receipt shall be issued to the person making such payment and the records thereof shall be kept in such a manner prescribed by law. All fees are established by the Governing Body through an established fee schedule.

D. **Public Hearing Required For All Zoning Changes.** No action on an amendment, modification, change, restriction, or repeal to these Zoning Regulations or a zoning change impacting only a specified lot, tract, or parcel shall be taken until it has been submitted to the Commission for a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. The Commission shall establish the time and place of the public hearing.

1. Notice of the time and place of the public hearing shall be published in the official paper of the City of Bel Aire at least 20 days prior to the hearing.
2. In addition to such public notice, written notice of a public hearing concerning such zoning amendment impacting a specific property shall be mailed to all property owners and applicable addresses within the notification area.
3. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available.
4. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Planning Commission or the Governing Body.

D. **Criteria for Review.** The following criteria shall be the basis for evaluation of the rezoning request in relation to the specific case being considered:

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 relative gain to the public health, safety and welfare by the destruction of the value of petitioner's property as compared to the hardship imposed upon the individual landowners;
7. Recommendations of permanent staff; and
8. Conformance of the requested change to the adopted or recognized master plan being utilized by the city.
9. The opinions of other property owners may be considered as one element of a decision in regard to the amendment associated with a single property, however, a decision either in support of or against any such rezoning may not be based upon a plebiscite of the neighbors.

E. Recommendation to Governing Body from Planning Commission. Within 60 days following the public hearing, the Commission shall make a report and recommendation to the Governing Body on the proposed action. The Commission may on its motion, determine that the recommendation of the Commission is to (a) approve, (b) disapprove, (c) fail to recommend. Failure of the Commission to make a recommendation for approval or disapproval within the time limit shall be considered by the Governing Body as a "fail to recommend." The required report shall include reference to the above listed standards, and the evidence supplied by all interested parties which was considered by the Commission. Additionally, conditions upon the requested zoning action, as proposed by the Commission, shall be developed in association with one or more of the criteria set forth within this section.

F. Protest Petition. Whether or not the Planning Commission recommends approval or fails to recommend approval of a zoning amendment, if a protest petition against such amendment is filed in the office of the city clerk within fourteen (14) days following the date of the conclusion of the public hearing, signed by the owners of record of 20% or more of any real property proposed to be rezoned, or by the owners of record of 20% or more of the total area within the notification area, the ordinance adopting such amendment shall not be passed except by at least a three-fourths vote of all the members of the Governing Body.

G. Action of the Governing Body. The Governing Body either may: (1) approve such recommendations by the adoption of the same by ordinance by simple majority vote; (2) override the Planning Commission's recommendations by a 2/3 majority vote of the membership of the Governing Body to approve the request by ordinance in a manner different from the recommendation provided by the Planning Commission; (3) override the Planning Commission's recommendations by a 2/3 majority vote of the membership of the Governing Body to disapprove the Planning Commission's recommendation, or (4) return the same to the Planning Commission for further consideration, together with a statement specifying the basis for the Governing Body's failure to approve or disapprove. If the Governing Body returns the Planning Commission's recommendations, the Planning Commission, after considering the same, may resubmit its original recommendations giving the reasons therefor or submit new and amended recommendations. Upon

the receipt of such recommendations, the Governing Body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by ordinance, or the Governing Body need take no further action thereon. If the Planning Commission fails to deliver its recommendations to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendations and proceed accordingly.

5.03 CONDITIONAL USES

The Governing Body may from time to time on its own motion or on petition, after public notice and hearing as provided herein, authorize in specific cases such conditional uses as are expressly allowed in the various districts. Before granting any conditional use, the same shall be referred to the Planning Commission for public hearing and recommendation.

B. **Application.** An application in writing for such conditional use shall be filed with the Commission, accompanied by such data and information as may be prescribed by the Commission to assure the fullest possible presentation of facts for the permanent record.

1. **Property Description and Application.** The Zoning Administrator shall adopt an application for zoning change which includes all information necessary to process the request, including information identifying the property, the property owner, the applicant, the reason(s) for the request, and those sections of the zoning code implicated by the request. On the application, the property for which the conditional use is sought shall be designated by legal description and general street location.
2. **Notification Area and Abstractor's List.** All property located within 200 feet of the designated property (excepting public streets and ways) is designated as the *area of notification*. A certified list of the names and addresses of all owners of property located within the notification area shall be provided with the zoning change application to the Zoning Administrator by the petitioner. If a proposed zoning change impacts property which is located adjacent to the city's limits, the area of notification of the action shall be extended to at least 1,000 feet in the unincorporated area.
3. **Fees.** A filing fee and a publication fee shall be paid to the city clerk upon the filing of each application for each lot, tract, or parcel included in the application for the purpose of defraying the costs of the proceedings prescribed herein. A written receipt shall be issued to the person making such payment and the records thereof shall be kept in such a manner prescribed by law. All fees are established by the Governing Body through an established fee schedule.

C. **Public Hearing and Notice of Hearing.** No action on an amendment, modification, change, restriction, or repeal shall be taken until it has been submitted to the Commission for a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. The Commission shall establish the time and place of the public hearing.

1. **Public Notice.** Notice of the time and place of the public hearing shall be published in the official paper of the City of Bel Aire at least 20 days prior to the hearing.
2. **Individual Notice.** In addition to such public notice, written notice of a public hearing concerning such conditional use shall be mailed to all property owners and applicable addresses within the notification area.
3. **Property Description.** All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available.
4. **Receipt of Mailing.** When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Planning Commission or the Governing Body.

D. **General Standards for Consideration of Request.** The objective of permitting specific conditional uses within a district is to provide adequate consideration of the conditions in terms of these Regulations to assure:

1. That proposed uses will not be contrary to the public interest.
2. That the spirit of the Code is observed.
3. That public safety and welfare is secured.
4. That substantially equal treatment under the law is preserved.

E. **Criteria for Review.** The following criteria arising out of the above listed standards, and any others applicable to any specific situation, shall be evaluated in terms of how such criteria relate to any specific case being considered and *any stipulation as deemed appropriate* by the Commission shall be incorporated into approval of a conditional use in association with the following concerns:

1. Access and traffic load and/or flow.
2. Noise, light and odor.
3. Screening.
4. Parking, refer to parking section.
5. Services (public utilities).
6. Public health and safety.
7. Adequacy of facility and lot size.
8. Signs.
9. Review by fire marshal for designation.
10. Other considerations as appropriate.

F. **Recommendation to Governing Body from Planning Commission.** Within 60 days following the public hearing, the Commission shall make a report and recommendation to the

Governing Body on the proposed action. The Commission may on its motion, determine that the recommendation of the Commission is to (a) recommend approval, (b) fail to recommend. Failure of the Commission to make a recommendation for approval within the time limit shall be considered by the Governing Body as a “fail to recommend.” The required report shall include reference to the above listed criteria, the evidence supplied by all interested parties which was considered by the Commission, and the reason for recommending approval or failing to recommend approval of such conditional use.

G. Protest Petition. Whether or not the Planning Commission recommends approval or fails to recommend approval of a conditional use request, if a protest petition against such conditional use is filed in the office of the city clerk within 14 days following the date of the conclusion of the public hearing signed by the owners of record of 20% or more of any real property proposed to be rezoned, or by the owners of record of 20% or more of the total area within the notification area, the order adopting such conditional use shall not be passed except by at least a three-fourths vote of all the members of the Governing Body.

H. Action of the Governing Body. The Governing Body either may: (1) Approve such recommendations by the adoption of the same by Ordinance by simple majority vote; (2) override the planning Commission's recommendations by a 2/3 majority vote of the membership of the Governing Body to approve the request by Ordinance in a manner different from the recommendation provided by the planning Commission; (3) override the planning Commission's recommendations by a 2/3 majority vote of the membership of the Governing Body and take such action as deemed appropriate by the Governing Body, or (4) may return the same to the Planning Commission for further consideration, together with a statement specifying the basis for the Governing Body's failure to approve or disapprove. If the Governing Body returns the planning Commission's recommendations, the Planning Commission, after considering the same, may resubmit its original recommendations giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the Governing Body, by a simple majority thereof, may adopt or may revise/amend and adopt such recommendations by Ordinance, or the Governing Body need take no further action thereon. If the Planning Commission fails to deliver its recommendations to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendations and proceed accordingly.

I. Existing Conditions. Uses which are legally in existence at the time of the adoption of this zoning ordinance that would be conditional uses under these regulations shall be considered non-conforming uses, and need not seek approval as a conditional use.

J. Height and Bulk Restrictions. As part of the approval of any conditional use permit, the Planning Commission and/or the Governing Body may impose restrictions upon such use, including restrictions upon height or bulk of buildings or structures, or impose requirements relative to yard and lot area, parking, open space or landscaping, or other requirements determined to be reasonably necessary for the protection of the public health, safety and welfare of the neighborhood and the community. Further, the Governing Body may require that the applicant

submit a final development plan for approval by the staff, Planning Commission or Governing Body prior to the issuance of any building or land use permit.

5.04 SPECIAL USES

A. **Special Uses Designated.** Certain uses not otherwise set forth herein, or identified as a Permitted or Conditional Use within a zoning district, may be considered for inclusion within a zoning district subject to approval of a Special Use permit by the Governing Body. All applicable development, performance and special standards associated with the use as set forth within these Regulations and all standards associated with the zoning district shall be incorporated in and made applicable to the continued validity of the Special Use unless lawfully and specifically stated otherwise within the approving Ordinance. Issuance of a Special Use is typically an exceptional response to an exceptional, unique, or less common circumstance. For example, hospitals and wireless telecommunications facilities would apply for a Special Use to locate within a district due to the relatively unique and area specific nature of such uses. Once issued a Special Use permit is restricted to the zoning district and land where such permit was approved to be made applicable. Because of the exceptional nature of such special uses the permit is transferable only upon signed acknowledgement of the conditions applicable to such Special Use by the subsequent owner. When applicable, such permit may be made non-transferable to future property owners. Issuance of a Special Use permit is subject to the continued conformance to the requirements set forth within such Special Use permit, including a limitation on the term of such Special Use, restricted hours of operation throughout the day or week, and use specific monitoring requirements. Modification of the Special Use shall require a new application and approval of Special Use.

B. **Prohibited Uses.** It shall be presumed that a Special Use permit shall be required for any use unless that is not specifically listed as a “permitted use” or as a “conditional use”. Uses specifically listed as “not permitted” within any zoning district may not be approved as a Special Use.

C. **Process for Seeking and Considering Special Uses.** The procedure for applying for a Special Use, and the hearing procedure, shall be the same as that set forth for a Conditional Use, except the applicant in the application, Planning Commission in the recommendation, and Governing Body in its Ordinance shall identify that exceptional circumstance(s) or unique set of facts that support the consideration and approval of permitting a use within a zoning district not otherwise permitted as either a permitted or conditional use.

D. **Time Limits for Special Uses.** Special Uses shall commence within one (1) year from the date of approval, unless extended by action of the Governing Body.

1. A Special Use commences upon the initial issuance of a building permit, or land clearing permit, or upon the initiation of significant action to satisfy requirements for improvements contained in the Special Use report, or other regulatory documents relating to said Special Use. Construction associated with the Special Use shall occur within one (1) year from the date of approval, or the approval shall be deemed expired. An expired Special Use is terminated. To reinstate the Special Use upon the location requires a new Special Use application and approval process.

2. The owner, prior to the expiration of the Special Use, may request one extension of time. Only one (1) time extension shall be permitted and shall not exceed six (6) months. Said request is to be made to the Zoning Administrator, or designee, and may be granted upon good cause shown.
3. Prior to approval of an extension of time to complete construction, the Zoning Administrator will review whether any modifications have been made to the Special Use site, or if changes have occurred to the City's Zoning Code, or if any other development regulations that would affect the original approval have been modified.
4. If the Zoning Administrator finds no substantial modifications to the Special Use are mandated, the time extension may be deemed approved subject to appropriate additional conditions.
5. If the Zoning Administrator finds that substantial modifications are proposed requiring modification of the approving Ordinance, the time extension shall be forwarded to the Governing Body for final action.

E. **Special Uses Shall Not Evolve into Nonconforming Uses.** Those special uses which are granted with a time limit shall not be authorized a nonconforming status when such time limit expires.

F. **Special Use Filed with Register of Deeds.** To protect the interests of any individuals seeking to obtain an interest in property upon which a special use has been permitted, the City shall file a copy of the Special Use Ordinance with the Register of Deeds.

G. **Revocation of Special Use Permits.** Any Special Use permit granted under the authority of these Regulations is subject to revocation for any or all of the following reasons, and the following are understood to be incorporated within the terms of any Ordinance approving a Special Use:

1. Noncompliance with any applicable requirement set forth herein, including unauthorized transfer.
2. Noncompliance with any special conditions imposed at the time of approval of the special use permit.
3. Violation of any provisions of City ordinances pertaining to the use of the land, construction or uses of buildings or structures or activities conducted on the premises by the owner or agents of the owner.
4. Where conditions in the neighborhood or surrounding property have changed to the extent that the Special Use has a documented negative impact upon the property values of homes within the area of notification, the Planning Commission may call for a public hearing in conformance with the standards for public hearings as set forth above, to hear and take evidence as to the changed conditions and documented detrimental effects of the Special Use. At the conclusion of the hearing the Commission may recommend to the Governing Body that the Special Use be

modified to add conditions that address the identified detrimental elements, or the approval of the permit be revoked.

H. Procedure for revocation:

1. Revocation proceedings may be initiated by a majority vote of the Governing Body to request that the Planning Commission hold a public hearing, all in conformance with 8.04(C). The Commission shall hear and receive all evidence regarding the revocation of the permit prior to the date of termination set forth within the Special Use Ordinance. The recommendation of the Planning Commission shall be forwarded to the Governing Body for final action.
2. An appeal of any decision of the Governing Body to revoke a Special Use permit may be filed in the District Court of Sedgwick County, Kansas, pursuant to K.S.A. 12-760, or amendments thereto. Any appeal taken shall not suspend the order of revocation during the pendency of the appeal, unless so ordered by the District Court.

J. Designation of Permittee. The person making application for a Special Use permit shall be designated the applicant and/or the permittee for purposes of these Regulations. Any person desiring to operate a Special Use by transfer of the Special Use permit granted the permittee shall make application with the City to be substituted as permittee. No person may use property for a Special Use without being designated as permittee. Unauthorized use of the property shall be grounds for revocation of the Special Use permit.

K. Additional Development Restrictions and Bulk Regulations Associated With Specified Uses. At the time of approval of any Special Use permit, the governing body may impose restrictions upon height or bulk of buildings or structures, or impose requirements relative to yard and lot area, parking, open space or landscaping, or other requirements determined to be reasonably necessary for the protection of the public health, safety and welfare of the neighborhood and the community. Further, the governing body may require that the applicant submit a final development plan for approval by the staff, planning commission or governing body prior to the issuance of any building or land use permit. Except where a longer or shorter time has been stated for specific special use, the governing body shall grant a permit, or extension thereof, for such period as is warranted under the circumstances.

5.05 APPEALS OF ADMINISTRATIVE ZONING DECISIONS

A. Administrative Appeal. Unless specified elsewhere in these Regulations or otherwise required by the Governing Body, appeals of the building official or any other administrative official's interpretation of the provisions and standards of these Regulations shall be to the Board of Zoning Appeals. Decisions of the Governing Body are not subject to administrative appeal.

B. Hearing Procedure. Appeals to the Board of Zoning Appeals 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 officer administering the provisions of the zoning ordinance or resolution. Such

appeal shall be taken within that timeframe as provided by the rules of the BZA, by filing a notice of appeal with the City Clerk specifying the grounds thereof and the payment of the fee required therefor. The notice of appeal shall include all information required by the rules of the BZA, and all evidence relevant to the decision at issue. The officer from whom the appeal is taken, when notified by the BZA or its agent, shall transmit to the BZA all the papers constituting the record upon which the action appealed from was taken. The BZA shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance or resolution. Decisions which are subject to administrative appeal include but are not limited to: definitions, permitted uses, height and area regulations, development and performance standards, parking and loading, signage, landscaping and screening, storage, accessory uses, nonconforming situation and vested rights, subdivision regulations, etc.

C. **Filing Fee.** A filing fee shall be paid to the city clerk upon the filing of each appeal for the purpose of defraying the costs of the proceedings prescribed herein. A written receipt shall be issued to the persons making such payment, and record thereof shall be kept in such manner as prescribed by law.

D. **Stay of Proceedings.** An appeal to the BZA stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the BZA after the notice of appeal shall have been filed that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of record.

E. **Hearing.** The BZA shall fix a reasonable time for the hearing of any appeal and provide due notice to the parties of interest of such time and date. The BZA shall decide such appeal as soon as reasonably possible following the conclusion of the appeal hearing. Any party may appear in person or by agent or attorney. Hearing procedure need not conform to rules of judicial or administrative procedure, but should allow for the public presentation of all relevant evidence produced by both the appellant and the official who issued the decision which is the subject of the appeal. Decisions by the BZA shall be by simple majority, and shall include a written statement setting forth such decision and the general reasons for such decision. Such decision shall be mailed to the appellant at the address provided within the application of appeal. If the affirms the decision of the City's officer because of the appellant's noncompliance with this Code or the City's Subdivision Code, the appellant shall be directed, as appropriate, to comply with such applicable Code provisions.

5.06 VARIANCES

A. **Consideration of Variances.** The BZA is empowered 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 owing to special conditions, a literal enforcement of the provisions of the Zoning Code will, in an individual case, result in unnecessary hardship (total deprivation of use), and provided that the spirit of these Regulations shall be observed, public safety and welfare secured, and substantial justice done. A variance is not a method for requesting a use otherwise

not permitted by this Code in such district [See Article 8 of these Regulations regarding “Conditional Use”, “Special Use”].

B. Mandatory Findings. An application for variance may only be granted upon a written finding by the Board of Zoning Appeals that all of the following conditions have been met:

1. That the variance requested arises from such condition that is unique to the property in question, 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.
2. That the granting of the variance will not adversely affect the rights of adjacent property owners or residents.
3. That the strict application of the provisions of these Regulations would constitute unnecessary hardship upon the property owner represented in the application.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
5. That granting the variance will not be opposed to the general spirit and intent of these Regulations.

C. Public Hearing. Variances shall only be considered after a public hearing has been held, following publication notice and individual notice to surrounding property owners in conformance with the Notice Procedure as set forth within 5.01(B) above. A copy of the publication notice shall be mailed to the applicant, and provided as a courtesy to Planning Commission and Governing Body.

D. Conditions for Approval of a Variance. In approving any application for Variance, the Board of Zoning Appeals may stipulate that the approval is subject to compliance with certain specified conditions including, but not limited to: limitations on permitted uses, time of performance, limitation on hours of operation, participation in transportation systems management programs, participation in improvement districts or other programs for financing public facilities, etc.

E. Vote Required. The concurring vote of a majority of the members appointed to the BZA shall be required to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required, or to affect any variation of the zoning regulations.

F. Written Findings. Written findings are required for a final decision on any application. Provided, however, that any decision may be made verbally subject to the subsequent adoption of written findings within five (5) days of the verbal decision.

G. Final Decision Requiring an Ordinance. A decision of the BZA shall be deemed final as of the date written findings supporting a decision are adopted. Decisions by the Board of Zoning Appeals may be appealed to the District Court in conformance with K.S.A. 12-760, K.S.A. 60-2101(d), or other applicable State Statute.

5.07 ADMINISTRATIVE EXCEPTION (EXCEPTION)

If, in the concurrent opinion of the Zoning Administrator and the City Manager, the strict application of one or more provisions of these Regulations will create a manifest injustice to a property owner and variance relief is not applicable to the situation, the Zoning Administrator and the City Manager may jointly issue an administrative exception from said provisions. The administrative exception shall be in writing, dated and signed by both the Zoning Administrator and the City Manager, and filed with the zoning variance case decisions. The Zoning Administrator and the City Manager may establish conditions for the administrative exception to remain in force.

An administrative exception is solely an equitable remedy, within the complete and absolute discretion of the Zoning Administrator and the City Manager, and therefore is not subject to administrative, legislative or judicial review. An administrative exception is not intended to be a vehicle for avoiding the variance process, or avoiding a decision of the Board of Zoning Appeals.

The fee to request an administrative exception is the same fee amount as the application fee for a zoning variance.

5.08 APPEAL OF FINAL DECISIONS

Except where these Regulations provide for an appeal to another quasi-judicial or administrative body, any person, official or agency aggrieved by a final decision of any action provided for in these Regulations, other than administrative exception, may appeal said final decision in the District Court of Sedgwick County in conformance with K.S.A. 12-760, K.S.A. 60-2101(d), or other applicable State Statute.

5.09 FILING FEES

Filing fees for all Variances, Exceptions, Amendments, Requests for Conditional Use, and any other action associated with Planning and Zoning shall be established by action of the Governing Body, and set forth within the City's adopted fee schedule.

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ARTICLE 6

ZONING DISTRICTS – GENERAL REGULATIONS, ACCESSORY USE, SETBACKS, HEIGHT RESTRICTIONS

6.00 DISTRICTS DESIGNATED

A. For the purpose of regulating and restricting the use of land and the erection, construction, reconstruction, altering, moving or use of buildings and structures, the corporate area of the City is divided into zoning districts enacted pursuant to K.S.A. 12-753 et seq. and a floodplain overlay zone enacted pursuant to K.S.A.12-754 and K.S.A.12-766 et seq, more fully described within Article 11 below.

B. For the purpose and intent of this Code, the City of Bel Aire is hereby divided into the following zoning districts:

Agricultural and Residential Districts

AG - Agricultural

RR - Rural Residential

R-1 – Estate Residential

R-2 - Single Family (min. 14,250 sq ft)

R-3 - Single Family (min 11,050 sq ft)

R-4 - Single Family (min 8,400 sq ft)

R-5 - Garden and Patio Homes, Townhouses and Condominiums

R-5b - Single Family/Zero Lot Line Residential

R-6 - Multi-Family District

MHP - Manufactured Home Park

RDMH - Residential Design Manufactured Home

GH - Group Homes

Commercial and Business District

C-1 - Neighborhood Commercial, Office and Retail

C-2 - Planned Commercial Office and Retail

Industrial District

M-1 - Planned Industrial District

6.01 OFFICIAL ZONING MAP

The location and boundaries of the districts established by this Zoning Code are hereby established to be as shown on a map officially designated as the Zoning District Map. The map and all the notations, references and information shown thereon are hereby made as much a part of this Zoning Code as if the same were set forth in full herein. It shall be the duty of the city clerk to keep in a file in his or her office an authentic copy of the map, all charges, amendments or additions thereto, and duplicate copies thereof shall be kept on file in the office of the Zoning Administrator and/or building inspector.

6.02 BOUNDARIES OF DISTRICTS

The following rules shall apply to the boundaries of the various districts as shown on the Zoning District Map:

- A. When definite distances in feet are not shown on the zoning district map, district boundary lines, unless otherwise indicated, are the centerlines of highways, streets, alleys, or the boundary lines of tracts or lots. If the exact location of such line is not clear, it shall be determined by the Zoning Administrator, due consideration being given to location as indicated by the scale of the zoning district map.
- B. In areas not subdivided into lots and blocks, wherever a district is indicated as a strip adjacent to and paralleling a street or highway, the depth of such strips shall be in accordance with dimensions shown on the maps measured at right angles from the centerline of the street, highway or railroad right-of-way, and the length of the frontage shall be in accordance with dimensions shown on the maps from section, quarter-section, or division lines or center lines of streets, highways, or railroad rights-of-way unless otherwise indicated.
- C. Where a district boundary line divides a lot as defined herein, the regulations for either portion of the lot may, in the owner's discretion, extend to the entire lot if such extension of regulations does not extend more than twenty-five (25) feet beyond the actual boundary line of the district.
- D. When the streets or alleys on the ground differ from the streets or alleys as shown on the zoning district map, the building inspector shall apply the district designations on the map to the streets and alleys on the ground in such manner as to conform to the intent and purpose of the zoning regulations.
- E. Whenever any street, alley or other public way is vacated by official action of the governing body, the zoning districts adjoining each side of such street, alley or public way shall automatically extend to the center of such vacation and all of the area included in this vacation shall then and thenceforth be subject to all regulations of the extended district.
- F. Questions concerning the exact locations of zoning district boundary lines shall be interpreted by the Zoning Administrator.

6.03 ZONING OF ANNEXED LAND

All land which is hereafter annexed into the City shall be zoned AG – Agricultural until such classification shall have been changed by an amendment to the zoning regulations as provided by this Code. A written agreement with the landowner prior to such annexation to designate a specific zoning district designation other than AG may be approved as part of the Annexation process.

6.04 CONFORMANCE TO COMPREHENSIVE PLAN

In the consideration of any application for a zoning amendment, conditional use or a special use request, the Planning Commission and the Governing Body shall determine whether the proposal conforms to the adopted Comprehensive Plan and any other recognized plans, studies or policies normally utilized by the City in making land use decisions.

6.05 GENERAL REQUIREMENTS

A. Except as otherwise specifically provided, no building or structure shall be erected, constructed, reconstructed, moved or altered, nor shall any building, structure or land be used or any occupancy permit granted for any purpose other than is permitted by the regulations of this Code as applicable to the zoning district in which such building, structure or land is situated.

B. Except as otherwise specifically provided, no building or structure shall be erected, constructed, reconstructed, moved or altered to exceed the height or area limits established by the regulations of this Code applicable to the zoning district in which such building or structure is situated.

C. Except as otherwise specifically provided, no lot area shall be reduced or diminished so that the yards or other open spaces shall be smaller than prescribed, nor shall the density be increased in any manner, except in conformity with the area regulations of this Code applicable to the zoning district in which the lot or property is situated.

D. Except as specifically noted in these regulations, the type of construction permitted will be governed by the building codes duly adopted and in use in the city.

E. Every building or structure hereafter erected, enlarged or converted for commercial or industrial purposes shall provide reasonable facilities for the loading or unloading of goods in compliance with all the district regulations established by this Code for the district in which the building, structure or land is located.

F. Offices, sheds, warehouses and open air storages used by building contractors in connection with the building of a principal building or the development of an area, may be erected and used in any district; provided, that they shall be removed from the premises within 10 days after substantial completion of the project or unusual suspension of work, or upon permit expiration, whichever is the earlier date. The City may remove such offices, sheds, warehouses and all items contained in open air storage in conformance with the City's nuisance code provisions. All costs of such action shall be assessed back against the property.

G. It shall be unlawful to remove minerals from the ground except in accordance with a permit providing specifically for such act to occur with the City (excluding water).

H. It shall be unlawful to use a manufactured home for habitation except in “MHP” Manufactured Home Parks or Subdivisions and in compliance with all of the regulations and requirements contained in all applicable ordinances regulating manufactured homes, adopted by the city and on file in the offices of the planning commission, building inspector, and city clerk.

I. The required front and side yard areas shall be landscaped and maintained in good condition.

J. Whenever a provision appears requiring the City Manager or some other officer or employee of the City to do some act or perform some duty, it is to be construed to authorize such individual to designate, delegate and authorize subordinates to perform the required act or duty unless the terms of the provision or section specify otherwise.

K. The minimum Lot Area requirements of this Code for Districts permitting Single-Family Dwelling Units shall not be interpreted as prohibiting the construction of a Single-Family Residential Dwelling Unit on a Lot of Record that existed prior to adoption of zoning for subject property.

Related Information: Design Guidelines; Residential Neighborhood Design Manual; Traditional Neighborhood Design Manual

L. The floodplain overlay zones are designated in, and subject to the provisions of Floodplain Zoning. In addition to the regulations set forth in Floodplain Zoning, all property lying within the boundaries of the floodplain overlay districts shall also be subject to the regulations applicable to the underlying zoning district.

6.06 ACCESSORY USES AND ACCESSORY STRUCTURES, PURPOSE

This section regulates uses and Structures that are incidental to Principal Uses and Buildings to prevent them from becoming the predominant element of the site. The standards provide for necessary Access around Structures, help maintain privacy to abutting Lots, and maintain open Front Setbacks.

A. GENERAL STANDARDS FOR ACCESSORY STRUCTURES

The standards of this section apply to all Accessory Uses and Structures.

1. **Time of Construction.** Accessory Structures shall be constructed in conjunction with or after the Principal Building. They shall not be built prior to the construction of the Principal Building.
2. **Subordinate Nature.**
 - a. Accessory Uses shall be a subordinate part of a Principal Use and be clearly incidental to a Principal Use.

- b. Accessory Structures shall be of secondary importance and subordinate in size and Scale to the Principal Building on a site.
3. **Building separation.** Unless attached to the Principal Structure, Accessory Structures shall be located at least three feet from the Principal Structure.
4. **Setbacks from easements.** No Accessory structure shall be located on any platted or recorded easement, or over any known utility.
5. **Density and Dimensional Standards.**
 - a. Unless otherwise expressly stated, the Setback, Height, and Building coverage standards of the Base District apply to both principal and Accessory Structures (See Density and Dimensional Standards). Accessory Structures in residential districts shall be located to the rear of the front Building line. Accessory Structures shall be set back at least ten feet from the centerline of any platted or dedicated Alley, and if no Alley exists, then five feet from the rear Lot Line. Accessory Structures may not utilize more than one-half of any required rear Yard. There shall be no Setback required between an Accessory Structure and an Alley when Access to the Structure is parallel to the Alley, except that no part of the Structure shall overhang or otherwise encroach onto the Alley.
 - b. **Corner Lot Setbacks.** Whenever located on a Key Lot, Accessory Structures shall not project beyond the Front Setback line required on the Lot in the rear of such Key Lot.
 - c. **Side Setbacks.** Accessory Structures shall comply with the Side Setback standards for Principal Uses, provided that an Accessory Structure shall not be required to set back more than three feet from an interior side Lot Line when all parts of the Accessory Structure are located more than one-half the depth of the Lot behind the front property line. Accessory Structures may not utilize more than one-half of any required side Yard.
6. **Building Coverage of Lot.**
 - a. A detached Accessory Structure may not have a larger footprint than the Building footprint of the Principal Building.
 - b. Unless otherwise expressly stated within the regulations concerning a specific zoning district, the combined footprint of all Accessory Structures may be equal to the footprint of the Principal Building or 30% of the Lot Area, provided the total footprint of all Structures does not exceed the maximum Building coverage as permitted by for the corresponding Zoning District. Lot coverage shall be calculated by total lot size minus improvements, structures, and pavement, including but not limited to sheds, decks, concreted areas, patios, and swimming pools.
 - c. No Accessory structure shall be located on any platted or recorded easement, or over any known utility.

7. **Height of Accessory Structures.** Unless otherwise expressly stated within the regulations concerning a specific zoning district, Accessory Structures may not exceed 25 feet in Height, or the Height of the Principal Building on the same Lot, whichever is less, except on properties of five acres or more where height may reach a maximum of sixty (60) feet.
8. **Agricultural Accessory Uses.** Agricultural Uses shall include Accessory Uses and activities customarily associated with agricultural operations, as determined by the Zoning Administrator.
9. **Home Occupation Storage.** No Outdoor Storage of equipment, materials or vehicles used in a Home Occupation shall be allowed as a residential Accessory Use except as otherwise permitted by this Code.
10. **Storage Building Design Standard.** Storage buildings shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage sheds or buildings, or any similar item as determined by the zoning administrator.
11. **Sharing Stand.** Any individual or organization desiring to place a Little Free Library, Gifting Pantry, or other noncommercial, unmanned stand of a similar nature associated with sharing items between neighbors, should be advised Sharing Standings are considered an accessory use within any zoning district within the City. Sharing Stands may be subject to limitation of placement associated with applicable Home Owner Association regulations. Sharing Stands may qualify for exemption from permitting or licensing requirements of the City, however, if placed in accordance with the following requirements:
 - a. Shall not be located within or overhang the public street right-of-way or any public easement;
 - b. Shall not obstruct vehicular, bicycle or pedestrian traffic, either physically, or by a person utilizing the Sharing Stand;
 - c. Shall not obstruct access aisles or paths utilized by persons in wheelchairs or for ADA accessibility;
 - d. May be placed as a permitted obstruction in a required front yard (area between the front wall of a building and the public street right-of-way);
 - e. Shall be raised above the ground, enclosed, sized and arranged such that no person or child is able to enter;
 - f. Shall be anchored to the ground or otherwise securely attached to something having a permanent location on the ground.

The City of Bel Aire encourages prospective operators of Sharing Stands to submit proposed locations for review by the Building Inspector to ensure the above listed requirements have been satisfied. Additionally, owners of properties hosting a Sharing Stand are encouraged to notify the Bel Aire Police Department of the installation of the Stand, so as to proactively address concerns of neighbors associated with unknown individuals entering upon private property and taking items away.

B. ACCESSORY APARTMENTS

1. Purpose

Apartment Units are allowed in certain situations to:

- a. Create new housing units while preserving the look and scale of the associated zoning district and neighborhood, and are subject to the standards established within each Zoning District;
- b. Provide a means for residents, particularly seniors, single parents, and couples, to remain in their homes and neighborhoods, security, companionship and services.

2. Design Standards

- a. **Purpose** These design standards are intended to ensure that Apartment Units:
 - (1) Are compatible with the desired character and livability of the Zoning Districts;
 - (2) Respect the general Building Scale and placement of Structures to allow sharing of common space on the Lot, such as Driveways and Yards; and
 - (3) Are 960 square feet or smaller in size.
- b. **Generally** The design standards for Apartment Units are stated in this section. If not addressed in this section, the applicable Zoning District standards apply.
- c. **Methods of Creation** An Apartment Unit may only be created through one of the following methods:
 - (1) Converting existing living area within a Detached Dwelling, Attached Dwelling (e.g., attic, Basement or attached garage); or
 - (2) Adding Floor Area to an existing Detached Dwelling, Attached Dwelling or detached garage; or
 - (3) Constructing a new Detached Dwelling, Attached Dwelling or detached garage with an internal Apartment Unit.
- d. **Owner Occupancy Required in RS Districts** Either the principal Apartment or the Apartment Unit must be occupied by one or more of the persons who is/are the record Owner of the Premises.

If at any time, neither of the Apartments in a Building that contains an Accessory Apartment is the principal residence of one of the Owners of the property, then the property shall be considered a Duplex. If a Duplex is not permitted in the Zoning District in which the property is located, the Owner

shall be subject to penalties for a zoning violation and to an abatement order requiring restoration of the Premises to lawful status, conforming to the uses permitted in the Zoning District.

- e. **Number of Residents** The total number of individuals that reside in both units (principal + accessory) may not exceed Occupancy Limit established for the Principal Building, plus one additional person.
- f. **Other Prohibited Uses** An Apartment Unit is prohibited in a house with a Home Occupation.
- g. **Location of Entrances**
 - (1) Only one entrance to the Principal Building may be located on the front Facade that faces the Street, unless the Principal Building contained an additional Street-facing entrance before the Apartment Unit was created.
 - (2) When the Apartment Unit is located behind the rear wall of the Principal Building, the apartment entrance shall face the Front Lot Line.
 - (3) An exception to subsection (b), above, is Apartments that do not have Access from the ground such as Apartments with entrances from balconies or elevated decks.
- h. **Parking** The following Parking requirements apply to Apartment Units.
 - (1) Lots containing Apartment Units shall contain a minimum of two off-Street Parking Spaces.
 - (2) If the Lot containing the Apartment Unit abuts only a Local Street and the pavement of the Local Street is at least 27 feet wide, no additional Parking Space is required for the Apartment Unit.
 - (3) If the Lot containing the Apartment Unit abuts only a Local Street and the pavement of the Local Street is less than 27 feet wide, or if the Apartment Unit is created at the same time as the principal Apartment, one additional Parking Space is required for the Apartment Unit.
 - (4) One additional Parking Space is required for the Apartment Unit if the Lot containing the Apartment Unit abuts only a Collector or Arterial Street.
- i. **Size** The maximum size of an Apartment Unit may be no more than (33%) of the living area of the Detached Dwelling or Attached Dwelling, or 960 square feet, whichever is less.
- j. **Floor Area Additions** Apartment Units created through the addition of habitable Floor Area to an existing Structure shall comply with the following standards:

- (1) The exterior finish material shall be the same or visually match in type, size and placement, the exterior finish material of the house or existing Structure;
- (2) The roof pitch shall be the same as the predominant roof pitch of the house or existing Structure;
- (3) Trim on edges of elements on the addition shall be the same in type, size and location as the trim used on the rest of the house or existing Structure;
- (4) Windows shall match those in the house in proportion (relationship of width to Height) and orientation (horizontal or vertical);and
- (5) Eaves shall project from the Building walls the same distance as the eaves on the rest of the house or existing Structure.

k. **Registration; Affidavit**

- (1) Apartment Units shall be registered with the Zoning Administrator prior to their establishment. The requirement for registration is intended to ensure that the applicant is aware of the provisions of this Development Code governing Apartment Units; that the City has all information necessary to evaluate whether the Apartment Unit initially meets and continues to meet Development Code requirements; and that the distribution and location of Apartment Units is known.
- (2) At the time of registration, the applicant shall submit an affidavit pledging agreement to the Apartment Unit standards of this section. The affidavit shall specify which of the Apartments will be occupied by an Owner of the property; if at any time such Owner moves to the other Apartment, the Owner shall be responsible for filing an updated affidavit, recording such change.
- (3) Permits for Apartment Units may be issued after the Zoning Administrator determines that the proposal complies with all applicable Development Code requirements.

C. **ACCESSORY PARKING AND VEHICLE STORAGE**

1. Accessory Parking shall be located in the same Zoning District as the use to which it is accessory. Accessory Parking may be permitted in a different Zoning District by site plan approval, subject to the following limitations:
 - a. Accessory parking for a nonresidential use shall in no case be allowed in a Residential Zoning District.

- b. Approval of any accessory Parking shall be made subject to appropriate Screening requirements to limit the impact of the accessory parking on abutting properties and upon any other Zoning District.
 - c. No Accessory Structure or Use shall eliminate or reduce the amount of off-street Parking or Loading required by this Code.
2. Parking for more than 72 hours and/or storage of Motor Vehicles and equipment.
- a. The following Accessory Uses shall be permitted when such are the personal property of the occupant of the Dwelling Unit and are screened in conformance with the landscaping and fencing code so as to not be visible from any adjoining property:
 - (1) Parking and/or storage of Motor Vehicles in back yard setbacks whether operable or inoperable, when such vehicle is the personal property of an occupant of the Dwelling Unit, and when stored upon an all-weather surface, and when accessible from an all-weather surface drive;
 - (2) Parking and/or storage of boats, when stored upon an all-weather surface, and when accessible from an all-weather surface drive;
 - (3) Parking and/or storage of Trailers that are exempt from Motor Vehicle registration by the State of Kansas or are registered or are required by law to be registered with an 8M Kansas license plate, when stored upon an all-weather surface, and when accessible from an all-weather surface drive;
 - (4) Parking and/or storage of unoccupied Recreational Vehicles, when stored upon an all-weather surface, and when accessible from an all-weather surface drive;
 - (5) Storage of construction equipment, for no more than forty-five (45) days in association with a licensed construction project occurring upon such property, and when stored in conformance with nuisance code including in a manner that prevents rodents and other types of pests from hiding or nesting in such equipment.
 - b. No Outdoor Storage of equipment, materials or vehicles used in a Home Occupation shall be allowed as a residential Accessory Use except as otherwise permitted by this Code.
 - c. No Outdoor Storage where prohibited by an Overlay District, or within the Flood Plain.
3. Non-residential uses. Accessories to non-residential uses which are otherwise lawfully permitted shall conform to the terms and design restrictions of the PUD or applicable zoning district, and Permitted accessory uses located on lots which abut a more restrictive zoning district shall be subject to additional screening requirements and other applicable measures to comply with any development and

performance standards imposed by the Zoning Administrator as a means of ensuring land use compatibility.

4. Public and civic Accessory Uses. Public and civic Uses shall include Accessory Uses and activities customarily associated with the purpose and function of the Principal Use, including but not limited to the following:
 - a. Refreshment stands and food and beverage sales located in uses involving public assembly;
 - b. Cafeterias, dining halls and similar food services when operated primarily for the convenience of employees, residents, clients, patients or visitors to the Principal Use;
 - c. Gift shops, newsstands and similar commercial activities operated primarily for the convenience of employees, residents, clients, patients or visitors to the Principal Use; and
 - d. Other necessary and customary uses determined by the Zoning Administrator to be appropriate, incidental and subordinate to the Principal Use on the Lot, subject to compliance with any development and performance standards imposed by the Zoning Administrator as a means of ensuring land use compatibility.

D. AMATEUR RADIO AND RECEIVE-ONLY ANTENNAS

1. Amateur Radio and Receive-Only Antennas

Amateur Radio and Receive-Only Antennas may be installed and operated as permitted Accessory Uses, subject to the following conditions:

- a. A single ground or Building mounted Receive-Only Antenna including any mast, for the sole use of the principal occupant(s) of the residential Parcel on which the Receive-Only Antenna is located; with a Receive-Only Antenna Height not exceeding twenty-five feet (25') or the Building Height allowed in the Zoning District, whichever is higher;
- b. A ground, Building, or tower mounted Amateur Radio Antenna if the Height (post and Antenna) does not exceed thirty-five feet (35'); and
- c. A ground, Building, or tower-mounted Amateur Radio or Receive-Only Antenna up to 75 feet tall as a Special Use, subject to the following additional standards:
 - (1) The applicant shall provide certification from a civil engineer licensed in Kansas that the tower design is such that it will not fall on adjacent property or on any Building on the property on which it is located;

- (2) The tower installation shall include a landscaped buffer to Screen it from any adjoining property in a residentially zoned district that is located within 20 feet of the proposed tower site; and
- (3) The tower may be limited to a Height of less than 75 feet if the Planning Commission finds that it will otherwise protrude above the tree Canopy or otherwise create an unnecessary and unacceptable visual impact.

2. **Satellite Dishes**

- a. **General** No Satellite Dish shall block any entrance or required emergency egress of any Building.
- b. **Satellite Dishes One Meter or Smaller** Satellite Dishes one meter or less in diameter are a permitted Accessory Structure in all zoning districts.
- c. **Satellite Dishes Two Meters or Smaller** Satellite Dishes more than one meter, up to and including two meters, in diameter are a permitted Accessory Structure in all Commercial and Industrial Zoning Districts and a Special Use in all Residential Zoning Districts, and are subject to the following:
 - (1) Such a Satellite Dish shall not be located in the Front Setback or Front Yard;
 - (2) Such a Satellite Dish shall not be located in a Side Setback; and
 - (3) Such a Satellite Dish in a Residential or Commercial Zoning District shall be Screened from view off Premises by a fence, wall, Berm, or Landscaping.
- d. **Satellite Dishes Larger than Two Meters** Satellite Dishes more than two meters in diameter are a permitted Accessory Structure in all Industrial Zoning Districts. Such Satellite Dishes are a Special Use in any Residential Zoning District or in a Commercial Zoning District. Such Satellite Dishes are subject to the following:
 - (1) Such a Satellite Dish shall not be located in a Front Setback or Front Yard;
 - (2) Such a Satellite Dish shall not be located in a Side or Rear Setback; and
 - (3) Such a Satellite Dish in a Commercial Zoning District or the Industrial PUD Zoning District, or where adjoining property is in a Residential or Commercial Zoning District, shall be Screened from view off Premises by a fence, wall, Berm, or Landscaping.

6.07 SETBACK – GENERAL STANDARDS

Setbacks. Setbacks refer 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, and unobstructed from the ground to the sky, unless otherwise provided for within this section.

A. Features allowed within Setbacks. The following structures and features may be located within required Setbacks:

1. Trees, shrubbery or other features of natural growth; except that when shrubbery or other features of natural growth have more than 80 percent opacity, the maximum height along the side Lot Line shall not exceed three feet within 20 feet of its intersection with the street right-of-way line, and further that along any Lot Line within 20 feet of the intersection of the street right-of-way with an ingress/egress driveway, the minimum height shall not exceed three feet.
2. Fences or screening walls extending into the front plane of a principal structure on a residential lot shall decrease, within a linearly measured distance of no more than eight (8) feet, from a maximum height of six (6) feet to a height of four (4) feet, shall be at least fifty (50) percent open, and shall not include chain-link or any other metal or wire type fencing..
3. Driveways, patios and sidewalks;
4. Signs, if permitted by Sign Code;
5. Bay windows, architectural design embellishments, and cantilevered Floor Areas of Dwelling Units that do not project more than two feet into the required Setback;
6. Eaves that do not project more than two and one-half feet into the required Setback;
7. Open outside stairways, decks, entrance hoods, terraces, canopies and balconies that do not project more than five feet into a required Front or Rear Setback nor more than two feet into a required Side Setback;
8. Chimneys, flues and ventilating ducts that do not project more than two feet into a required Setback and when placed so as not to obstruct light and ventilation;
9. Open, unenclosed Porches and carports that do not project more than eight feet into a required Front Setback nor more than five feet into a required Rear Setback;
10. Utility lines, wires and associated structures, such as power poles, or bus shelters;
11. Detached unenclosed canopy structures over motor fuel pump islands, drive-throughs, bank aisles, and Automated Teller Machines, provided that the supports for the structures and the equipment they cover shall be located at least ten feet from the right-of-way, and provided that no portion of the canopy shall project over the public right-of-way, utility easements, required landscape area, required Setback Abutting a residential zoning District, or any Abutting property line. Whenever the equipment ceases to be used for its purpose, the equipment and, all canopies shall be removed within 90 days or prior to conversion of the property to another use, whichever occurs first.

12. Window wells not over eight inches above grade may project a maximum of 44 inches, including all structural elements.
 13. Wheelchair ramps should not project more than eight feet into a required Setback. Modifications to this standard may be approved to meet any necessary requirements of the building codes, upon approval of the building inspector following approval of a site plan and building materials.
- B. Setbacks measured from proposed rights-of-way. In areas where a development plan for road improvements has been approved and adopted by the Governing Body, minimum Front Setbacks shall be measured from the proposed right-of-way line.
- C. Conflict with Building Setback Lines on recorded plats. If the minimum Setback standards imposed by this Code conflict with Building Setback Lines shown on valid, recorded plats, or with the remaining Building Setback Lines that are modified by a valid, recorded vacation order, the minimum Setback shall be the same distance shown on the valid, recorded plat or vacation order.
- D. Setback averaging.
1. Residential Districts. If the existing Front Setbacks of developed Lots within the same block and same residential zoning District and fronting on the same side of the Street are less than the required Front Setback of the Underlying residential zoning District, applicants shall be allowed to use the "average" Front Setback on the block. In such cases, the "average Front Setback" shall be the mean (average) Front Setback of all Lots on the same side of the street within the same block as the subject property. In no event shall nonresidential Uses or undeveloped Lots be included in the calculation of the average Setback, and in no case shall more than five Lots on either side of the subject property be included in the calculation. This provision shall not be interpreted as requiring a greater Front Setback than imposed by the Underlying zoning District, and it shall not be interpreted as allowing Setbacks to be reduced to a level that results in right-of-way widths dropping below the minimums established by the *Transportation Plan* most recently adopted by the Governing Body.
 2. Nonresidential Districts. If the existing Front Setbacks of developed Lots within the same block and fronting on the same side of the street are less than the required Front Setback of the Underlying nonresidential zoning District, applicants shall be allowed to use the "average" Front Setback on the block. In such cases, the "average Front Setback" shall be the mean (average) Setback of all Lots on the same side of the street within the same block as the subject property. This provision shall not be interpreted as requiring a greater Front Setback than imposed by the Underlying zoning District, and it shall not be interpreted as allowing Setbacks to be reduced to a level that results in right-of-way widths dropping below the minimums established by the *Transportation Plan* most recently adopted by the Governing Body.
- E. Front Setbacks on Corner Lots. In the case of Corner Lots, a Front Setback shall be provided along the shorter street frontage, except that residential Key Lots shall provide a Front Setback along all street exposures.

F. Setbacks reduced for public purpose. When an existing setback is reduced as a result of conveyance to a federal, state or local government for a public purpose and the remaining Setback is at least 75 percent of the required minimum Setback for the District in which it is located, then that remaining Setback shall be deemed to be in compliance with the minimum Setback standards of this Code without resort to the Board of Zoning Appeals.

G. Rear Setbacks Adjacent to Alleys. Where an Alley has been platted or otherwise dedicated Adjacent to the rear of a Lot, half the width of the Alley may be included in the rear Yard Setback requirement.

6.08 HEIGHT REGULATIONS

A. Building Height refers to the vertical distance between the average finished grade at the base of the building and: (a) the highest point of the coping of a flat roof; (b) the deck line of a mansard roof; or (c) the average height level between the eaves and ridge line of a gable, hip or gambrel roof. In the case of Fences or Screening Walls, height shall be measured on the side with the least vertical exposure above finished grade of the Building or Structure being screened to the top of the Fence or Screening Wall.

B. Exemptions from height standards. The following Structures and features shall be exempt from the Height requirements of this Code to the extent indicated, but this section shall not serve to override compatibility standards set forth in other provisions of this Code, or other applicable Codes:

1. Chimneys, smokestacks or flues;
2. Cooling towers and ventilators;
3. Elevator bulkheads and stairway enclosures;
4. Fire towers;
5. Utility poles;
6. Belfries, spires and church steeples;
7. Tanks, water towers, and silos;
8. Monuments and ornamental towers;
9. Energy Generating Structures not exceeding 45 feet in height, provided that such Structure shall not be located in any required Setback nor be located closer to any adjacent property than the height of the Energy Generating Structure;

6.09 PERFORMANCE STANDARDS; MEASUREMENT

In some districts, performance standards capable of quantitative measurement are established. Except to the extent modified in the specific zoning district regulations, the following general provisions shall apply to measure compliance with such performance standards.

A. Noise: A decibel is a measure of unit of sound pressure. Since sound waves having the same decibel level “sound” louder or softer to the human ear depending upon the frequency of the sound wave in cycles-per-second (i.e., whether the pitch of the sound is high or low), an A-weighted filter constructed in accordance with the specifications of the American Nations Standards Institute, which automatically takes account of the varying effect on the human ear of different pitches, shall be used on any sound level meter used to take required measurements. Accordingly, all measurements are expressed in dB(A) to reflect the use of this A-weighted filter. Impact noises are sounds that occur intermittently rather than continuously. Impact noises shall be measured using the fast response of the sound level meter. Unless specifically indicated to the contrary in the zoning district regulations, noise resulting from temporary construction activity that occurs between 7:00 AM and 7:00 PM shall be exempt from the indicated performance standard.

B. Smoke Particulate Matter:

1. For the purpose of determining the density of equivalent capacity of smoke, the Ringlemann Chart, as adopted and published by the United States Department of Interior, Bureau of Mines, shall be used. The Ringlemann number indicated as the performance standard in certain zoning districts refers to the number of the area of the Ringlemann Chart that coincides most nearly with the visual density of equivalent opacity of the emission of smoke observed.
2. Particulate matter emissions, in excess of the threshold limit values caused by the wind from open storage areas, yards, roads, etc., within lot lines shall be kept to a minimum by appropriate landscaping, paving, oiling, wetting and other means, or shall be eliminated.

C. Vibration: Vibrations are measured in particle velocity and are to be measured at the property line or other designated location. The instrument used to measure vibrations shall be a three-component measuring system capable of simultaneous measurement of vibration in three mutually perpendicular directions. The vibration maximums indicated as the performance standard in certain zoning districts may be measured directly with suitable instrumentation or computed on the basis of displacement and frequency. When computed, the following formula shall be used:

$$PV = 6.28 F \times D$$

Where:

PV = particle velocity, inches-per second

F = vibration frequency, cycles-per second

D = single amplitude displacement of the vibration, inches

The maximum particle velocity shall be in the maximum vector sum of three mutually perpendicular components recorded simultaneously. Unless specifically indicated to the contrary in the zoning district regulations, vibration resulting from temporary construction activity that occurs between 7:00 AM and 7:00 PM shall be exempt from the indicated performance standard.

D. Glare: Illumination levels shall be measured with a photoelectric photometer having a spectral response similar to that of the human eye, following the standard spectral luminous efficiency curve adopted by the International Commission on Illumination.

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ARTICLE 7
ZONING DISTRICTS

7.00 AGRICULTURAL DISTRICT

The zoning of property as AG, Agricultural District, is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock. In addition, the Agricultural District may serve as a “holding zone” for land where future urban expansion is possible, but not yet appropriate due to the unavailability of urban level facilities and services. Property zoned AG for “holding zone” purposes may be used for certain commercial and industrial special uses where those uses would be of limited duration or compatible with the uses shown on the Future Land Use Plan of the *Comprehensive Plan*.

A. Use Regulations.

No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed moved or altered except for one (1) or more of the uses set forth herein, or similar uses, subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the Agricultural District:
 - a. Agricultural production – crops
 - b. Agricultural production – livestock and animal specialties
 - c. Agricultural services
 - d. Single-family residences with a minimum of 1,800 square feet living space.
 - e. Accessory Structures typically associated with agricultural services, and ordinary domestic household needs. Accessory structures associated with other types of businesses shall comply with such regulations as set forth within Section 6.06 of this Zoning Code.
2. Conditional uses: The following uses shall be permitted in the “AG” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Article 5.03:
 - a. Development of natural resources and extraction of raw materials such as rock, gravel, sand, fill dirt, soil, etc.

B. Height and Area Regulations for AG Developments

The maximum height of buildings and structures, the minimum dimension of lots, setbacks for parking/paving and yards, and the minimum lot area per dwelling unit permitted on any lot shall be as follows, except as otherwise provided in these Regulations relating to Height and Area Regulations, Exceptions, and requirements set forth within the Subdivision Code:

1. Minimum lot area per dwelling unit – twenty (20) net acres.

2. Maximum height:
 - a. Residences – two and one-half (2 ½) stories, not exceeding thirty-five (35) feet from finished grade.
 - b. Agricultural structures – fifty (50) feet from finished grade.
 - c. Non-agricultural structures and uses – seventy-five (75) feet, provided such structure is set back from all property lines a distance equal to or greater than its height.
3. Minimum front, side and rear yards – fifty (50) feet.
4. Minimum lot width – six hundred (600) feet.
5. Minimum setbacks for parking/paving (nonagricultural uses):
 - a. Thirty (30) feet from street right-of-way.
 - b. Thirty (30) feet from property lines other than street right-of-way.

C. Development and Performance Standards for AG Developments

1. Parking and Loading – See Article 9
2. Sign Code – As adopted by the Governing Body
3. Landscaping and Screening – See Article 10
4. There shall be no restrictions as to operation of agricultural vehicles and machinery, or the sale or marketing of products raised on the premises.
5. All buildings, structures or yards used for the raising, feeding, housing or sale of livestock or poultry shall be located at least one hundred (100) feet from residentially zoned land.
6. There shall be no disposal of garbage, rubbish or offal, other than regular removal thereof, within three hundred (300) feet of residentially zoned land.
7. Where a lot or tract had less than the twenty (20) acre minimum lot area required herein in separate ownership on January 1, 2004, these Regulations shall not prohibit the erection or alteration of a single-family dwelling.
8. Where development utilizing septic tanks is proposed, applicant shall submit a septic tank suitability study in accordance with at the time of filing the application for Agricultural zoning.
9. Noise levels in accordance with all City regulations governing noise, including those provided for within these Regulations.

7.01 RURAL RESIDENTIAL DISTRICT

The zoning of property as RR, Rural Residential District, is intended to provide for development of single-family detached dwellings at a density which does not exceed one (1) dwelling unit per

five (5) acres. In addition, other uses which are compatible with the large-lot/low-density residential character of this district would be permitted under certain conditions. Property zoned RR should include only those tracts which abut or are in close proximity to existing large-lot single-family development where a neighborhood character of single-family dwellings on large lots has been established.

A. Use Regulations.

No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses, subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the Rural Residential District, subject to all applicable development and performance standards:
 - a. Single-family residences with a minimum of two thousand four hundred (2,400) square feet living space.
 - b. Manufactured Home/Residential Design Manufactured Home
 - c. Churches and their accessory buildings.
 - d. Day care.
 - e. Golf Course.
 - f. Group home, limited.
 - g. Parks, playgrounds and community buildings owned and/or operated by the city.
 - h. School, elementary, middle and high.
 - i. Utility, minor.
2. Conditional uses: The following uses shall be permitted in the “RR” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Article 5.03:
 - a. Accessory apartment.
 - b. Agriculture
 - c. Group residence, limited and general.
 - d. Neighborhood swimming pool.
 - e. Cemetery.
 - f. Community assembly.
 - g. Convalescent care facility, limited.
 - h. Cultural group.
 - i. Government service.

- j. Home Occupation
- k. Hospital.
- l. Library.
- m. Safety services.
- n. Utility, major.
- o. Airport or airstrip.
- p. Bed and breakfast inn.
- q. Kennel, boarding/breeding/training and hobby.
- r. Parking area and/or accessory drive ancillary.
- s. Recreation and entertainment, indoor and outdoor.
- t. Recreational vehicle campground.
- u. Riding academy or stable.

B. Height and Area Regulations for RR Developments

The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for parking/paving and yards, and the minimum lot area per dwelling units permitted on any lot shall be as follows, except as otherwise provided in these Regulations relating to Height and Area Regulations, Exceptions, and requirements set forth within the Subdivision Code:

- 1. Minimum lot area per dwelling unit – five (5) net acres.
- 2. Maximum height:
 - a. Residences – two and one-half (2 ½) stories, not exceeding thirty-five (35) feet from finished grade.
 - b. Non-residential structures and uses – seventy-five (75) feet, provided such structure is set back from all property lines a distance equal to or greater than its height.
- 3. Minimum front yard – fifty (50) feet from street right-of-way.
- 4. Minimum side yard:
 - a. Total side yards shall be twenty (20) percent of the width of the lot; no side yard may be less than twenty (20) feet.
 - b. Corner lots – thirty (30) feet from street right-of-way.
- 5. Minimum rear yard – seventy-five (75) feet.
- 6. Minimum lot width – two hundred (200) feet.
- 7. Minimum parking/paving setbacks for nonresidential uses.
 - a. Fifty (50) feet from street right-of-way

- b. Twenty (20) feet from property lines other than street right-of-way.
 - 8. Maximum lot coverage – thirty-five (35%) percent.
 - C. **Development and Performance Standards for RR Developments**
 - 1. Parking and Loading – See Article 9
 - 2. Sign Code – As adopted by the Governing Body
 - 3. Landscaping and Screening – See Article 10
 - 4. Where development utilizing septic tanks is proposed, applicant shall submit a septic tank suitability study to the City at the time of filing the application for Rural Residential zoning.
 - 5. No noise levels shall be generated that exceed the levels permitted in these Regulations.
 - D. **Accessory Use Regulations.** Unless otherwise stated, Accessory Uses are subject to the same regulations as the Principal Use. Accessory Uses and Structures, including Accessory Dwelling Units and Home Occupations, are subject to the regulations of Section 6.06.
 - 1. An accessory use shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.
 - 2. A shed is by definition an Accessory Structure, but sheds of less than 120 square feet shall be permitted by right within this zoning district upon obtaining all necessary building permits, including determination that the proposed accessory structure has not been located on/within any platted or recorded easement, or over any known utility. The combined footprint of all Accessory Structures, including sheds, may not exceed the footprint of the Principal Building or 30% of the Lot Area.

7.02 ESTATE RESIDENTIAL DISTRICT (R-1)

The zoning of property as R-1, Estate Residential District, one (1) unit per acre, is intended to provide for development of standard low-density residential developments, in areas where adequate public facilities and services exist, and residential development is appropriate given the surrounding land uses and neighborhood.

A. **Use Regulations.**

No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the R-1, Estate Residential District, subject to all applicable development and performance standards:
 - a. Single-family residences with a minimum of two thousand four hundred (2,400) square feet of living space.
2. Conditional uses: The following uses shall be permitted in the “R-1” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Articles 6 and 8 of this Zoning Code.
 - a. Accessory apartment.
 - b. Group residence, limited and general.
 - c. Neighborhood swimming pool.
 - d. Cemetery.
 - e. Community assembly.
 - f. Cultural group.
 - g. Government service.
 - h. Home Occupation
 - i. Hospital.
 - j. Library
 - k. Parks
 - l. Safety services.
 - m. Utility, minor.
 - n. Bed and breakfast inn.
 - o. Parking area and/or accessory drive ancillary.
3. Prohibited uses:
 - a. Manufactured housing
 - b. Mobile Home

B. Height and Area Regulations for R-1 Developments

The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for parking/paving and yards, and the minimum lot area per dwelling unit permitted on any lot shall be as follows, except as otherwise provided in these Regulations relating to Height and Area Regulations, Exceptions, and requirements set forth within the Subdivision Code:

1. Minimum lot area per dwelling unit – one (1) acre
2. Maximum height:

- a. Residences – two and one-half (2 ½) stories, not exceeding thirty-five (35) feet from finished grade.
 - b. Nonresidential structures and uses – seventy-five (75) feet, provided such structure is set back from all property lines a distance equal to or greater than its height.
3. Minimum front yard – thirty (30) feet from street right-of-way.
 4. Minimum side yard:
 - a. Total side yards shall be twenty (20) percent of the width of the lot; no side yard may be less than ten (10) feet from property lines.
 - b. Corner lots – thirty (30) feet from street right-of-way.
 5. Minimum rear yard – thirty-five (35) feet from property line.
 6. Minimum lot width – one hundred (100) feet.
 7. Minimum lot depth – average of two hundred (200) feet.
 8. Maximum lot coverage – thirty (30) percent.

C. Development and Performance Standards for R-1 Developments

1. Parking and Loading – See Article 9
2. Sign Code – As adopted by the Governing Body
3. Landscaping and Screening – See Article 10
4. Connection to municipal utilities is a requirement for this zoning classification.
5. An accessory use shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.

7.03 SINGLE-FAMILY RESIDENTIAL DISTRICT (R-2)

The zoning of property as R-2, Single-Family Residential District, is intended to provide for development of standard low-density residential developments, with no district bonus densities, in areas where adequate public facilities and services exist, and residential development is appropriate given the surrounding land uses and neighborhood.

A. Use Regulations.

No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the R-2, Single-Family Residential District, subject to all applicable development and performance standards:

- a. Single-family residences with a minimum of two thousand (2,000) square feet of living space.
 - b. Parks
2. Conditional uses: The following uses shall be permitted in the “R-2” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Articles 6 and 8 of this Zoning Code.
- a. Community buildings owned and operated by the City.
 - b. Churches and their accessory buildings.
 - c. Public libraries.
 - d. Public schools, elementary schools and high schools and private schools having a curriculum equivalent to and substantially the same as that of a public elementary or public high school but not including private kindergartens or nursery schools accommodating 10 or more students.
 - e. Public golf courses operated for commercial purposes and open to anyone who applies, except miniature golf courses and driving ranges.
 - f. Residential Design Manufactured housing.
 - g. Home Occupations.
 - h. Detached accessory structures: Provided, that they are located within the side and/or rear yard of a lot and are in accordance with all setback requirements. An accessory use shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.
3. Prohibited uses:
- a. Manufactured housing
 - b. Mobile Home
4. Accessory use regulation(s):
- a. A shed is by definition an Accessory Structure, but sheds of less than 120 square feet shall be permitted by right within this zoning district upon obtaining all necessary building permits, including determination that the proposed accessory structure has not been located on/within any platted or recorded easement, or over any known utility. The combined footprint of all Accessory Structures, including sheds, may not exceed the footprint of the Principal Building or 30% of the Lot Area.

B. Height and Area Regulations for R-2 Developments

The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for parking/paving and yards, and the minimum lot area per dwelling unit permitted on any lot shall be as follows, except as otherwise provided in these Regulations or as set forth within the Subdivision Regulations of this City:

1. Minimum lot area per dwelling unit – fourteen thousand two hundred fifty (14,250) sq. ft.
2. Maximum height: Residences – two and one-half (2 ½) stories, not exceeding thirty-five (35) feet from finished grade.
3. Minimum front yard – twenty-five (25) feet from street right-of-way.
4. Minimum side yards:
 - a. Total side yards shall be twenty (20) percent of the width of the lot; no side yard may be less than ten (10) feet from the property lines
 - b. Corner lots – twenty-five (25) feet from street right-of-way.
5. Minimum rear yard: Thirty-five (35) feet from property line.
6. Minimum lot width – ninety-five (95) feet; side-load garage requires minimum lot width of one hundred fifteen (115) feet.
7. Minimum lot depth – average of one hundred fifty (150) feet.

7.04 SINGLE-FAMILY RESIDENTIAL DISTRICT (R-3)

(LOW TO MODERATE DENSITY/MINIMUM 11,050 SQ. FT.)

The zoning of property as R-3, Single-Family Residential District, is intended to provide for residential development with a minimum of 11,050 sq ft lots in areas where adequate public facilities and services exist, and residential development is appropriate given the surrounding land uses and neighborhood.

A. **Use Regulations.** No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the R-3, Single-Family Residential District, subject to all applicable development and performance standards:
 - a. Single-family residences with a minimum of two thousand (1,800) square feet of living space.
2. Conditional uses: The following uses shall be permitted in the “R-3” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Articles 6 and 8 of this Zoning Code.

- a. All conditional uses listed for the R-2 district.
 - b. Neighborhood swimming pool
 - c. Cemetery
 - d. Residential Design Manufactured housing
 - e. Utility, major
3. Prohibited uses:
- a. Manufactured housing
 - b. Mobile Home
4. Accessory use regulation(s):
- a. A shed is by definition an Accessory Structure, but sheds of less than 120 square feet shall be permitted by right within this zoning district upon obtaining all necessary building permits, including determination that the proposed accessory structure has not been located on/within any platted or recorded easement, or over any known utility. The combined footprint of all Accessory Structures, including sheds, may not exceed the footprint of the Principal Building or 30% of the Lot Area.

B. Height and Area Regulations for R-3 Developments. The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for parking/paving and yards, and the minimum site area per dwelling unit permitted on any lot shall be as follows, except as otherwise provided in these regulations relating to height and area regulations, Exceptions, and requirements set forth within the subdivision code:

- 1. Minimum lot area per dwelling unit – Eleven thousand fifty (11,050) sq ft. lot
- 2. Maximum height: Residences – two (2) stories, not exceeding thirty-five (35) feet from finished grade
- 3. Minimum front yard – twenty-five (25) feet from street right-of-way
- 4. Minimum side yard:
 - a. Total side yards shall be twenty (20) percent of lot width. No side yard shall be less than ten (10) feet from property line.
 - b. Corner Lots – twenty-five (25) feet from street right-of-way
- 5. Minimum rear yard: Twenty-five (25) feet from property line
- 6. Minimum lot width – Eighty-five (85) feet; Side-load garage requires minimum lot width of One hundred-fifteen (115) feet
- 7. Minimum lot depth – One Hundred-thirty (130) feet

7.05 SINGLE-FAMILY RESIDENTIAL DISTRICT (R-4) (MODERATE DENSITY/MINIMUM 8,400 SQ. FT.)

The zoning of property as R-4, Single-Family Residential District, is intended to provide for residential development with a minimum of 8,400 sq. ft. lots in areas where adequate public facilities and services exist, and residential development is appropriate given the surrounding land uses and neighborhood.

A. **Use Regulations.** No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the R-4, Single-Family Residential District, subject to all applicable development and performance standards:
 - a. Single-family residences with a minimum of 1,600 square feet of living space.
 - b. Single family with 1,200 square feet minimum living space on lots platted prior to January 1, 2003 that have a minimum lot area per dwelling unit of 7,500 square feet.
 - c. Two-family residences (duplexes) with not less than 1,200 square feet per unit
 - d. Churches and their accessory buildings
 - e. Day care
 - f. Golf Course
 - g. Group home, limited
 - h. Parks, playgrounds and community buildings or Governmental buildings owned and/or operated by the city
 - i. Residential Design Manufactured Homes (see 7.05 C below)
 - j. School, elementary, middle and high
 - k. Utility, minor
2. Conditional uses: The following uses shall be permitted in the “R-4” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Articles 6 and 8 of this Zoning Code.
 - a. All conditional uses listed for the R-3 district
3. Accessory use regulation(s):

- a. A shed is by definition an Accessory Structure, but sheds of less than 120 square feet shall be permitted by right within this zoning district upon obtaining all necessary building permits, including determination that the proposed accessory structure has not been located on/within any platted or recorded easement, or over any known utility. The combined footprint of all Accessory Structures, including sheds, may not exceed the footprint of the Principal Building or 30% of the Lot Area.

B. Height and Area Regulations for R-4 Developments.

The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for parking/paving and yards, and the minimum site area per dwelling unit permitted on any lot shall be as follows, except as otherwise provided in these Regulations relating to Height and Area Regulations, Exceptions, and requirements set forth within the Subdivision Code:

1. Minimum lot area per dwelling unit – Eight thousand four hundred (8,400) square feet, this district shall also include lots platted prior to January 1, 2003 which have a minimum lot area prior dwelling unit of 7,500 square feet
2. Maximum height:
Residences – two (2) stories, not exceeding thirty-five (35) feet from finished grade
3. Minimum front yard – twenty-five (25) feet from street right-of-way
4. Minimum side yard:
 - a. Total side yards shall be twenty (20) percent of lot width. No side yard shall be less than ten (10) feet from property line
 - b. Corner Lots – twenty-five (25) feet from street right-of-way
5. Minimum rear yard: Twenty-five (25) feet from property line
6. Minimum lot width – Seventy (70) feet
7. Minimum lot depth – One hundred twenty (120) feet

C. Development and Performance Standards.

1. Residential Design Manufactured Homes may be utilized in this residential district if such dwelling conforms to the height and area requirements as set forth above and complies with the following additional requirements:
 - a. The roof must be covered with material that is customarily used on site-built dwellings, including but not limited to approved wood, or asphalt composition shingles, but excluding corrugated aluminum, corrugated fiberglass, or corrugated metal roof.
 - b. Exterior siding shall be of a 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 the local building code.

- c. The home shall be installed in accordance with the recommended installation procedures of the manufacturer and the standards set by the International Conference of Building Officials (ICBO) and published in “Guidelines for Manufactured Housing Installations” currently in effect at the time of installation. A continuous, permanent masonry foundation on top of the footing or masonry curtain wall, unpierced except for required ventilation and access which may include basements and garages, shall be installed under the perimeter of the home, also in accordance with the ICBO “Guidelines for Manufactured Housing Installations” currently in effect at the time of installation.
 - d. The required door must have a minimum of three (3) feet by three (3) feet landing which is constructed to meet the requirements of the local building code.
 - e. All manufactured home running gear, tongues, axles, and wheels must be removed at the time of installation of the home on the lot.
 - f. Any addition or attached garage to a residential-design manufactured home shall comply with all construction requirements of the local building code.
 - g. At the point of highest elevation of the finish grade, maximum height of the foundation/curtain wall will be a maximum of ten (10) inches and a minimum of eight (8) inches.
2. An accessory use shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.
 3. A shed is by definition an Accessory Structure, but sheds of less than 120 square feet shall be permitted by right within this zoning district upon obtaining all necessary building permits, including determination that the proposed accessory structure has not been located on/within any platted or recorded easement, or over any known utility. The combined footprint of all Accessory Structures, including sheds, may not exceed the footprint of the Principal Building or 30% of the Lot Area.

7.06 GARDEN AND PATIO HOMES, TOWNHOUSES AND CONDOMINIUMS (R-5)

The zoning of property as R-5, Multi-Family district is intended to provide for the development of well-designed Garden homes, Townhouses, and condos with emphasis on open space and access to light and air. The R-5 District allows for development up to six (6) dwelling units per acre.

Setbacks associated with any R-5 district shall be established as part of the platting process, as this district is not intended to be applied to a single structure.

A. Use Regulations.

No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the R-5, Single-Family Residential District, subject to all applicable development and performance standards:
 - a. Townhouse – A one family townhouse dwelling unit, with a private entrance which is part of a structure whose dwelling units are attached horizontally in a linear arrangement, and having a totally exposed front and rear wall to be used for access, light and ventilations.
 - b. Garden and Patio Home – A detached or common walled single family patio house unit situated on a reduced size lot that orients outdoor activities within designated rear or side yard patio areas.
- b. Condominium – A multiple dwelling condominium development containing individually owned dwelling units and jointly owned and shared areas and facilities, pursuant to the condominium laws of the State of Kansas.
- c. Parks.
2. Conditional uses: The following uses shall be permitted in the “R-5” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Articles 6 and 8 of this Zoning Code.
 - a. Community buildings owned and operated by the city.
 - b. Churches and their accessory buildings.
 - c. Public libraries.
 - d. Public schools, elementary schools and high schools and private schools having a curriculum equivalent to and substantially the same as that of a public elementary or public high school but not including private kindergartens or nursery schools accommodating 10 or more students.
 - e. Public golf courses operated for commercial purposes and open to anyone who applies, except miniature golf courses and driving ranges.
 - f. Safety services.
 - g. Home Occupation.
 - h. Detached accessory structures: Provided, that they are located within the side and/or rear yard of a lot and are set back a minimum of five (5) feet from any property line, and are not located upon an easement. An accessory

use shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.

3. Prohibited uses:
 - a. Manufactured housing
 - b. Mobile Home

B. Height and Area Regulations for R-5 Developments.

The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for parking/paving and yards, and the minimum site area per dwelling unit permitted on any lot shall be as follows, except as otherwise provided in these Regulations relating to Height and Area Regulations, Exceptions, and requirements set forth within the Subdivision Code:

1. Maximum density per acre – 6 dwelling units
2. Maximum height:
Residences – two (2) stories, not exceeding thirty-five (35) feet from finished grade
3. Minimum dwelling unit – 1,200 square feet

C. Development and Performance Standards for R-5b Developments

1. Parking and Loading – See Article 9
2. Sign Code – As adopted by the Governing Body
3. Landscaping and Screening – See Article 10
4. Connection to municipal utilities is a requirement for this zoning classification.
5. An accessory use shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.

7.07 SINGLE FAMILY/ZERO LOT LINE RESIDENTIAL (ZLL) (R-5B)

The “R-5b” Single Family/Zero Lot Line Residential District is intended to accommodate those types of residential developments that provide minimal yards, in order to create high quality single family homes with reduced yard maintenance requirements. Setbacks associated with any R-5b district shall be established as part of the platting process, as this district is not intended to be applied to a single structure.

A. Use Regulations.

No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the “R-5b” Single Family/Zero Lot Line Residential District, subject to all applicable development and performance standards:
 - a. Single-family residences with a minimum of one thousand one hundred and seventy (1,170) square feet of living space.
2. Conditional uses: The following uses shall be permitted in the “R-5b” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Article 5.03.
 - a. All Conditional Uses listed for the R-5 district.
 - b. Detached Accessory Structures: provided, that they are located within the rear yard of a lot and are set back a minimum of five (5) feet from any property line, and are not located upon an easement.. An accessory use shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.
 - c. Residential Design Manufactured housing in accordance with the standards provided for the R-3 district.

B. General Conditions.

1. Land used for an “R-5b” District:
 - a. Are typically to be located as a self-contained unit of development such as created by (1) a cul-de-sac or (2) zero lot line (ZLL) lots which 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.
 - 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 that may be created by the particular design concept.
2. 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 most minimum setback. Such wall shall be constructed of the same material as the other exterior walls of the dwelling unit.
4. 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.

6. In the event that within two years following approval by the Governing Body, the applicant does not initiate construction in accordance with the plans and conditions so approved, the Planning Commission may initiate action to change the zoning district classification of the property. A public hearing shall be held at which time the applicant shall be given any opportunity to show why construction has been delayed. Following the hearing, the Planning Commission shall make findings of fact and an appropriate recommendation to the Governing Body for official action.

C. Height Regulations and Area Regulations.

The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for parking/paving and yards, and the minimum site area per dwelling unit permitted on any lot shall be as follows, except as otherwise provided in these Regulations relating to Height and Area Regulations, Exceptions, and requirements set forth within the Subdivision Code:

1. No building shall exceed two stories or 35 feet in height.
2. Minimum area of dwelling – 1,170 square feet for each family.
3. Lot area - the lot area for “R-5b” Single Family Dwellings and accessory buildings shall be not less than 5,000 square feet.
4. Lot width - the lot width shall be not less than 50 feet.
5. Lot depth - the minimum lot depth shall be not less than 90 feet.
6. Front yard.
 - a. In all locations where building lines or setback lines or front yard lines are shown on plats which have been approved by the commission and which are recorded in the office of the register of deeds of Sedgwick County, the minimum front yard setback shall be the same as the distance between the front line and the building or setback line shown on the plat.
 - b. In the “R-5b” Single Family Dwelling/Zero Lot Line District, the minimum front yard setback shall be 15 feet on interior lots. 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 zero lot line lot.
7. Side yard.
 - a. In all locations where building lines or side lines on corner lots are shown on plats which have been approved by the commission and which are recorded in the office of the register of deeds of Sedgwick County, the minimum width of the side yard shall be the same as the distance between the side lot line and the building line shown on the plat.
 - b. A minimum of 10 feet shall be maintained between the adjacent residential structure. Overhanging eaves and gutters are permitted, provided that provisions for their extension and maintenance over adjacent property is contained in the restrictive covenants.

8. Rear yard.
 - a. There shall be rear yard having a depth of not less than 15 feet.
 - b. Provided further, that chimneys and egress windows may project into the required rear yard but shall not encroach upon any platted or recorded easement.
 - c. Accessory building shall be not less than five feet from the rear lot line, nor shall they encroach on any platted or recorded easement.

D. Development and Performance Standards for R-5b Developments

1. Parking and Loading – See Article 9
2. Sign Code – As adopted by the Governing Body
3. Landscaping and Screening – See Article 10
4. Connection to municipal utilities is a requirement for this zoning classification.

7.08 MULTI-FAMILY DISTRICT (R-6)

The zoning of property as R-6 Multi-Family District, is intended to provide for development of well-designed garden apartment complexes with emphasis on open space and access to light and air. The R-6 district allows development of up to twelve (12) dwelling units per net acre. Apartment projects in the R-6 district will all be low-rise developments with commonly maintained landscaped open space.

A. Use Regulations. No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the “R-6” Multi-Family District, subject to all applicable development and performance standards:
 - a. Multifamily (attached) dwellings with not less than 800 square feet minimum of living space.
 - b. Leasing office for the apartment complex.
2. Conditional uses: The following uses shall be permitted in the “R-6” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Article 5.03.
 - a. Generally - Non-residential uses which are proposed for the benefit of or as an amenity to a particular subdivision and not for the use by the general public, i.e., neighborhood pools, clubhouses, etc.
 - b. Community buildings owned and operated by the city.

- c. Churches and their accessory buildings.
- d. Public libraries.
- e. Public schools, elementary schools and high schools and private schools having a curriculum equivalent to and substantially the same as that of a public elementary or public high school but not including private kindergartens or nursery schools accommodating 10 or more students.
- f. Public golf courses operated for commercial purposes and open to anyone who applies, except miniature golf courses and driving ranges.
- g. Safety services.
- h. Home Occupation.
- i. Detached accessory structures: Provided, that they are located within the side and/or rear yard of a lot and are in accordance with all setback requirements. An accessory use shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.
- j. Boarding and lodging houses.
- k. Private Kindergartens, nurseries, doctors' offices, hospitals and clinics, but not small animal hospitals or animal clinics.
- l. Storage garages and parking lots for storage only.
- m. Intensive care facilities.

B. Height and Area Regulations for R-6 Developments

The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for parking/paving and yards, and the minimum site area per dwelling unit permitted on any lot shall be as follows, except as otherwise provided in these Regulations relating to Height and Area Regulations, Exceptions, and requirements set forth within the Subdivision Code:

- 1. Minimum district size – one (1) net acre;
- 2. Minimum lot area per dwelling unit – three-thousand-six-hundred-thirty feet (3,630)
- 3. Maximum height:
 - a. Residences – three (3) stories, not exceeding forty (40) feet from finished grade.
 - b. Nonresidential structures and uses – seventy-five (75) feet, provided such structure is set back from all property lines a distance equal to or greater than its height.
- 4. Minimum front yard – thirty (30) feet from street right-a-way.

5. Minimum side yards:
 - a. Fifteen (15) from property lines.
 - b. Seventy-five (75) feet from property lines adjoining land zoned C-2 through M-2 inclusive.
 - c. Corner lots – thirty (30) feet from street right-of-way
6. Minimum rear yard:
 - a. Thirty-five (35) feet from property line
 - b. Seventy-five (75) feet from property lines adjoining land zoned C-2 through M-3, inclusive
7. Minimum distance between building – forty-five (45) feet
8. Minimum Parking/paving setbacks shall be the same as required front, side and rear yards

D. Development and Performance Standards for R-6 Developments

1. Parking and Loading – See Article 9
2. Sign Code – As adopted by the Governing Body
3. Landscaping and Screening – See Article 10
4. Connection to municipal utilities is a requirement for this zoning classification.

7.09 MANUFACTURED HOME PARK (MHP)

The “MHP” Manufactured Home Park District is intended to accommodate those types of residential developments that accommodate those dwelling structures consisting of one or more mobile components manufactured to the standards embodied in the Federal Manufactured Home Construction and Safety Standards Act generally known as the HUD Code. Such units shall be connected to all utilities in conformance with applicable regulations. This shall not include a “residential-design manufactured home.” (K.S.A. 12-742). The following conditions shall be attached to the recorded deed of the land and shall be complied with by the present and future owners until such time as this use is discontinued. Such homes will not be allowed on individually owned zoning lots. A Manufactured Home Park Ordinance or Code of the City may further govern Manufactured Home Parks.

A. Use Regulations.

No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the “R-5b” Single Family/Zero Lot Line Residential District, subject to all applicable development and performance standards:
 - a. Manufactured home park.
 - b. Manufactured home subdivision.
2. Conditional uses: The following uses shall be permitted in the “MHP” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Article 5.03.
 - a. Development of natural resources and extraction of raw materials such as rock, gravel, sand, fill dirt, soil, etc.
 - b. Parks, playgrounds and community buildings owned and operated by the city.
 - c. Churches and their accessory buildings.
 - d. Public libraries.
 - e. Public schools, elementary schools and high schools and private schools having a curriculum equivalent to and substantially the same as that of a public elementary or public high school.
 - f. Public golf courses operated for commercial purposes and open to anyone who applies, except miniature golf courses and driving ranges.
 - g. Office of a physician, dentist, musician or other professional person.
 - h. Private kindergartens, nurseries, doctors’ offices, hospitals and clinics, but not small animal hospitals or animal clinics.
 - i. Storage garages and parking lots for storage only. A storage shed, building, or garage shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.
 - j. Intensive care facilities.

B. Height and Area Regulations for MHP Developments

The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for parking/paving and yards, and the minimum site area per dwelling unit permitted on any lot shall be as follows, except as otherwise provided in these Regulations relating to Height and Area Regulations, Exceptions, and requirements set forth within the Subdivision Code:

1. Height Regulations. No building or structure shall exceed 35 feet in height.
2. Area Regulations.
 - a. Site Area: The minimum site area for manufactured home parks or manufactured home subdivisions shall be 5 acres.

- b. Lot Area:
 - i. The minimum lot area in manufactured home parks shall be 3,200 square feet for each manufactured home or mobile home.
 - ii. The minimum lot area in manufactured home subdivisions shall be 5,000 square feet, with no more than 50% lot coverage.
- 3. Lot Width. The minimum lot widths in manufactured home parks or manufactured home subdivisions shall be 40 feet.
- 4. Lot Depth. The minimum lot depth in manufactured home parks or manufactured home subdivisions shall be 80 feet.

C. Setbacks

- 1. In all locations where building lines or setback lines are shown on plats that have been approved by the commission and that are recorded in the office of the register of deeds of Sedgwick County the minimum front yard shall be the same as shown on the plat.
- 2. In all other locations the setbacks shall be:
 - a. **Manufactured Home Parks.** All structures within the Manufactured Home Parks, whether permanent or temporary, except as allowed by Street and Parking Regulations, shall be setback at least 25 feet from any public street rights-of-way, at least 10 feet from any private roadway or private street, and must maintain a setback no less than 10 feet from any side or rear manufactured home/mobile home space boundary.

All manufactured homes/mobile homes shall be located as to maintain a clearance of not less than 20 feet from another manufactured home/mobile home or appurtenance thereto within the same manufactured home park.
 - b. **Manufactured Home Subdivisions.** All structures within Manufactured Home Subdivisions shall be setback at least 25 feet from street rights-of-way or front lot lines, at least 20 feet from the rear lot line, and at least 6 feet from the side lot lines. Garages and carports shall be located in the side or rear yard. Any structure established for any main use, other than for dwelling purposes, shall comply with the same yard requirements for that use to be located in “A” Single Family dwelling district.

D. Street and Parking Regulations.

- 1. All manufactured home park spaces shall abut upon a park roadway or private street, with no manufactured home/mobile home having its direct access from a public street or highway unless such manufactured home/mobile home is located in a manufactured home subdivision, and unless in unusual circumstances the city deems that manufactured home/mobile homes shall have direct access from a public street or highway. All roadways and private streets shall have unobstructed access to a public street or highway, with all dead end roadways being provided an

adequate vehicular turn around (cul-de-sac) with a diameter of not less than 80 feet. All roadways shall meet the following requirements:

- a. Widths. All manufactured home spaces shall abut a private street or park roadway that maintains a street easement width of 50 feet and a paved width of 30 feet.
 - b. Curbs and Gutters. All private streets and park roadways shall have curbs and gutters on each side.
 - c. Parking and Layout. Spaces shall be laid out in such a manner as to accommodate easy access for service and emergency vehicles. Private streets and park roadways shall be plainly marked as to speed, traffic control, and other similar items.
 - d. Surface. All park roadways and private streets shall be surfaced with concrete, asphaltic concrete or asphalt in accordance with the City's standard for paving and drainage improvements.
2. There shall be no on street parking allowed on any private or public street located in the Manufactured Home Park and Manufactured Home Subdivision district. Surfaced off-street parking shall be provided for each manufactured home/mobile home space. Off-street parking should be surfaced with concrete or similar material upon approval by the Zoning Administrator. Asphalt is a prohibited material for off-street parking.
 3. Each manufactured home/mobile home space shall be allowed one detached carport or similar structure for protected off-street parking coverage, provided that such structure shall not project into the front yard setback more than 5 feet, and provided that no off-street parking accessory structure shall be located in a dedicated easement. Such structure shall be constructed from a non-combustible material and shall be unenclosed with the exception of a roof.

E. Recreations, Landscape, and Screening

1. Each manufactured home park shall devote an area of land not to exceed 10 percent (10%) of the tract for developed recreational area - parks, playgrounds, and/or sidewalks. Individual recreational areas shall not be less than 5,000 square feet. Except for sidewalk improvements, required setbacks, driveways, and off-street parking spaces shall not be considered as recreational space.
2. Manufactured home parks shall be screened from all zoning districts other than the Manufactured Home Park or Manufactured Home Subdivision district. Screening shall be a solid or semi-solid fence or wall which is a minimum of six feet and a maximum of eight feet high.
3. In lieu of such a fence or wall, a landscape buffer may be provided not less than 25 feet in width and shall be planted with coniferous and deciduous plant material so as to provide proper screening for the park. When the landscape buffer is used, the

buffer shall not be considered as any part of a required rear yard for a manufactured home space.

4. The fence, wall or landscape buffer shall be properly monitored and maintained by the owner or the HOA.

7.10 PLANNED UNIT DEVELOPMENT RESIDENTIAL DISTRICT (R-PUD)

The “R-PUD” Planned Unit Development Residential District is intended to provide for development of innovative residential development.

A. Use Regulations.

No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: Residential uses pursuant to a Planned Unit Development. (PUD).
2. Conditional uses: The following uses shall be permitted in the “R-PUD” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Article 5.03.
 - a. All conditional uses listed in the R-4 District

B. **PUD Height and Area Regulations.** Height and Area Regulations, Setbacks, Streets and Parking Regulations for the R-PUD District shall be pursuant to an approved plat, and may differ from development to development within the R-PUD district.

7.11 NEIGHBORHOOD COMMERCIAL, OFFICE AND RETAIL (C-1)

The zoning of property as C-1, Neighborhood Commercial Office and Retail District, is intended to provide for development of small scale retail business uses within the City. This district permits limited retail activities that are conducted wholly indoors. The Neighborhood Commercial Office & Retail District is intended specifically for development of limited commercial centers in areas that are sensitive because of adjoining land uses, or natural features.

A. Use Regulations.

No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses set forth herein, or similar uses subject to all applicable development and performance standards.

1. Permitted uses: The following uses shall be permitted by right in the “C-1” Neighborhood Commercial Office and Retail District, subject to all applicable development and performance standards:
 - a. **Offices**, including the following:

Abstract and title companies

Accountants' offices

Advertising agencies.

Architects' offices

Artist studios.

Attorneys' offices

Broadcasting or recording studios without transmitter towers.

Computer and data processing offices.

Dental offices and clinics

Engineers' offices

Medical offices and clinics

Offices, administrative, clerical sales services, including the display of sample or inventory items made available for demonstration purposes and where such display constitutes less than half of the total floor area. Such display area shall be limited to small business machines, desk computers and similar types of office aids and hardware. Such material shall not be extended to office furniture, larger appliances or machines. Repairs and services of authorized material is permitted as an accessory use.

Optician and optical dispensaries

Photography studios.

Real estate offices.

Religious offices and headquarters

Travel agencies

b. **Retail stores and personal service businesses**, including the following:

Artist, craft and hobby supply store.

Camera shop and photographic supplies.

Clothing and costume rental store.

Drug store, pharmacy or apothecary.

Florist shop.

Hair stylists (barber and beauty shops).

Jewelry and jewelry repair.

Key shop.

Medical and orthopedic appliance stores.

Picture framing shop.

Shoe repair shop.

Tailor shop.

- c. **Residential uses**, as follows:

Each business or office may have an owner residence within the primary structure of the business or office structure.

- d. **Miscellaneous type uses**, including: Off-street parking and loading accessory to the principal use established on the zoning lot, all in conformance with the standards set forth within Article 6 of this Zoning Code.

2. **Conditional uses:** The following uses shall be permitted in the “C-1” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Article 5.03.

- a. Safety services
- b. Wireless Telecommunication Facilities
- c. Accessory uses when determined to be subordinate in area, extent and purpose to the principal use served, and is determined by the commission to contribute to the necessity of the principal residence or business established on the zoning lot, all in conformance with the standards set forth within Article 6 of this Zoning Code.

B. **Height and Area Regulations for C-1 Developments**

The maximum height of buildings and structures, the minimum district size, the maximum district size, setbacks for buildings and parking/paving, maximum floor area ratio and minimum landscape open space ratio shall be as follows:

1. District size:
- a. Minimum district size -- one (1) net acre.
- b. Maximum district size -- three (3) net acres.
2. Maximum height -- two (2) stories, not exceeding thirty (30) feet from finished grade.
3. Minimum setbacks:
- a. Buildings:
- i. Forty (40) feet from street right-of-way

- ii. Twenty (20) feet from property lines adjoining land zoned AG through R-6, inclusive. Buildings over twenty (20) feet in height shall set back an additional one (1) foot for every two (2) feet in height.
 - iii. Ten (10) feet from property lines, unless attached to adjacent structure approved by City. Non-attached side shall be twenty (20) feet
 - b. Parking/paving:
 - i. Fifteen (15) feet from street right-of-way
 - ii. Twenty (20) feet from property lines
 - c. The City may allow a ten (10) foot setback for buildings less than thirty (30) feet in height or parking when the proposed development is part of a multi-structure complex.
- 4. Business Area regulations.

No individual business shall occupy more than 10,000 square feet of floor area with the maximum 30% of the overall lot area coverage; provided, however, an Administrative Exception to this limitation may be granted subject to the following conditions:

- a. A basement area, not exceeding the area used for office or sales use, which is used only for storage, records, mechanical equipment or other non-person uses.
 - b. Such area shall be determined to be non-traffic generating and deemed to be exempt from all off-street parking requirements.
 - c. Any Administrative Exception to the floor area shall apply only to the use set forth in the application. Any change of occupancy will be subject to all limitations of these regulations.
- 5. Minimum landscaped open space ratio -- twenty (20) percent of net site area.

C. Development and Performance Standards for C-1 Districts

- 1. The intent of the C-1 District is to provide for single buildings with single or multiple tenants with office and light commercial uses.
 - a. All business establishments, other than office, shall be retail or service establishments dealing directly with the consumer.
 - b. Service establishments shall be the type that deal primarily with services for persons or businesses, or limited retail sale that do not require the use of vehicles and heavy equipment in the operation of the business other than for the delivery of goods or services to the home; e.g. florist truck, etc. Vehicles stored or retained on the site overnight shall be stored within the main structure, or an enclosed detached garage as approved by the commission.

- c. The use is limited to offices and limited retail and service uses which are considered to be compatible with and not unduly burdensome upon adjacent residential properties or residential areas located nearby.
 - d. The use is compatible to other businesses located nearby within the district itself.
 - e. The nature of any use located within the district shall be smaller, less intense uses.
 - f. An accessory use shall not include converted semi-trailers, railcars, metal storage boxes not specifically designed to serve as storage buildings in residential yards, or any similar item as determined by the zoning administrator.
2. Parking and Loading.
- a. Required off-street parking shall be determined to be not less than that required by the floor area used for office and sales purposes.
 - b. Any business within the zone shall not generate more traffic per day upon its abutting streets than may be accommodated within its permitted parking areas.
 - c. A business may have no more than two (2) delivery vehicles, provided that the delivery vehicles shall be customary passenger automobiles or small pickup trucks or vans.
 - d. Additionally, see Article 9.
3. Sign.
- a. No advertising banners, flags, lights and similar attention devices shall be permitted without a Temporary Advertising Permit (TAP) from the City.
 - b. Additionally, see adopted Sign Code.
4. Landscaping and Screening.
- a. Exterior lighting fixtures shall be shaded so that direct light is directed away from adjacent residential property.
 - b. Additionally, see Article 10.
5. Unless a waiver is approved by the City for a solar design or improved site design, buildings should be oriented so that fronts of buildings face the street frontage of the property.
6. Prohibited Uses or Practices in the C-1 District.
- a. Sale of merchandise from a vehicle or temporary structure is prohibited, except as provided for by temporary sales and events permit.
 - b. Delivery services shall not be permitted.

- c. No merchandise shall be stored or displayed outside of an enclosed building, and no equipment or vehicles other than operable passenger vehicles shall be stored outside a building.
- d. No business establishments shall offer goods or services by way of drive-up windows or directly to customers' parked motor vehicles.
- e. Motor vehicles or heavy equipment parts, service or fuels shall not be displayed in this district.

7.12 PLANNED UNIT DEVELOPMENT - COMMERCIAL OFFICE AND RETAIL (C-2)

The "C-2" Planned Unit Commercial Office and Retail District is intended to provide for development of a variety of general commercial uses, and innovative residential and/or commercial uses.

A. Use Regulations.

1. Permitted uses: The following uses shall be permitted by right in the "C-2" Planned Unit Development - Commercial Office and Retail District, subject to all applicable development and performance standards:
 - a. Commercial office and retail uses pursuant to a Planned Unit Development (PUD).
 - b. Residential spaces pursuant to a Planned Unit Development.
2. Conditional uses: The following uses shall be permitted in the "C-2" District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Article 5.03.
 - a. All conditional uses permitted in all other more intensive zoning districts.
 - b. All uses generally considered retail or commercial, and typically located near residential areas, to meet the needs of consumers.

B. Development and Performance Standards for C-1 Districts

PUD Height and Area Regulations. Height and Area Regulations, Setbacks, Streets and Parking Regulations for the R-PUD District shall be pursuant to an approved plat, and may differ from development to development within the R-PUD district.

Signage. All signage within a PUD shall be in conformance with the Sign Code of the City and the specific terms of the Planned Unit Development.

Landscaping. All landscaping within a PUD shall be in conformance with the terms of the Planned Unit Development landscape plan.

7.13 PLANNED UNIT DEVELOPMENT - INDUSTRIAL DISTRICT (M-1)

The “M-1” Planned Unit Development - Industrial District is intended to encourage innovation in commercial and industrial development, through designs allowing for a more efficient use of land, incorporation of new technologies in urban land development, and incorporation of a greater variety and flexibility in type, design, and layout of structures.

A. **Use Regulations.** No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except in conformance with those uses provided for below.

1. Permitted uses: The following uses shall be permitted by right in the “M-1” Planned Unit Development - Industrial, subject to all applicable development and performance standards:
 - a. Commercial office and retail uses pursuant to a Planned Unit Development.
 - b. Manufacturing and industrial uses pursuant to a Planned Unit Development.
2. Conditional uses: The following uses shall be permitted in the “M-1” District if reviewed and approved by the Planning Commission in accordance with the procedures and standards of Article 5.03.
 - a. All conditional uses listed in all other more intensive zoning districts.
 - b. All uses generally considered intensive commercial, or manufacturing or industrial, and typically not located near residential areas, as such products are not typically purchased by consumers for their day-to-day use, and are more likely to produce odor, noise, vibration, intensive lighting, heavy traffic, or other offensive effects

B. **Accessory Uses.** Accessory uses and structures in the Industrial District shall be permitted pursuant to the specific terms of a Planned Unit Development, or as conditional uses pursuant to the procedures set forth within Article 5.03. The following are accessory uses and structures:

1. Automotive repair and maintenance shops, maximum of two (2) bays in conjunction with gasoline service stations.
2. Car washes (single-bay, automatic) in conjunction with gasoline service stations.
3. Dwelling units for security, management or maintenance personnel.
4. Fences or walls.
5. Flag poles, under sixty (60) feet in height.
6. Food service and vending machines for tenants.
7. Gate houses.

8. Parking and loading areas.
9. Private parking garages.
10. Recreational areas and facilities.
11. Satellite dish antennas.
12. Signs.
13. Solar collectors.
14. Storage lots for vehicles awaiting repair, with screening requirements.

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ARTICLE 8

HOME OCCUPATIONS, NON-CONFORMING USES, TEMPORARY ZONING, PLANNED UNIT DEVELOPMENT, and WIRELESS TELECOMMUNICATIONS FACILITIES SITING REGULATIONS

8.01 HOME OCCUPATIONS

Home Occupations are activities accessory to uses in the Residential Use category, and are usually approved as a conditional use, but may be appropriate for a special use. This section sets forth those additional regulations applicable specifically to such Home Occupations to ensure that home based businesses will not be a detriment to the character and livability of the surrounding neighborhood. The regulations are intended to ensure that the Home Occupation remains subordinate to the residential use, and that the residential viability of the Dwelling and neighborhood is maintained. These regulations recognize that many types of work can be done in a home with little or no impact upon the surrounding neighborhood.

A. Authorization Specific to Home Occupations. Use of residential property for a Home Occupation requires approval the Planning Commission as a conditional use unless otherwise specified in this section. Maintaining a Home Occupation permit, city business license, and all other applicable State and local permits associated with the permitted use, shall be standard terms of any Home Occupation granted a conditional use to operate a home based business/occupation within the City, and shall be deemed incorporated by reference within any ordinance approving such use unless a waiver of such term is lawfully stated therein.

B. Use Limitations. In addition to all of the use limitations specifically applicable to the district in which it is located, the following restrictions are applicable and incorporated by reference into any ordinance approving a Home Occupation. If the enabling Ordinance provides conditions more restrictive than the following, the more restrictive conditions shall apply.

1. The Dwelling and site shall remain residential in appearance and characteristics. Internal or external changes that will make the Dwelling appear less residential in character or function are prohibited. Examples of such prohibited alterations include construction of Parking Lots, paving of required Setbacks, or the addition of commercial-like exterior lighting. Approval of design modifications associated with a Home Occupation shall be incorporated into the building permit process. Additionally, the permittee may be required to provide to the building inspector a letter of approval from any applicable HOA regarding any design modifications to the outside of the primary structure associated with the Home Occupation.
2. The Home Occupation shall not occupy more floor area than floor area devoted to the primary use as a residence.
3. No equipment shall be used which shall create undue noise, vibration, electrical interference, smoke or particulate matter emission, power demands or odors.
4. Hazardous substances are prohibited, except at the “consumer commodity” level, as that term is defined in 49 C.F.R. Sec. 171.8.

5. There shall be no outside storage or display of goods or equipment or materials used in the Home Occupation.
6. No more than two (2) persons shall be engaged in such Home Occupation other than a person occupying such dwelling unit as his or her residence.
7. The Home Occupation shall be conducted entirely within an enclosed structure.
8. One non-animated, non-illuminated, accessory identification sign of no more than 2 square feet in area shall be permitted. The allowed sign shall be placed flat against a wall or door, displayed in a window, or within ten feet (10') of the Building entrance. Vehicles, including trailers, shall not be used as signs. Otherwise, all signs shall be permitted in accordance with the Sign Code of the City of Bel Aire.
9. Zoning Code authorization of a Home Occupation shall in no way be construed to override any restrictive covenant(s) of record.
10. No more than two (2) vehicles which advertise or assist in operation of the business shall be parked in the front setback at the Home Occupation at one time.
11. There shall be no overnight parking of vehicles rated over one (1) ton in the front setback.
12. Truck deliveries or pick-ups of supplies or products, associated with business activities, are allowed at the Home Occupation only from 7 a.m. to 9 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods.
13. Except for Day Care Homes or Bed and Breakfast Inns, customers or clients may visit the site only during the hours of 7 a.m. to 7 p.m. Only 10 customers or clients may visit the site in a day.
14. Day Care homes are regulated as a Home Occupation, but must additionally meet all other applicable State and local licensing provisions.
15. Bed and Breakfasts and Bed and Breakfast Inns are regulated as Home Occupations but must additionally meet all other applicable State and local licensing provisions.
16. Conditional Use permits issued for Home Occupations DO NOT run with the land, but are specific to the applicant. An Ordinance or Order authorizing a Home Occupation must be filed with the Register of Deeds to put third parties on notice that all subsequent purchasers of the requirement to seek a special use permit to utilize a residential property for a Home Occupation.

C. Use Reviewed Biannually. Home Occupations are required to register with the Zoning Administrator prior to their establishment to receive a Home Occupation permit. Such permit verifies that the City has reviewed the subject property to determine on-going compliance with all terms of the Special Use, as set forth within the specific enabling ordinance and those terms provided within the zoning regulations. At the time of registration, the applicant shall provide an affidavit pledging compliance with all applicable regulations, standards, and conditions. A Home Occupation permit will be issued by the Zoning Administrator for a 2-year period. It is the responsibility of the applicant to obtain the permit every 2 years. The permit is tied to the applicant and to the Lot occupied by the Home Occupation. Permits are not transferable to other sites or to

other operators. The applicant shall also demonstrate at the time of registration compliance with neighborhood notice requirements. Failure to obtain the biannual review and permit is grounds for revocation of the Special Use.

D. **Neighborhood Notice.** As part of an application for a conditional use to allow a home based business/occupation the applicant shall notify the registered Neighborhood Association and nearby landowners of the request to establish a Home Occupation. The applicant shall prepare a notice that describes the standards set forth in this section, the type of business activities to take place at the site, the hours of operation, and either the existence of a nonresident employee or the expected number of customers/clients on a daily basis. The notice shall include the number of people and vehicles that will be present at the home on a daily basis. If the proposed business/occupation will have non-standard hours of operation, the notice will clearly provide the anticipated times/dates/hours of operation and estimate person and vehicle usage of the property at its highest levels, as well as at regular levels.

1. The applicant shall send notice to all Registered Neighborhood Associations whose boundaries include the site and to all Owners of property within 200 feet of the subject site. At the time of application submittal, the applicant shall submit to the Zoning Administrator a list of the Owners and addresses notified, a copy of the notice that was sent, and a signed Statement verifying that notice requirements have been met. It is the responsibility of the applicant to gather the information to fulfill this requirement.

2. **The following statement shall be at the top of every notice sent out pursuant to this section:**

Notice of Proposed Home Occupation

This letter is being sent to Landowners, or a Registered Neighborhood Association, near the site of a proposed Home Occupation. It is being sent for the purpose of informing the Landowner and other interested parties about the proposed homebased business. This letter does not grant the recipient and/or Landowner any legal rights to challenge the proposed development, instead, it is being provided solely to inform nearby Landowners of the proposed plans of one of your neighbors. For further information, contact the Bel Aire Zoning Administrator at 7651 East Central Park Avenue, Bel Aire, Kansas 67226 (316) 744-2451 ext (120).

E. **Revocation** A Home Occupation may be revoked in association with the applicable use revocation standards. Additionally, when a Home Occupation permit has been revoked, a new Home Occupation permit will not be issued to the applicant or for use upon the applicable property site for two (2) years to support the residential nature of the district, unless the underlying zoning designation is changed to a less intensive designation.

F. **Standards Associated with Specific Home Occupations.**

1. **Day-Care Home: Child or Adult.**

- a. Employees other than immediate family members residing on the premises may be employed if the Governing Body finds that neighboring properties will not be adversely impacted. In no case shall the number of employees exceed the adult to child ratios in accordance with State of Kansas, Department of Health and Environment regulations on child-care centers.
- b. The initial special use permit may be granted for a period of up to twelve (12) months, with multiple renewals granted for periods of up to five (5) years thereafter.
- c. If the Governing Body finds that neighboring properties have been adversely affected, they may, as part of the renewal of special use permit, require that the number of children and/or employees be reduced to the extent that adjoining properties will not be adversely impacted.
- d. Not more than twelve (12) children, including the operator's own children, shall receive care during a calendar day.
- e. The owner or operator shall occupy the structure as his or her private residence.
- f. Child group day-care homes shall be operated in accordance with State of Kansas, Department of Health and Environment regulations on child group day-care homes.
- g. Day Care Centers shall maintain a wall or fence, in conformance with the City's Fence Code, at least 4 feet in Height between any play area and any other property.

2. **Residential Real Estate Sales.** Residential real estate sales offices may be permitted by right, or operated under a conditional use permit for the purpose of selling properties located within the subdivision or project under such conditions as may be imposed at the time of approval of the permit. A Conditional Use permit will be issued by the Zoning Administrator for a 2-year period. It is the responsibility of the applicant to obtain the permit every 2 years. The precise location of any such real estate sales office within the subdivision or project shall be indicated on the application for the permit. If the location of such real estate sales office should need to change prior to the end of the existing 2-year permit, the applicant shall apply for a new 2-year permit associated with the new location.

3. **Vehicle Sales and Leasing.**

- a. Customary passenger motor vehicles, all types, sales, leasing and rental (generally items with the following or similar SIC Codes: 551, 552, 7514, 7515). It is the intent of this category to address the intensity, impact and aesthetic appearance of such uses and ensure compliance with all applicable requirements and regulations.

- (1) Such uses shall be located in areas currently developed with similar uses and STANDARD INDUSTRIAL CLASSIFICATION CODE (SIC Code) classification.
 - (2). The display area shall not be placed within a required parking/paving setback area and shall not reduce the capacity of a required parking lot.
- b. Trailers, trucks, recreational vehicles, motorcycles and other motor vehicles, all types, sales, leasing and rental (generally items with the following or similar SIC Codes: 556, 557, 559, 7513, 7519).
- (1). Such uses shall be located in areas currently developed with similar uses and upon parcels abutting a commercially zoned district.
 - (2). The display area shall not be placed within a required parking/paving setback area and shall not reduce the capacity of a parking lot below that required by Parking and Loading.

8.02 NONCONFORMING USES

A. Purpose, Policy and Applicability

1. **Definition.** Zoning nonconformities are those uses, structures, or lots that came into being lawfully but that no longer conform to one or more requirements of these Regulations.
2. **Policy.** It is the general policy of the City to allow uses, structures or lots that came into existence legally and in conformance with then-applicable zoning requirements but that do not conform to all of the applicable requirements of this currently adopted Code to continue to exist and be put to productive use, but to bring as many aspects of such use into conformance with the current Code as is reasonably practicable, all subject to the limitations of this section. The limitations of this section are intended to recognize the interests of the property owner in continuing to use the property but to control the expansion of the nonconformity and to control re-establishment of abandoned uses and limit re-establishment of buildings and structures that have been substantially destroyed.
3. **No nonconformities created by adoption of these Regulations.** No use of a building, structure or property that complied with the zoning ordinance or zoning resolution in effect prior to the effective date of these Regulations shall become or be deemed to have become nonconforming or noncomplying due to adoption of these Regulations. Any use of a building, structure or property and any building, structure or property that complied with the zoning ordinance or zoning resolution in effect prior to the effective date of these Regulations may be rebuilt, repaired or otherwise re-established to the extent that it existed prior to the effective date of

these Regulations.

4. **Zoning Administrator Discretion/Appeals.** Whenever these Regulations shall refer to a percentage of change, lot size, use, etc., the final determination of whether a proposal meets or exceeds such percentage shall be a determination of the Zoning Administrator. Appeals of this, or any, determination of the Zoning Administrator in association with nonconformities shall be to the Board of Zoning Appeals.

B. Definitions. Unless otherwise specifically provided or unless clearly required by the context, the following words and phrases shall have the meaning indicated when used in association with issues of nonconforming use, lot, or structure.

1. “Cost.” The total cost of alteration or repair shall mean the fair market value of the materials, services and labor necessary to accomplish such renovation, repair or restoration. No person may seek to avoid the intent of this Article by doing such work incrementally.
2. “Dimensional Nonconformity.” A nonconforming situation that occurs when the height, size or minimum floor area of a structure, or the relationship between an existing building or buildings and the other buildings or lot lines, does not conform to the regulations applicable to the zoning district in which the property is located.
3. “Effective Date of These Regulations.” Whenever this Article refers to the effective date of these Regulations, the reference shall be deemed to include the effective date of any amendments to these Regulations if the amendment, rather than these Regulations (as originally adopted), creates a nonconforming situation.
4. “Nonconforming Lot.” A platted lot existing on the effective date of these Regulations that does not meet the minimum width, depth and area requirement of the zoning district in which the lot is located and is not subject to a prior variance or Exception.
5. “Nonconforming Structure.” A situation that occurs when, on the effective date of these Regulations, an existing structure or improvement, i.e. parking and landscaping, or the use of an existing structure or improvement no longer conforms to one (1) or more of the regulations applicable to the zoning district in which the structure or improvement is located.
6. “Nonconforming Project.” Any structure, development or undertaking that is incomplete on the effective date of these Regulations, and would be inconsistent with one (1) or more of the regulations applicable to the zoning district in which it is located if completed as proposed or planned.
7. “Nonconforming Sign.” A sign that, on the effective date of these Regulations, does not conform to one (1) or more of the regulations set forth in the City’s Sign Code.
8. “Nonconforming Use.” A situation that occurs when property is used legally for a purpose and then, in any manner, prohibited or made unlawful by the zoning regulations subsequently made applicable to the zoning district in which the property is located. The term also refers to the activity that constitutes the use made of the property.

9. “Nonconforming Site Improvement.” A situation that occurs when, on the effective date of these Regulations, an existing site improvement on a lot, including but not limited to parking areas, storm drainage facilities, sidewalks and landscaping, no longer conforms to one (1) or more of the regulations of these Regulations applicable to the property.

10. “Nonconforming Situation.” A situation that occurs when, on the effective date of these Regulations, an existing lot, structure or improvement, i.e. parking and landscaping, or the use of an existing lot, structure or improvement no longer conforms to one (1) or more of the regulations applicable to the zoning district in which the lot, structure or improvement is located.

11. “Structural Value.” The present-day cost of replacing the structure or improvement.

C. **Nonconforming Uses.**

1. **Maintenance and repair.** Any structure which is part of a nonconforming use protected under this section may be repaired or altered on the same terms set forth for nonconforming structures, under this section.

2. **Enlargement and expansion within a building and enlargement and expansion of a building.** A nonconforming use may be expanded within the floor area of an existing, conforming structure or within an expanded structure, subject to the limitations listed herein. In any residential district, such expansion shall be permitted into an area equal to the original floor area of the nonconforming use, when the expansion:

- a. Does not increase the number of dwelling units;
- b. Includes plans for all off-street parking and loading required to serve the expansion area;
- c. If greater than 50 percent of the original floor area such nonconforming use must make application to the Board of Zoning Appeals, and if such use is found by the Board of Zoning Appeals to be compatible with the neighborhood and not detrimental to the community, as determined by the effect of the expansion on traffic, value of adjacent and nearby properties, and the availability of adequate public facilities and services.

3. **Expansion of outdoor nonconforming uses.** A nonconforming use of premises for which the principal use is not enclosed within a building, such as a salvage yard or a motor vehicle sales lot, may not be expanded except in conformity with the requirements of these Regulations.

4. **Change in use.** A nonconforming use may be changed to a new use when approved by the BZA, provided that the new use shall be of the same general character or of a character less intensive (and thus more closely conforming) than the existing, nonconforming use. The initial determination of whether a proposed use is a conforming use or is less intense shall be made by the City Zoning Administrator, or his/her designee, with an appeal to the Board of Zoning Appeals. In either case,

the determination shall be based on the use hierarchy established by the Zoning Regulations. A nonconforming use, if changed to a conforming use or less intensive nonconforming use, may not thereafter be changed back to a less conforming use than that to which it was changed, or a nonconforming use.

D. Nonconforming Structures.

1. **Maintenance and repair.** Remodeling of a nonconforming structure within the existing building footprint shall be permitted without a variance. Any nonconforming structure damaged to the extent of 50 percent or less of its fair market value by fire, wind, tornado, earthquake, or other natural disaster, may be rebuilt, provided such rebuilding does not increase the intensity of use as determined by the number of dwelling units (for residences) or floor areas or ground coverage (for nonresidential uses). The structure shall not be rebuilt closer to the property line than the original structure or the applicable setback lines, whichever is closer. Nonconforming structures damaged 50% or less of their fair market value by flooding may be rebuilt as set forth in this section, provided such reconstruction shall conform to all requirements of the adopted building code related to construction in flood hazard areas. Any building so damaged more than 50 percent of its value may not be rebuilt, repaired, or used unless it is made to conform to all regulations for buildings in the district in which it is located, provided that such restoration as may be made is to the fullest extent possible in conformance with development standards.
2. **Enlargement and expansion.** Any expansion of the nonconforming structure that increases the degree of nonconformance is prohibited. Other expansions of the structure shall be permitted and shall not require a variance. The initial determination of whether a proposed expansion increases the degree of nonconformity shall be made by the City Zoning Administrator, or his/her designee, with an appeal to the Board of Zoning Appeals.
3. **Relocation.** If a nonconforming structure is relocated within the area to which these Regulations is applicable, it shall be placed only in a location in which it fully conforms with the requirements of these Regulations.
4. **Unsafe structures.** Nothing in this section shall be construed to permit the continuing use of a building found to be in violation of basic life safety or health codes of the City and/or County. The right to continue to use a noncomplying structure shall be subject to all applicable housing, building, health and other life safety and health codes of the City and/or County.

E. Nonconforming Lots. A lot shown on an approved and recorded subdivision plat on the date on which these Regulations became applicable to the lot or a parcel shown on the assessor's records as a separate parcel on such date may be occupied and used although it may not conform in every respect with the dimensional requirements of these Regulations, subject to the provisions of this section.

1. **Vacant lot.** If the lot or parcel was vacant on the date on which these Regulations

became applicable to it, then the owner may use the property as permitted by the applicable zoning district, provided that the use shall comply with applicable dimensional requirements of these Regulations to the maximum extent practicable. If the applicable zoning district permits a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable setback requirements while others would not, then only the uses or intensities that would conform with the applicable setback requirements shall be permitted. Otherwise the owner may seek a variance from such requirements from the Board of Zoning Appeals.

2. **Lot with building or structure.** If the lot or parcel contains a building or structure on the date on which these Regulations becomes applicable to it, then the owner may continue the use of that building or structure and may reasonably expand the structure in any way that does not increase the degree of nonconformity. An increase in building size shall not be deemed to increase the degree of nonconformity unless it increases the encroachment on a required setback. Remodeling of a structure within the existing building footprint or expansion in compliance with this section shall not require a variance but shall be reviewed by the City Zoning Administrator, or his/her designee, as though the lot were conforming.
3. **Lot merger.** If the lot or parcel is smaller than would otherwise be required by these Regulations and such lot or parcel is at any time on or after the date on which these Regulations became applicable to such lot or parcel under common control with an adjacent lot or parcel, then the two shall be considered merged for purposes of these Regulations and shall in the future be considered together for purposes of determining compliance. If the merged lots or parcels contain sufficient area for the actual or proposed use, then they shall be deemed fully conforming. If the merged lots or parcels together do not contain sufficient area for the actual or proposed use, they shall nonetheless be considered together for purposes of reducing the degree of nonconformity. When a nonconforming lot or parcel shall not again be used as a separate lot or parcel, unless it is subdivided from the lot or parcel with which it has been merged; subdivision shall require full compliance with the requirement of these Regulations and the applicable subdivision regulations.

F. Other Nonconformities.

1. **Examples of other nonconformities.** The types of other nonconformities to which this section applies include but are not limited to: fence height or location; lack of buffers or screening; lack of or inadequate landscaping; lack of or inadequate off-street parking; and other nonconformities not involving the basic design or structural aspects of the building, location of the building on the lot, lot dimensions or land or building use. However, development that is consistent with an approved site plan and to the extent that such plan or conditions imposed thereon directly addresses the specific issue involved in the determination of conformity, a nonconformity other than a nonconforming use, structure or lot, as described above,

shall be brought into conformance upon the occurrence of any one of the following:

- a. Any increase on the premises of more than 30 percent floor area or 50 percent value;
 - b. For a property in a commercial or industrial zone, any change in use to a more intensive use when a new certificate of occupancy is required.
2. **Waiver by Variance.** The requirement that these other nonconformities be brought into conformance shall be subject to variance by the Board of Zoning Appeals where it finds that such conformance would involve an unreasonable hardship.
 3. **Policy.** Because other nonconformities involve less investment and are more easily corrected than those involving lots, buildings and uses, it is generally the policy of the City to eliminate such other nonconformities as quickly as practicable.
 4. **Increase prohibited.** The extent of such other nonconformities shall not be increased, with or without a variance.
- G. **Nonconformities Created By Public Action.** When lot area or setbacks are reduced as a result of conveyance to a federal, state or local government for a public purpose and the remaining area is at least 75 percent of the required minimum standard for the district in which it is located, then that lot shall be deemed to be in compliance with the minimum lot size and setback standards of these Regulations, shall not be deemed nonconforming, and need not resort to the Board of Zoning Appeals for such determination.
- H. **Discontinuance.**
1. **Nonconforming use.** When a nonconforming use has been abandoned, such nonconforming use shall not be renewed. When a building containing a nonconforming use has been destroyed or damaged to an extent exceeding 50 percent of its fair market value, such nonconforming use shall not be renewed and the building shall not be restored in a way that is designed primarily for such use.
 2. **Abandonment.** A nonconforming use shall be presumed abandoned when any of the following has occurred:
 - a. The owner has in writing or by public statement indicated intent to abandon the use;
 - b. A less intensive use has replaced the original nonconforming use;
 - c. The building or structure has been removed through the applicable procedures for the condemnation of unsafe structures;
 - d. The owner has physically changed the building or structure or its permanent equipment in such a way as to indicate clearly a change in use or activity to something other than the nonconforming use; or
 - e. When a nonconforming use is discontinued for a consecutive period of one hundred eighty (180) days, or discontinued for any period of time without a present intention of resuming that activity, then the property may thereafter

be used only in conformity with these Regulations.

3. **Overcoming presumption of abandonment.** A presumption of abandonment based solely on the length of time a land use has remained vacant or inactive may be rebutted upon a showing, to the satisfaction of the Board of Zoning Appeals, that during such period the owner of the land or structure:
 - a. Has been maintaining the land and structure in accordance with the current building code and can document a belief that the use was continuing; or
 - b. Has been actively and continuously marketing the land or structure for sale or lease; or
 - c. Has been engaged in activities that would affirmatively prove that there was not an intent to abandon the nonconforming use.

I. **Determination of Nonconforming Status.** In all cases, the property owner shall have the burden of establishing that a nonconforming use or nonconforming structure lawfully exists under these Regulations.

J. **Registration of Nonconformities.**

1. **Rights conditional.** The recognition by the Zoning Administrator of rights given to those using or owning property involving a Nonconformity under these Regulations are specifically conditioned on the registration of the Nonconformity or exemption with the Zoning Administrator. Nonconformities or exemptions so registered shall be deemed to be lawful Uses under the provisions of these Regulations, to the extent documented on the registration form.
2. **Registration process.** Registration shall be required for Nonconformities existing on the effective date of these Regulations, Nonconformities arising because of an amendment to these Regulations, or Nonconformities arising because of a change in jurisdictional boundaries. There shall be no deadline for the registration. The Zoning Administrator shall establish a process for the registration of Nonconformities and shall establish a system for keeping records of the same. The Zoning Administrator shall provide registration forms for this purpose.
3. **Registration determination and appeal.** The Zoning Administrator shall verify the qualification of a Use, Structure, or Lot for registration under this section. The Zoning Administrator shall refuse to permit the expansion, continuance, repair, maintenance or other continuation of nonconforming status for a Nonconformity not registered in accordance with this section. An aggrieved party may appeal the Zoning Administrator's registration or denial of registration to the Board of Zoning Appeals.
4. **Evidentiary considerations.** In verifying the qualification of a Use, Structure or Lot for registration under this section, the Zoning Administrator shall consider all relevant and material evidence, whether submitted by the applicant, by any other person supporting or opposing the claim of Nonconforming rights, or otherwise available to the Zoning Administrator. Examples of relevant evidence that shall be considered includes, but is not limited to, the following materials that may tend to

show the existence of a Use, Structure, or Lot that predates the effective date of the applicable code provision:

- a. photographs, video, or other visual types of evidence that can be verified as predating the effective date of the code provisions involved;
- b. contracts, deeds, or other legal instruments that are dated, whether or not recorded or filed in any public office of recorded;
- c. books, magazine articles, or newspaper clippings that are dated;
- d. tax returns, receipts, or other financial records that are dated;
- e. statements by witnesses, in the form of affidavits, that are made on personal knowledge; and
- f. certificates of occupancy, licenses, or other permits issued by a governmental entity.

K. Appeals. Requests for appeals of decisions of the Building Inspector or Zoning Administrator, or any designee, in relation to a decision concerning any nonconforming situation as set forth within this Article shall be to the Board of Zoning Appeals.

8.03 TEMPORARY ZONING WAIVER.

Temporary Zoning Waiver. Temporary sales and events taking place pursuant to a permit lawfully issued pursuant to City Municipal Code may allow temporary use of real property located within the City of Bel Aire in a manner not generally permitted within the applicable zoning district.

8.04 PLANNED UNIT DEVELOPMENT

A. PUD Planned Unit Development District (“PUD”)

1. **Purpose.** The Planned Unit Development (“PUD”) is a special purpose zoning district or zoning overlay upon an underlying zoning district 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 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 when such deviations are not contrary to the general spirit and intent of this Code.
2. **Initiation and Method of Adoption.** An application for PUD approval shall be submitted in accordance with Article 5 of this Code.
 3. **Uses and Development Standards.**
 - a. **Permitted Uses.** Any Use may be permitted within the PUD zoning District, provided that it is consistent with the purposes of this Code and the approved PUD plan.
 - b. **Development Intensity.** The total number of Dwelling Units and level of nonresidential Development allowed within a PUD shall not exceed the level that can be adequately served by public facilities. To provide information on the capacity of Streets and other facilities serving a PUD, the Zoning Administrator may require the applicant to conduct a traffic impact study or other infrastructure capacity analyses to provide information on the Development's expected impacts on existing and planned facilities.
 - c. **Other zoning standards and regulations.** Applicable zoning standards and regulations may be varied or modified as part of the PUD plan approval and rezoning process: Lot Area, Building Height, Setbacks, Open Space, off-street Parking and Loading Space, Sign, Screening, Landscaping and Compatibility Standards.
 4. **Permitting.** No new or existing building or structure shall be occupied or no change in the character or use of land or of a building shall occur, without a valid certificate of occupancy issued by the City with a signature by the City Administrator, or his/her designee certifying that such building or use is in compliance with all regulations of this ordinance, city codes and ordinances, including structure location and foundation & pad elevations contained in the PUD documents or on the final plat.
 5. **Process.** No property which has a zoning district classification which requires approval of a PUD may be developed or redeveloped without a preliminary PUD first having been submitted to and approved by the Planning Commission. The Planning Commission shall review the preliminary PUD to determine:
 - a. satisfactory quality of design in the individual buildings;
 - b. satisfactory quality of design for the site;
 - c. appropriateness of the building or buildings to the intended use;
 - d. aesthetic appropriateness of the development to its surroundings.

Satisfactory design quality and harmony will involve among other things:

- a. The site is capable of accommodating the building(s), parking areas and drives with appropriate open space.
 - b. The plan is consistent with good land planning, good site engineering design principles and good landscape architectural principles.
 - c. An appropriate use of quality materials. The harmony and proportion of the overall design.
 - d. The architectural style which should be appropriate for the project in question and compatible with the overall character of the neighborhood.
 - e. The site of the structure on the property, as compared to the site of other structures in the immediate neighborhood.
 - f. The bulk, height and color of the proposed structure as compared to the bulk, height and color of other structures in the immediate neighborhood.
 - g. Landscaping shall be required on the site and shall be in keeping with the character or design of the site. Existing trees shall be preserved wherever possible.
 - h. Ingress, egress, internal traffic circulation, off-street parking facilities and pedestrian ways shall be so designed as to promote safety and convenience and shall conform to approved City standards.
 - i. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, the Official Street Map, and other adopted planning documents and policies.
6. **Project Initiation.** Construction may proceed upon the Planned Unit Development when the property is properly platted pursuant to a final PUD plan. The final PUD plan shall be approved by the Governing Body to verify that it complies with the PUD Plan's Contents and Submission Requirements contained herein and the requirements pursuant to the preliminary PUD plan approval and generally includes the information needed for the platting process and the issuance of a building permit.
7. **Administrative Modification.** The following changes are not considered significant changes to the preliminary PUD plan and may be approved by the Zoning Administrator:
- a. An increase in floor area or number of dwelling units not exceeding five (5) percent.
 - b. Substitution of landscape materials provided that the new materials are the same general size and type.
 - c. Minor changes to elevation, building materials, parking lot design, screening fences or walls, building location, etc., that would improve the site or are needed because of circumstances not foreseen at the time the preliminary site development plan was approved by the City.

8. **PUD Administrative Development Area.** The Governing Body may designate a development area as appropriate for administrative PUD plan approval by the City Manager. Such areas may be those existing developments with an established site plan and architectural character, or new developments with an approved preliminary development plan including typical building elevations, materials and colors; a general landscape plan; and an approved landscape buffer where applicable. Administrative PUD plan submission requirements shall also be in conformance with PUD Plans, Contents, and Submission Requirements. Applications not in conformance with such plans and the approved preliminary development plan shall not be approved administratively and shall be forwarded to the Governing Body for consideration upon submission of a complete application.

B. CUP Community Unit Plan Overlay District (“CUP”)

1. **Purpose.** The Community Unit Plan (“CUP”) Overlay District is a form of PUD intended to provide well planned and well organized Developments for Residential Uses of varying densities and for office, commercial, industrial and/or mixed Uses that are held under unified control at the time of initial approval. It is intended to protect the public safety, convenience, health and general welfare through standards and provisions that establish requirements as to Lot coverage, Building Height, Setback and Screening that permit review of the size, shape and location of such facilities with due regard to the tract as a whole so as to ensure the development of facilities with proper ingress and egress, parking, drainage facilities, screening, sign control, environmental control and other requirements and amenities. The character of the Development should be appropriate to the neighborhood and conditions and safeguards should be provided to ensure that the development will minimize any diminution, if any, in value of surrounding property. Two types of CUP regulations are set out in this section: nonresidential and residential. Additionally, a unified Nonresidential and Residential CUP can be developed when approved by the Zoning Administrator in conformance with the spirit and intent of these Regulations.
2. **Nonresidential CUPs.** The following nonresidential CUP regulations shall apply to development or construction on Sites with a contiguous area that are held under unified control at the time of initial approval and that are now or hereafter zoned either C-1, C-2, or M-1, or a combination thereof.
 - a. **Permitted Uses and Structures.** The following Uses and Structures may be allowed as part of a nonresidential CUP:
 - (1) All Permitted and Conditional Uses in the zoning classification in which the Development is proposed, subject to all applicable site development regulations as deemed applicable by the approving authorities.
 - (2) Uses and Structures that are customarily accessory and clearly incidental and subordinate to permitted Principal Uses and Structures and that do not involve operations or Structures that are incompatible with the District; and

- (3) In cases where a nonresidential CUP Development proposes a mixture of nonresidential and residential Uses, the CUP Development plan shall indicate the proposed location and general types of both residential and nonresidential Uses and the method of Screening, Landscaping and Buffering.
- b. Development standards.
- (1) Minimum Setback requirements. The grouping of Buildings and Parking Areas shall be designed to protect all residential areas, and screened so as to limit the noise and light emitted therefrom. All projects subject to the CUP standards shall comply with the following minimum standards.
 - (a) All Main Buildings or Structures shall set back at least 35 feet from all Street Right-of-Way Lines or Alleys.
 - (b) Where the proposed Development abuts a residential District, all Buildings shall be set back at least 35 feet from such District line.
 - (c) There shall be a rear Yard, Alley, service drive or combination thereof with a depth of at least 30 feet.
 - (2) Maximum Lot coverage. Buildings shall not cover more than 40 percent of the land upon which the Development is proposed.
 - (3) Height regulations. The height standards of the underlying zoning District shall control unless modified heights are specified as part of the CUP Development provisions.
 - (4) Screening. A Solid Screening Wall with a height of between six and eight feet shall be required to prevent the passage of debris and light and to mitigate adverse visual impacts. The wall shall be constructed of brick, stone, masonry, architectural tile or other similar material (not including wood or woven wire). Screening walls shall be installed in accordance with the following standards:
 - (a) A Screening Wall shall be required along the property line when a residential district is contiguous to the proposed Development. The wall shall be reduced to three feet in height for that portion that lies between the Side or Front Setback Lines of the Contiguous residential property and the property line Abutting any public street, unless the reduction in height is determined by the Governing Body to be inappropriate (See *Figure 4-1*);
 - (b) Along the property line when Adjacent to a residential District and separated by a public way, street or alley if the storage area, service area or rear of the Building face directly such residential District;

- (c) When a part of the property on which there is a proposed commercial or industrial Development shall serve as a buffer between adjacent residential Districts and the commercial or industrial Development, then the wall shall be constructed at the boundary between the buffer and said residential District
- 3. **Residential CUPs.** The Owner or Owners of any tract of land permitting residential Uses may submit to the Zoning Administrator a plan for the use and development of all such tracts of land for residential purposes. Such Development plan shall be referred to the Planning Commission for public hearing. The Planning Commission may approve, approve with conditions or modifications, or disapprove the Development plan. If the Development plan is approved, such Development may occur even though the Use of the land and the use and location of the Structures, including the Yards and Open Spaces required by this Code, do not conform in all respects to the regulations contained in other sections of this Code. However, the Development shall conform with the following conditions.
 - a. The land within the residential CUP shall be used only for residential purpose, for nonresidential uses permitted in the C-1 District, and customary accessory uses, such as passenger vehicle Parking Areas, Garages, recreation and common areas.
 - b. The average Lot Area per Family contained in the Site, exclusive of the area occupied by Streets, shall be not less than the Lot Area per Family required for the underlying zoning district in which the residential CUP is located.
- 4. **Waivers.** When otherwise considering a CUP, the Planning Commission or Governing Body may modify or waive the Setback, including compatibility Setback, Lot coverage, Building Height, Parking and/or Screening requirements in this section and elsewhere in this Code as part of the approval or amendment of a CUP, where the objectives of the *Comprehensive Plan* and good planning practices are furthered, provided that the Planning Commission or Governing Body must set forth the specific reasons for such modification and an explanation of how such modification or waiver meets the criteria and purpose of this section.

8.05 WIRELESS TELECOMMUNICATIONS FACILITIES SITING REGULATIONS

- A. **PURPOSE.** The purpose of this Section 8.05 is to define a process for the regulation, placement, construction and modification of commercial wireless telecommunications facilities and antenna support structures in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City in compliance with the Telecommunications Act of 1996, Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6409(b), (c), 126 Stat. 156 (2012) (Spectrum Act), Section 332(c)(7) of the Communications Act and the Federal Communication Commission’s *2009 Declaratory Ruling, FCC Ruling 14-153, adopted October 17, 2014 and released October 21, 2014*, Kansas Session Laws at L. 2016, ch 40, secs. 1-7, and any other applicable laws.

B. OBJECTIVES. The objectives of this Section 8.05 are the following:

1. To regulate the placement, construction and modification of wireless telecommunications facilities in the City;
2. To regulate the location of wireless communication facilities in areas and on sites where the adverse impact is minimal;
3. To minimize the potential adverse visual impact of wireless telecommunications facilities through careful design, siting, landscaping and innovative camouflaging techniques;
4. To ensure that wireless telecommunications facilities are compatible with surrounding land uses;
5. To promote and encourage shared use/co-location of wireless telecommunications facilities and antenna support structures as the primary option for personal wireless telecommunications services instead of the construction of additional single-provider towers;
6. To avoid potential damage to property caused by wireless telecommunications facilities by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained and removed when no longer used or when determined to be structurally unsound;
7. To encourage the safe, effective and efficient provision of personal wireless telecommunication services to the community;
8. To ensure that the regulation of personal wireless telecommunication services does not prohibit or have the effect of prohibiting the provision of such services; and,
9. To ensure that that the regulation of personal wireless telecommunication services does not unreasonably discriminate among functionally equivalent providers of such services.

C. DEFINITIONS. For the purpose of this Section 8.05 and all other references to wireless telecommunications facilities within these Regulations, certain terms or words shall be interpreted as follows:

1. Abandonment. A failure to (a) to start operations within one hundred eighty (180) days of completion of the structure, or (b) a cessation of operation for a period of one hundred eighty (180) or more consecutive days.
2. Act. The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*, as amended, including the amendment known as the Telecommunications Act of 1996, and all future amendments.

3. Antenna. Any structure or device used to transmit or receive electromagnetic or optical signals for television, radio, digital, microwave, cellular, telephone, personal communication system (PCS) or similar forms of wireless telecommunication.
4. Antenna Support Structure. Any building or structure other than a tower or stealth monopole that can be used for the location of telecommunications facilities.
5. Array. A set of antennas for one (1) carrier or service that are placed on a structure at a given height and spaced so as to avoid interference.
6. Base Station. A station at a specified site that enables wireless communication between user equipment and a communications network, including any associated equipment such as, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. Base station includes structures other than towers that support or house an antenna, transceiver, or other associated equipment that constitutes part of a “base station” at the time the relevant application is filed with State or municipal authorities, even if the structure was not built for the sole or primary purpose of providing such support, but does not include structures that do not at that time support or house base station components
7. Camouflage. A wireless communication facility that is disguised, hidden, or integrated with an existing structure as an architecturally compatible element or a wireless communication facility that is placed within an existing or proposed structure so as to be effectively hidden from view. This is a form of stealth design.
8. Co-location. Locating wireless telecommunication facilities owned by more than one provider on/in a single antenna support structure, tower or stealth monopole structure. Co-location includes equipment associated with the antennas (such as wiring, cabling, cabinets, and backup-power).
9. Distributed antenna system (DAS) networks. DAS is a small-cell transmission system which uses components that are a fraction of the size of macrocell deployments, and can be installed on utility poles, buildings, and other existing structures.
10. Equipment enclosures. A structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals and associated equipment. Associated equipment may include air conditioning, back power supplies and emergency generators.
11. Existing tower. Any tower in existence at the time of application for an administrative permit or special use permit.
12. FAA: The Federal Aviation Administration.

13. Facility a.k.a. Wireless Telecommunications Facility as defined below.
14. Fall Zone. The area on the ground within a prescribed radius, beginning from the base of a telecom structure or an antenna support structure within which there is a potential hazard from falling debris or collapsing material.
15. FCC: The Federal Communications Commission.
16. Guyed Tower. A type of tower that is supported, in whole or in part, by guy wires anchored to any surface.
17. Height. The vertical distance above grade to the highest point of the antenna support structure, including the lightning rod and antenna.
18. Lattice Tower. A self-supporting structure, erected on any surface, which consists of an open network of metal crossed strips or bars to support antennas and related equipment.
19. Modification. Any physical change to any element of a telecommunications structure or pre-existing structure.
20. Mount. The structure or surface upon which wireless communication facilities are mounted. There are three (3) types of mounts: (i) Building mounted--a wireless communication facility affixed to the roof or side of a building, (ii) Ground mounted--a wireless communication facility fixed to the ground such as a tower, and (iii) Structure mounted--a wireless communication facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.
21. Monopole. A monopole structure, erected on any surface, which supports antennas and any connecting appurtenances.
22. Municipal Facilities. An antenna support structure owned by the City, including, but not limited to, water towers, fire stations and other similar buildings and structures.
23. Operator. An individual, partnership, association, joint-stock company, trust, or corporation engaged in control and maintenance of all instrumentalities, facilities and apparatus incidental to wireless telecommunication transmission, including but not limited to, a tower, antennae, associated buildings, cabinets and equipment. For the purposes of this Section 8.05, an "operator" may or may not hold a lease, license or title on or for the site on which a tower is located.
24. Personal Wireless Telecommunications Services. Any personal wireless service as defined in the Act, including FCC-licensed commercial wireless

telecommunications services such as cellular, personal communications services, specialized mobile radio, enhanced specialized mobile radio, paging and unlicensed wireless services and common carrier wireless exchange access services.

25. Pre-Existing Structure. Any telecommunications structure that existed prior to the effective date of this Section 8.05 or any telecommunications structure that exists outside the City limits either before or after the effective date of this Section 8.05 and is annexed into the City limits.
26. Provider. An entity licensed by the FCC or a state agency to transmit or receive electromagnetic or optical signals for television, radio, digital, microwave, cellular, telephone, personal communication system (PCS) or similar forms of wireless telecommunication. A tower builder is not a provider.
27. Public Right-Of-Way. The area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include utility easements.
28. Screening. Materials that effectively hide personal wireless facilities from view, or landscaping in accordance with the requirements of the Zoning Ordinance.
29. Security Barrier. A wall, fence, or berm that has the purpose of sealing a wireless communication facility from unauthorized entry or trespass.
30. Stealth. A method of designing, constructing, and/or locating any telecommunications structure to blend in with the character and environment of the area in which it is located, and to enhance compatibility with nearby land uses and the area by minimizing visual impacts, incorporating the design principles.
31. Stealth Monopole. Any freestanding, monopole structure, 50 feet or less in total height, as measured from the ground, which incorporates stealth design principles, including but not limited to, camouflaging the structure as a tree, flagpole or light pole.
32. Structure Owner. Any person who develops, constructs, builds, modifies, erects or owns a telecommunications structure upon a parcel of land.
33. Substantial Change. a modification “substantially changes” the physical dimensions of a tower or base station, as measured from the dimensions of the tower or base station inclusive of any modifications approved prior to the passage of the Spectrum Act, if it meets any of the following criteria:
 - a. for towers outside of public rights-of-way, it increases the height by more than 20 feet or 10%, whichever is greater; for those towers in the rights-of-way and

- for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;
 - b. for towers outside of public rights-of-way, it protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than six feet;
 - c. it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
 - d. it entails any excavation or deployment outside the current site of the tower or base station;
 - e. it would defeat the existing concealment elements of the tower or base station; or
 - f. it does not comply with conditions associated with the prior approval of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds.
34. Support structure. A ground-mounted self-supporting vertical structure used to elevate or carry lines, cables, wires, or antennas for telecommunications, cable television, electricity or other utility services, or to provide lighting.
35. Telecommunications Structure (Structure). Any tower, stealth monopole or telecommunications facilities.
36. Telecommunications Facilities. Any cables, wires, lines, wave guides, antennas and any other equipment or facilities, including buildings, shelters or cabinets that house telecommunications providers’ equipment, associated with the transmission or reception of communications that a person seeks to locate or has installed upon or near a commercial tower or antenna support structure.
37. Tower. A self-supporting lattice, guyed or monopole structure that supports telecommunications facilities for the purpose of providing personal wireless telecommunications services, including any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities. The term tower shall not include stealth monopoles, as defined herein, or amateur radio operators' equipment, as licensed by the FCC.
38. Transmission equipment. Antennas and other equipment associated with and necessary to the operation of a telecommunication facility, including power supply cables and backup power equipment
39. Unlicensed wireless services. Commercial mobile services that operate on public frequencies and do not need a FCC license.

40. Wireless communication service and wireless communication facilities as used in the chapter shall be defined in the same manner as the Title 47, United States Code, Section 332 (c)(7)(C), as may be amended now or in the future and includes facilities for the transmission and reception of radio microwave signals used for communication, cellular phone, personal communication services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.

D. **APPLICABILITY.** All wireless telecommunications facilities and antenna support structures, and any portion of which are located within the City, shall be subject to the terms of this Section 8.05, except as follows:

1. Amateur radio operators. This this Section 8.05 shall not apply to any short-wave radio tower that is owned and operated by a federally licensed amateur radio station.
2. Residential Antennas. This this Section 8.05 shall not apply to accessory antennas attached to residential structures whose purpose is receiving television, radio, microwave, telephone, digital data or similar forms of wireless information transmission for the sole use of the occupants. A provider shall comply with this Section 8.05 to utilize a residential structure as an antenna support structure for its network, and shall obtain the appropriate permits as required.
3. Utility poles. This Section 8.05 shall not apply to utility poles, which are utilized solely for the support of electrical, telephone, cable television or similar cables and wires, located on public rights-of-ways or easements for that purpose, and are part of a system of such poles throughout the City.
4. Broadcast systems and facilities. This Section 8.05 shall not apply to towers or telecommunications facilities utilized for the transmission of signals not associated with personal wireless telecommunications services.

E. **ZONING REQUIREMENTS**

1. Towers: A tower, and any related telecommunication facilities, shall only be permitted by administrative approval or special use permit, whichever is applicable, in all zoning districts. No person shall erect a tower upon any parcel of land unless:
 - a. An application for administrative approval is made, and approved, in accordance with this Section 8.05; or
 - b. An application for special use permit is made, and approved, by the Governing Body.
2. Stealth Monopoles. Stealth monopoles and any related telecommunication facilities shall only be permitted by administrative approval or special use permit in all zoning districts. No person shall erect a tower upon any parcel of land unless:

- a. An application for administrative approval is made, and approved, in accordance with this Section 8.05; or
- b. An application for special use permit is made, and approved, by the Governing Body.

F. PERMITS

1. Permit Required: No person shall locate an antenna or tower for wireless communication purposes or substantially change an existing wireless communication facility upon any lot or parcel within the City except as provided in this Section 8.05.
2. Application Requirements for Administrative Approval or Special Use Permit: Each application shall conform to the requirements of this Section 8.05. If a determination is made to request a Special Use Permit to originally site or modify an existing site, the provisions of Article 8 of the Zoning Regulations regarding special uses shall be followed, and the following shall be provided within the application:
 - a. The name, address and telephone number of the landowner of any parcel of land or antenna support structure upon which the telecommunications structure will be situated. If the applicant is not the landowner, the applicant shall submit his or her name, address and telephone number. The landowner, structure owner and applicant shall sign the application.
 - b. The legal description and street address of the parcel of land, or antenna support structure, upon which the proposed telecommunications structure will be situated.
 - c. Elevation plans drawn to scale of all proposed wireless telecommunications facilities; an accurately scaled site plan showing existing buildings, proposed wireless telecommunications facilities and proposed landscaping and screening; and a written description of all proposed wireless telecommunications facilities and proposed quantities, types and sizes of landscaping materials.
 - d. Photographs of the site in its current condition, and accurately proportioned photo-realistic representations of the site showing the telecommunications structure in place with proposed landscaping and screening.
 - e. If the applicant is not the landowner, the landowner shall provide an affidavit indicating consent to develop upon the landowner's property. The landowner shall sign an agreement with the City that states if abandonment occurs, the landowner shall be responsible for the removal of the proposed telecom structure if the structure owner fails to remove it. (See also Section 8.05 Q). Abandonment) The landowner shall file the agreement with the Register of Deeds as a condition of approval of any permit for any telecommunications structure, and shall provide a copy of the filed agreement to the City prior to approval of the permit for the

telecommunications structure. The agreement shall refer to the lien mentioned in Section 8.05 Q - Abandonment.

- f. An affidavit from the manufacturer or engineer describing the maximum capacity of the telecommunications structure for co-location, including the number and type of providers it can accommodate, with consideration of radio frequency interference, mass, height and other characteristics, as well as options to overcome any problems those considerations may pose to service delivery. The affidavit shall certify that the telecommunications structure has been designed and will be constructed to support the specified number of providers.
- g. For a stealth monopole or tower application, certification from the engineer of the structure's manufacturer that the structure is designed and shall be constructed to ensure that a structural failure or collapse will not create a safety hazard to adjoining properties and that the structure will collapse on itself within the fall zone designated by the manufacturer.
- h. Written statements from the applicant or engineer that indicate the following:
 - (1) A map showing the location of the proposed telecommunications structure and its service area; the location of the providers' other existing wireless telecommunications facilities in the area; applicable propagation models, search ring maps and other relevant documentation.
 - (2) The minimum height required to serve the proposed service area.
 - (3) An explanation why the proposed site is required to meet service demands and how it would interact with the providers' other existing wireless telecommunications facilities in the service area.
 - (4) Proposed stealth measures designed to minimize potentially adverse visual effects on nearby properties, with consideration of design, unobtrusiveness, minimum height necessary to accommodate antennae, avoidance of artificial light and the color of the telecommunications structure.
 - (5) A description of the fall zone of the telecommunications structure, including the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153.
 - (6) The distance between the proposed telecommunications structure and the nearest residential dwelling unit and residentially zoned properties including any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153.
 - (7) A description of the security barrier, including the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, if any, surrounding the base of the

telecommunications structure, including the method of fencing, finished color and, if applicable, the method of camouflage and illumination.

- i. Applicants shall be required to submit information on the proposed power density of their proposed telecommunications structure and demonstrate compliance with FCC standards regulating radio frequency (RF) emissions. This information is used solely for public information, as the FCC has the sole jurisdiction to regulate RF emissions. The City will not condition or deny an application because of potential RF impacts.
- j. When applicable, documentation that the proposed tower or stealth monopole meets FAA requirements.
- k. Any other information requested by the City that is reasonably necessary for the City to fully evaluate the application including information associated with any potential additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153.
- l. An engineer shall provide the following written technical evidence:
 - (1) Evidence that existing wireless telecommunications facilities and antenna support structures within the proposed service area of the proposed telecommunications structure site are not capable of co-location to provide reasonable service to the proposed service area, due to height, capacity, structural strength or interference with other electromagnetic/radio frequencies, including, but not limited to, public safety communications, radio and television signals.
 - (2) Evidence that the proposed telecommunications structure meets the standards set forth in “Structural Requirements.”
 - (3) Evidence that the proposed site of the telecommunications structure, including any additional dimensions associated with a possible increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, does not pose a risk of explosion, fire or other danger to life or property due to its proximity to volatile, flammable, explosive or hazardous materials such as LP gas, propane, gasoline, natural gas or corrosive or other hazardous chemicals.
- m. The applicant shall provide an affidavit, attesting to the following:
 - (1) That the applicant made diligent efforts to install or co-locate on existing wireless telecommunications facilities or antenna support structures within the proposed service area.
 - (2) That the fees, cost or contractual provisions required by the structure owner(s) of other wireless telecommunications facilities or antenna support structures within the proposed service area are unreasonable.

- (3) That other limiting factors render the use of other wireless telecommunications facilities and antenna support structures within the proposed service area, unsuitable.
- n. For towers, the applicant shall provide evidence that indicates why the use of alternative types of wireless telecommunications facilities, such as stealth monopoles or telecommunications facilities mounted on antenna support structures or municipal facilities, is insufficient or inadequate to meet the providers' service area needs.

G. PERMIT PROCESS Except as otherwise provided within this Section 8.05 for siting of telecommunication facilities within right of ways, the following permit process shall be applicable within the City.

- 1. Administrative approval or Special Use Permit. The Zoning Administrator, and/or the Planning Commission and Governing Body shall consider an administrative approval or special use permit application, as applicable, subject to the requirements set forth within this Section 8.05, and shall also take into account the following additional standards:
 - a. Whether substantial evidence exists to demonstrate that existing or approved wireless telecommunications facilities or antenna support structures are unsuitable for co-location or to serve the proposed service area.
 - b. Whether the proposed telecommunications structure(s) has incorporated a reasonable level of stealth design to minimize the visual impact of the telecommunications structure(s), given the type of telecommunications structure and the character of the area in which the structure(s) is proposed to be located.
- 2. Administrative Approval Process. Within ten (10) business days of receiving a complete application, the Zoning Administrator shall approve, approve with conditions, or deny the request for an administrative permit, or shall refer the application to the Planning Commission for a public hearing in conformance with the special use permitting process set forth in Section 8.04 above.
 - a. The Zoning Administrator may issue an administrative permit for the installation, structural modification, or change in height, dimension, or number of antenna of a wireless communication facility if:
 - (1) The proposed wireless communication facility satisfies the performance standards and other requirements of this Section 8.05; and
 - (2) If the antenna component of the wireless communication facility will be installed or exists in a residential or commercial district, it will be attached to:
 - i. An existing support structure; or
 - ii. A replacement or extension of an existing support structure, if the height of the replaced or extended support structure does not

exceed the height of the original support structure by more than ten (10%) percent or more than ten (10) feet, whichever is greater. In addition, the diameter of the replaced or extended support structure shall not add an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet; or

iii. Installation of ground cabinets that are not more than 10% larger in height or overall volume than any other ground cabinets associated with the structure (NOTE: A request for installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure shall require a special

(3) Written Findings Required. Any decision to deny an Administrative approval or Special Use Permit, under this section shall be made in writing and shall state the specific reasons for the denial. Any denial by the Governing Body shall be deemed a final administrative decision, subject to judicial review and appeal. In the event that a permit application is denied by the Governing Body, no new request for the same or substantially similar permit shall be accepted or processed within six (6) months after denial of that application.

(4) The Applicant may appeal any determination of the Zoning Administrator by converting the application to a request for a special use permit. The applicant may, by written notice to the Zoning Administrator, convert the request for an administrative permit to a request for a special use permit at no additional cost. Additionally, an applicant may, in lieu of and without first seeking an administrative permit hereunder, initially request a special use permit for a proposed wireless communication facility.

(5) Protests. The notification and protest area for permit applications shall be two hundred (200) feet from the property boundary of the proposed tower site. The protest procedure shall be as provided in K.S.A. 12-708 and Article 5 of the Bel Aire Zoning Code.

3. Special use permit.

a. Hearing. For any application to install, structurally modify, or change in height, dimension, or number of antenna a wireless communication facility that does not meet the criteria for an administrative permit, or for any application to install a new support structure in a residential district or commercial district, the Planning Commission shall hold a public hearing regarding issuance of a special use permit in accordance with the procedures set forth in 8.04 of these Regulations, as modified by those procedures and standards specific to wireless communications as set forth within this Section 8.05..

- b. Standards for evaluation of special use permit applications. The Planning Commission may recommend approval, recommend approval with conditions, or recommend disapproval of an application for a special use permit in any zoning district after review and consideration of the conditions set forth within 8.04 above and all of the following:
 - (1) Conformity with the city’s comprehensive plan;
 - (2) Compatibility with abutting property and surrounding land uses;
 - (3) Adverse impacts such as visual, environmental, or safety impacts;
 - (4) Color and finish of the proposed facilities;
 - (5) Screening potential of existing vegetation, structures and topographic features;
 - (6) Potential for adequate screening of proposed facilities;
 - (7) Scale of facilities in relation to surrounding land uses;
 - (8) Impact on entry corridors into the city;
 - (9) Impact on landmark structures, historically or architecturally significant structures or districts, or environmentally sensitive areas;
 - (10) Impact upon established easements;
 - (11) History of land use of property, including but not limited to: existing nuisance code violations, failure of property owner to abide by nuisance, health and safety, building or zoning codes, failure of property owner to enforce codes upon subject property when property occupied by a tenant, and documentation that property is currently subject to abandonment or foreclosure action;
 - (12) Property owner entering into abandonment agreement, which will be filed with the register of deeds and run with the property.
- c. Denial of special use permit. Any denial by the Governing Body of a special use permit associated with a wireless telecommunications facility shall be deemed a final administrative decision, subject to judicial appeal and judicial review. In the event that a special use permit application is denied by the Governing Body, no new request for the same or substantially similar special use permit shall be accepted or processed within six (6) months after denial of that application.

H. SITING AND PLACEMENT WITHIN THE PUBLIC RIGHT-OF-WAY

- 1. Purpose and objectives. The purpose of this section is to establish requirements for the siting and placement of wireless communication facilities, including support equipment and support structure(s) (as defined herein) to such wireless communication facility, within the public right-of-way in a manner consistent with state and federal law, while ensuring the public health, safety, and welfare, including minimizing the visual effects of wireless communication facilities on public streetscapes, protecting public views, and otherwise avoiding and mitigating the potential impacts of wireless communication facilities on nearby properties and

the community at-large. The provisions of this section are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecommunication services, nor shall they be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecommunication services.

2. Permit required.
 - a. No person shall install, structurally modify, or change in height, dimension, or number of antenna a wireless communication facility in the public right-of-way except upon approval of an administrative permit or a special use permit, as provided in this section.
 - b. Maintenance or repair of existing permitted wireless communication facilities shall be excluded from the permitting requirement of this section.
3. Complete Application Required. Within ten (10) business days after receiving a submitted application, if the Zoning Administrator, or designee, determines that the application is incomplete, such administrator, or designee, shall issue a written determination of incomplete application to applicant setting forth in detail the areas of such application that must be completed before such application may be processed. The notice of incomplete application may be communicated via e-mail, fax, or via regular mail, as applicant has indicated preference for this notice on the application.
4. Administrative Approval Process. Within ten (10) business days of receiving a complete application, the Zoning Administrator shall approve, approve with conditions, or deny the request for an administrative permit, or shall refer the application to the Planning Commission for a public hearing.
 - a. The Zoning Administrator may issue an administrative permit for the installation, structural modification, or change in height, dimension, or number of antenna of a wireless communication facility in the public right-of-way if:
 - (1) The proposed wireless communication facility satisfies the performance standards and other requirements of this section; and
 - (2) If the antenna component of the wireless communication facility will be installed or exists in a residential district or commercial district, it will be attached to:
 - i. An existing support structure; or
 - ii. A replacement or extension of an existing support structure, if the height of the replaced or extended support structure does not exceed the height of the original support structure by more than ten (10%) percent or more than ten (10) feet, whichever is greater. In addition, the diameter of the replaced or extended support structure shall not add an appurtenance to the body of

the structure that would protrude from the edge of the structure by more than six (6) feet; or

- iii. Installation of ground cabinets that are not more than 10% larger in height or overall volume than any other ground cabinets associated with the structure (NOTE: A request for installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure shall require a special use hearing).
 - b. Any decision to deny an administrative permit under this section shall be made in writing and shall state the specific reasons for the denial. Such written decision shall be mailed by registered mail or hand delivered to the applicant at the address provided by the applicant within the application within three business days of the decision by the Zoning Administrator or the Governing Body, whichever is applicable.
 - c. The Applicant may appeal any determination of the Zoning Administrator by converting the application to a request for a special use permit. The applicant may, by written notice to the Zoning Administrator, convert the request for an administrative permit to a request for a special use permit at no additional cost. Additionally, an applicant may, in lieu of and without first seeking an administrative permit hereunder, initially request a special use permit for a proposed wireless communication facility.
5. Special use permit.
- a. Procedure. For any application to install, structurally modify, or change in height, dimension, or number of antenna a wireless communication facility in the administrative permit, or for any application to install a new support public right-of-way that does not meet the criteria for an structure in the public right-of-way in a residential district or commercial district, an applicant may file an application for a special use permit in conformance with Section 8.04 above, and any additional requirements set forth within this Section 8.05.
 - b. Standards for evaluation of special use permit applications. The Planning Commission may recommend to approve, approve with conditions, or disapprove an application for a special use permit in any zoning district after review and consideration of all of the following:
 - (1) Conformity with the city's comprehensive plan;
 - (2) Compatibility with abutting property and surrounding land uses;
 - (3) Adverse impacts such as visual, environmental, or safety impacts;
 - (4) Color and finish of the proposed facilities;
 - (5) Screening potential of existing vegetation, structures and topographic features;
 - (6) Potential for adequate screening of proposed facilities;
 - (7) Scale of facilities in relation to surrounding land uses;
 - (8) Impact on entry corridors into the city; and

- (9) Impact on landmark structures, historically or architecturally significant structures or districts, or environmentally sensitive areas.
 - c. Denial of special use permit. Any recommendation by the Planning Commission shall be made in writing and shall state the specific reasons for the denial. The Governing Body shall review any recommendation submitted by the Planning Commission in conformance with the special use procedures set forth in 8.04 above. Any denial of a requested special use permit for a wireless telecommunications facility by the Governing Body shall be deemed a final administrative decision, subject to appeal and judicial review. In the event that a special use permit application is denied by the Governing Body, no new request for the same or substantially similar administrative or special use permit shall be accepted or processed within six (6) months after denial of that application.
 - d. Protests. The notification and protest area for special use permit applications shall be as set forth in Section 8.04 above.
- 6. Application Requirements. Applications for wireless telecommunication facility siting shall be promulgated by the Zoning Administrator and shall include those requirements set forth within this Section 8.05 for both administrative and special use applications, and any additions deemed necessary by the Zoning Administrator. Additionally, special use applications shall include that information as set forth within Section 8.04 of these Regulations.
- 7. Performance criteria. Unless otherwise specified, all wireless communication facilities in the public right-of-way shall comply with the following performance standards. A waiver may be granted from these standards when the applicant has demonstrated that there is a need to close a significant gap in coverage or capacity that can only be met by placement of the proposed facilities in the proposed location, or if the applicant can demonstrate any technical limitations conflicting with the performance standards, and if the purpose and objectives of this section would be better served thereby.
 - a. Antennas shall be screened by means of canisters, shrouds or other screening measures and treated with exterior coatings of a color and texture to match the support structure upon which they are attached.
 - b. Any replacement support structure shall be of new material, and the replacement or extension of a support structure shall match the original and/or surrounding utility or light poles in material, style, design, color, and finish.
 - c. Antennas shall not extend more than thirty-six (36) inches from the top of the support structure.
 - d. Support equipment attached to a support structure (excluding ancillary attached electrical equipment, such as an electric meter or breaker panel) shall not exceed six (6) feet in height and two (2) feet in width, or project more than twenty-four (24) inches horizontally from the support structure.

- e. All portions of the wireless communication facilities (other than the support structure and ground-mounted or underground support equipment) shall be located so as to provide adequate roadway clearance, to prevent interference or hazard to pedestrians, vehicular traffic, or other property in the public right-of-way.
- f. Cable connecting an antenna to any support equipment shall be contained inside or shall be flush mounted to the support structure and covered with a metal, plastic, or similar material cap that matches the color of the support structure and is properly secured.
- g. A new, modified, or replaced support structure shall not exceed eighteen (18) inches in diameter.
- h. No signs or advertising shall be allowed on wireless communication facilities, except for small identification, address, warning, and similar information plates approved by the Zoning Administrator.
- i. Wireless communication facilities shall not be artificially illuminated unless required by applicable law to protect the public's health and safety.

I. PRE-EXISTING STRUCTURES

- 1. Pre-existing structures shall meet all requirements of this Section 8.05 upon modification, in accordance with these regulations.
- 2. All pre-existing structures shall comply with the following requirements of this Section 8.05:
 - a. "Building Permits, Certifications and Inspections."
 - b. "Maintenance."
 - c. "Abandonment."

J. BULK REGULATIONS

- 1. Maximum Height.
 - a. The height of a tower or stealth monopole shall be regulated by this Section 8.05.
 - b. The height of a tower, including any antenna, shall not exceed one-hundred-fifty (150) feet, as measured from the ground. The maximum height limitation does not include a lightning rod, which shall not exceed an additional twenty (20) feet in height. When considering the height of a proposed tower, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.
 - c. The total height of a stealth monopole shall not exceed fifty (50) feet, as measured from the ground. When considering the height of a proposed tower, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.

- d. The following height requirements shall apply to telecommunications facilities mounted externally on antenna support structures or municipal facilities:
 - (1) On structures 30 feet in height or less, telecommunications facilities shall be mounted consistent with the “Stealth Design Principles.”
 - (2) On structures between 30 and 60 feet in height, telecommunications facilities shall not extend more than a combined height of 75 feet, including the structure on which it is mounted upon.
 - (3) On structures 60 feet in height or more, telecommunications facilities shall not extend more than 75 feet, including the structure on which it is mounted upon.

2. Setback Restrictions.

- a. Towers. Towers shall be set back from all property lines a distance equal to the fall zone of the tower, as certified by the structure manufacturer’s engineer. If the fall zone is not ascertainable, the tower shall be set back from all property lines a distance equal to the height of the tower, including any antenna, plus other appurtenances. When considering the height of a proposed tower, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.
- b. Stealth Monopoles. Stealth monopoles shall be set back from all property lines a distance equal to the fall zone of the structure, as certified by the structure manufacturer’s engineer. If the fall zone is not ascertainable, the stealth monopole shall be set back from all property lines a distance equal to the height of the stealth monopole, including any antenna, plus other appurtenances. When considering the height of a proposed tower, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.
- c. Accessory ground-level equipment including guy-wire anchors shall follow the setbacks for accessory uses in the applicable zoning district. When considering the dimensions of any accessory ground-level equipment, the impact of any additional dimensions associated with an increase to the tower or base structure not deemed to be a substantial change under FCC Ruling 14-153, should be considered.

K. STRUCTURAL REQUIREMENTS

- 1. All wireless telecommunications facilities shall be designed and certified by an engineer to be structurally sound and shall, at a minimum, be in conformance with these regulations and all applicable federal and city codes.
- 2. All towers and stealth monopoles shall be designed and constructed to collapse on themselves to minimize the impact on surrounding properties.

3. New towers or stealth monopoles shall be built, constructed or erected in the City to be capable of co-location. All new towers less than 100 feet in height and stealth monopoles shall provide space for at least two (2) separate providers. All new towers one-hundred (100) feet or higher in height shall provide space for at least three (3) separate providers.
4. **Antennas Mounted on Structures or Rooftops.** The equipment cabinet or structure used in association with antennas shall comply with the following:
 - a. The cabinet or structure shall not contain more than 300 square feet of gross floor area or be more than 10 feet in height. In addition, for buildings and structures which are less than sixty-five (65) feet in height, the related unmanned equipment structure, if over 100 square feet of gross floor area or six (6) feet in height, shall be located on the ground and shall not be located on the roof of the structure.
 - b. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than fifteen (15) percent of the roof area.
 - c. Equipment storage buildings or cabinets shall comply with all applicable building codes.
5. **Antennas Mounted on Utility Poles or Light Poles.** The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:
 - a. In residential districts, the equipment cabinet or structure may be located:
 - (1) In a front or side yard provided the cabinet or structure is no greater than five (5) feet in height or fifty (50) square feet of gross floor area and the cabinet/structure is located a minimum of twenty-five (25) feet from all lot lines. To allow for a future non-substantial change, the amount of additional space associated with such change shall be calculated and enough space allowed so that such change would continue to be outside the twenty-five (25) foot set back requirement.
 - (2) In a rear yard, provided the cabinet or structure is no greater than eight (8) feet in height or 100 square feet in gross floor area, inclusive of any future non-substantial change to increase height or area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches.
 - b. In commercial or industrial districts the equipment cabinet or structure shall be no greater than eight (8) feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be screened from view of any and all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence eight (8) feet in height or an

evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches.

6. Antennas Located on Towers. The related unmanned equipment structure shall not continue more than 100 square feet of gross floor area or be more than eight (8) feet in height, and shall be located in accordance with the minimum yard requirements of the zoning district in which located.
7. Modification of Building Size Requirements. The requirements of this Section may be modified by the Zoning Administrator in the case of administratively approved uses or by the Planning Commission in the case of uses permitted by special use in an effort to encourage co-location.

L. USE LIMITATIONS

1. Stealth Design: The City may require stealth design of a tower or telecommunications facility, in accordance with regulations, depending on the character of the proposed location and type of tower or telecommunications facility.
2. Illumination:
 - a. Towers shall not be artificially lighted except as required by the FAA.
 - b. Notwithstanding subsection (1), in the case of a stealth telecommunications structure, illumination may be provided that is appropriate and customary for the type of stealth structure, as approved by the Special Use process.
 - c. Security lighting may be installed around the base of a tower or accessory telecommunication facilities, provided the lighting is a full cut-off design to prevent direct light from being cast upon nearby property and to prevent glare on nearby public streets, as approved by the Special Use process.
3. Security Fencing: The City may require the installation of a security fence around all sides of a telecommunications structure located at ground level, and shall review and approve the material and design of any fencing to ensure that it will in fact serve to secure the facility.
4. Screening and Landscaping: All landscaping on a parcel of land containing wireless telecommunications facilities and/or antenna support structures shall conform to the applicable landscaping requirements, if any, in the zoning district where the structure is located. The City may require year-round landscaping and/or screening in order to reduce visual impacts and enhance the compatibility of telecommunications structure(s) with the character of nearby land uses and the area. Such screening may consist of walls, fencing and/or landscaping or combinations thereof, as approved by the City, but any such screening may be reviewed to determine that it does in fact screen the facility from view.

5. Parking and Access. The parcel of land upon which a telecommunications structure is located shall either contain at least one (1) off-street parking space on the site, or shall identify other permanently available off-street parking associated with the site.

M. SIGNS

1. Signs Prohibited. No signs, flyers, flags or banners, shall be permitted on any telecommunications structure, except as may be required by the FAA, FCC, other federal or state agency or the City. A flag may be hung on an approved stealth flagpole structure in accordance with regulations.
2. Removal of Signs. The land or structure owner shall remove any sign placed on any telecommunications structure in violation of this section within five (5) days of notice having been sent by the City.
3. Notwithstanding any contrary provisions of the city's zoning ordinance, the following warning signs shall be utilized in connection with the tower or antenna site, as applicable:
 - a. If high voltage is necessary for the operation of the tower or associated equipment, "HIGH VOLTAGE--DANGER" warning signs shall be permanently attached to each side of the fence or wall surrounding the structure.
 - b. "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall surrounding the structure and spaced no more than forty (40) feet apart; (a) the height of the lettering of the warning signs shall be at least twelve (12) inches and the signs shall be installed at least five (5) feet above the finished grade; (b) the warning signs may be attached to freestanding poles if the content of the sign may be obstructed by landscaping.
 - c. A sign on the gate indicating the name and address of the tower owner and a phone number where the tower owner can be reached twenty-four (24) hours a day in case of an emergency shall be permanently attached to the fence.

N. STEALTH DESIGN FOR WIRELESS TELECOMMUNICATIONS FACILITIES

1. Stealth wireless telecommunications facilities shall be designed to blend in with the character and environment of the area in which they are proposed to be located, and to enhance compatibility with nearby land uses by minimizing visual impacts. Stealth wireless telecommunications facilities shall incorporate the following design principles, as applicable to the type of telecommunications structure and character of the location:

- a. Preserve the pre-existing character of the area as much as possible.
- b. Minimize the height, mass and proportion of wireless telecommunications facilities to minimize impacts on the character of the nearby area.
- c. Minimize the silhouette presented by new towers, stealth monopoles, antenna support structures and antenna arrays. Monopoles are favored over lattice-type towers; antennas mounted inside an antenna support structure or monopole, or mounted flush to the antenna support structure, are favored over triangular “top-hat” or other projecting external types of antenna arrays.
- d. Use colors, textures and materials that blend in with the existing environment; surfaces shall be painted, or otherwise treated, to match or complement existing background structures and surfaces, and to minimize reflection.
- e. Conceal telecommunication facilities from view by placing inside a building, steeple, penthouse, clock tower, flagpole or other appropriate structure. Architectural additions or appurtenances to existing antenna support structures that are intended to conceal telecommunication facilities, shall be designed to be appropriate in mass, scale, material, texture, color and character with the existing antenna support structure.
- f. Camouflage and/or disguise wireless telecommunications facilities to look like another type of structure or object, through methods including, but not limited to design, placement, use of materials, texture, color, year-round landscaping and screening, to blend in with the character of the surroundings, or integrate into the architectural elements and character of an existing antenna support structure to such an extent that it is indistinguishable by the casual observer from the structure on which it is located, or from the surroundings in which it is placed. Stealth monopoles designed to look like a flagpole shall utilize a flag that is appropriately sized for the height of the pole. Stealth monopoles disguised as a tree shall be of a height, character and placement that is appropriate to the location. Wireless telecommunications facilities mounted on roofs or similar structures shall be concealed from view by placement and setback from the edges and/or through use of architectural screening that is in character with the building or antenna support structure.
- g. Locate wireless telecommunications facilities in areas where trees and/or buildings obscure some or all the wireless telecommunications facilities from view, and install new year-round landscaping and screening around the site where visible from public streets or residential areas.
- h. Locate accessory equipment inside a building or in underground vaults when possible. Screen ground-level wireless telecommunications facilities through use of walls, fencing or year-round landscaping, or combinations thereof, which is appropriate in design, height and material to the character of the location and the structure to be screened.

O. MODIFICATION AND REPLACEMENT

1. Modification to existing site. Up to fifty (50) percent of the height of an existing tower may be replaced with no substantial change in height as part of modifications made to provide for co-location of a new facility. Replacement of more than fifty (50) percent of a tower shall be considered a new tower and shall meet all of the applicable requirements for new construction.
2. Rebuilding damaged or destroyed existing site. If more than fifty (50) percent of the tower or facility is damaged or destroyed, it shall be considered a new facility and shall meet all the applicable requirements for new construction. All replacement shall comply with then applicable building codes and a new administrative approval or special use permit and building permit shall be obtained and be completed within one hundred eighty (180) days from the date the tower or facility was damaged or destroyed. If no permit is obtained or it expires, or replacement is not timely completed, the tower or facility shall be deemed abandoned.

P. BUILDING PERMITS, INSPECTIONS AND CERTIFICATIONS

1. The applicant shall apply for and receive all applicable City permits prior to the construction of an antenna support structure or telecommunications structure. Wireless telecommunications facilities shall conform to the requirements of the applicable city codes and all other construction standards set forth by federal and state law. The City shall inspect the antenna support structure or telecommunications structure and issue a certificate of occupancy prior to use by the providers. It shall be a violation of this subsection for a structure owner to construct or use a telecommunications structure without the required permit, inspection or certificate of occupancy.
2. An engineer shall certify that all wireless telecommunications facilities are structurally sound. For new wireless telecommunications facilities, such certification shall be based upon the construction plans, and shall be submitted with an application. The City may require subsequent certifications if the City reasonably believes that the structural and/or electrical integrity of the telecommunications structure is jeopardized. Failure to comply within seven business days of such request shall be grounds for revoking such structure's occupancy permit, and ceasing operations until compliance is achieved.

Q. ABANDONMENT

1. The structure owner and/or provider of a telecommunications structure shall provide the City a copy of its notice to the FCC of intent to cease operations. The structure owner shall remove the structure at the structure owner's expense within

one hundred and eighty (180) days from the date of cessation of operation of the tower. If the structure owner and/or provider ceases operation of the tower and/or fails to remove the structure within one hundred and eighty (180) days from the date of cessation of operation, the structure may be declared a nuisance and dangerous structure in conformance with the City's nuisance code. The removal process shall be as set forth in the Bel Aire Code for removal of nuisance and/or dangerous buildings. Failure to provide the City with the proper notice of intent to cease operations shall be evidence of intent to abandon the tower and nuisance abatement may be commenced.

2. Failure to remove the abandoned structure in compliance with the time limit provided within a notice that such facility has been declared a nuisance shall be grounds for the City to remove the structure with all costs of removing such dangerous and nuisance structure assessed against the landowner as a lien against the real property in the amount of all direct and indirect costs associated with the dismantling and disposal of the structure.

R. MAINTENANCE

1. Structure owners shall employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public including sufficient anti-climbing and other measures to reduce the potential for trespass or injury.
2. Structure owners shall install and maintain wireless telecommunications facilities, fixtures and other equipment in compliance with the requirements of all federal, state and local codes and regulations, and in such manner that will not interfere with the use of other property.
3. All wireless telecommunications facilities shall be maintained in good condition, order and repair.
4. Licensed maintenance and construction personnel shall perform all maintenance and construction of wireless telecommunications facilities.
5. All wireless telecommunications facilities shall comply with the current RF emission standards, as determined by the FCC.

S. FEES.

1. Fees for each of the following shall be as set forth within the City's fee schedule:
 - a. Administrative Permit (New Cell Tower)
 - b. Administrative Permit (Modification of Existing Structure)

- c. Right of Way, Wireless Facility Administrative Permit
 - d. Special Use Permit Application
 - e. Staff Review, Special Use Permit
2. Special Use Permit Deposit Process. The applicant shall submit with any Special Use Permit application, or at the time of converting an application for an administrative permit to a request for a Special Use Permit, an initial deposit of \$500.00 for each wireless facility location that is the subject of the application. After completing the preliminary review, the Zoning Administrator shall notify the applicant, in writing, of any additional information required to complete the review, and of any anticipated extraordinary costs or expenses for additional City staff time, postage and advertising, retention of expert or consultant assistance, or legal fees. If the Zoning Administrator identifies anticipated costs in excess of the deposit balance after payment of expenses incurred, the deposit shall be replenished or supplemented to the extent necessary to assure payment of the anticipated costs before the City shall incur those anticipated costs and before any further review of the application shall occur. At the conclusion of the permitting process a finalized statement shall be provided to the applicant, all deposit monies held by City in excess of actual costs shall be returned to the applicant. The total charges and fees assessed by the authority shall not exceed:
- a. \$500 for a co-location application, that is not a substantial modification, small cell facility application or distributed antenna system application; or
 - b. \$2,000 for an application for a new wireless support structure or for a co-location application that is a substantial modification of a wireless support structure.
3. All fees shall be in conformance with Kansas Session Laws at L. 2016, ch 40, sec. 1, as such provisions are subsequently codified with Kansas Statute.

T. ENFORCEMENT and PENALTY. Enforcement of all provisions of this Section 8.05 and penalties for violation of any provision of this Section 8.05 shall be in conformance with Article 3 of this Zoning Code. Each day that any violation of this Section 8.05 continues shall constitute a separate offense and be punishable hereunder as a separate violation.

ARTICLE 9

PARKING AND LOADING

9.01 PARKING REQUIRED FOR ALL STRUCTURES

For all buildings or structures hereafter erected, constructed, reconstructed, moved or altered, off-street parking in the form of garages or areas made available exclusively for parking shall be provided. Thus, parking spaces shall be located entirely on the same property as the main use, with no portion other than the necessary drives extending into any street or other public way. The issuance of building permits or certificates of occupancy shall require compliance with the parking standards approved in the platting process and or the planned unit development if one exists.

All parking areas and drives shall be ready for use upon occupancy of a building and shall be surfaced with a permanent, bituminous or concrete paving meeting the standards of the City prior to the issuance of a certificate of occupancy. All parking lots, drives, and single-family dwellings, shall have curbs and drainage facilities approved by the City. No residential driveway approach shall exceed thirty (30) feet in width as measured along the outside sidewalk line and expand no larger than the width of the garage. Approach aprons and curbs shall be Portland cement concrete.

9.02 ACCESS TO PARKING AREAS

Ingress and egress to all multifamily residential or commercial parking areas shall not exceed thirty-five (35) feet in width, or be less than twenty-five (25) feet for two (2) way approaches. Industrial driveway approaches shall not exceed sixty-five (65) feet in width. All residential, commercial and industrial driveway approaches shall be in accordance with Subdivision regulations.

9.03 DIMENSIONS AND DESIGN OF PARKING AREAS

A. Standard parking stall dimensions shall be nine (9) feet by twenty (20) feet, exclusive of access drives on aisles. Where the end of the parking space abuts an interior parking lot curbed area at least six (6) feet in width (with landscaping or sidewalk), an overhang may be permitted which would reduce the length of the parking space by two (2) feet. Such overhang shall be measured from the face of the curb.

B. Minimum dimensions for a parallel parking space shall be eight (8) feet by twenty-two (22) feet.

C. Minimum parking dimensions for other configurations shall be determined by the City Zoning Administrator.

D. Large parking lots shall be divided into smaller parking lots of fifty (50) cars with landscape strips, peninsulas, or grade separations to reduce the visual impact of large expanses of paving, to direct vehicular traffic through the parking lot, and to provide a location for pedestrian walks.

E. Landscape aisles should be placed on both sides of entrance drives to create pleasing tree-lined entrances, to direct vehicles into and out of the site, and to provide adequate space for vehicular stacking at exits onto perimeter roadways.

F. Parking lots shall be designed to separate pedestrians from vehicles and include protected pedestrian walkways within parking areas which lead to store entrances, except for those sites with unique conditions or terrain.

G. Sidewalks and walkways shall be provided to connect sidewalks along adjacent roadways and trails in the City’s greenway system with buildings within a development. Walkways shall be designed and buffered in a manner that encourages their use.

H. Parking stalls for customer parking, employee parking, and parking spaces for disabled persons shall be designated on all site development plans and any other plans submitted for approval by the City. In addition, businesses with vehicles for sale, lease, rental, display, etc. shall designate on said plans the location(s) of display areas allocated for such vehicles. Said vehicles and display areas shall not be located within a required parking/paving setback area, shall not reduce the capacity of a parking lot below that required by this Code for both Parking and Loading, and shall not hinder the movement of vehicles in drive aisles. All parking stalls shall be striped, maintained, and specifically used for the related purpose as identified on the plans. Areas designated for parking shall not be used for display of vehicles for sale, lease, rental, etc.

Related Information: Design Guidelines

9.04 ACCESSIBLE PARKING SPACES

For those buildings where such parking is required, parking areas servicing each building entrance shall have the number of level parking spaces for person(s) with disabilities set forth in the following “Accessible Parking Spaces Table.”

| Accessible Parking Spaces Table | |
|--|-----------------------------------|
| Total Parking Area (Spaces) | Required Accessible Spaces |
| 1 to 25 | 1 |
| 26 to 50 | 2 |
| 51 to 75 | 3 |
| 76 to 100 | 4 |
| 101 to 150 | 5 |
| 151 to 200 | 6 |
| 201 to 300 | 7 |
| 301 to 400 | 8 |

| | |
|----------------|-----------------------------------|
| 401 to 500 | 9 |
| 501 to 1,000 | 2 percent of Total |
| 1,001 and over | 20 plus 1 for each 100 over 1,000 |

Such parking spaces shall be in accordance with current Federal, State, and local regulations, and all parking stalls designated as accessible shall be clearly marked by vertically mounted signs bearing the international symbol of access. One (1) in every eight (8) accessible spaces, but not less than one (1), shall be served by an access aisle ninety-six (96) inches wide minimum, and shall be designated “van accessible”, unless this number is increased by applicable Federal or State law or regulation. Accessible parking stalls shall be designated adjacent to the entrances of a building.

9.05 SETBACKS

A. Parking areas and other paved areas such as drive-through aisles in conventional zoning districts shall conform to the following setback requirements:

1. In Districts AG, RR, R-1, R-2, R-3, R-4, R-5, and R-6 and for single-family and two-family dwellings in any other district, no parking area shall be located within five (5) feet of a lot line associated with a residential use.
2. For multifamily dwellings, no parking area shall be located within thirty (30) feet of a street right-of-way or in a required yard area.
3. No parking area for a nonresidential use in any residential district shall be located within thirty (30) feet of any street right-of-way or in a required yard area.
4. In commercial and industrial districts, no parking area shall be located within the applicable parking and paving setback requirements within that zoning district.
5. Parking in any zoning district shall be permitted only in designated parking spaces.

B. Parking area setbacks within the PUD zoning districts shall be approved by the City in conjunction with the PUD review, and shall not occupy any portion of the required yard areas.

Related Information: Design Guidelines

9.06 PARKING LOT LIGHTING

A. Illumination of parking areas shall be required for all multi-family, commercial and industrial parking areas and all parking areas with more than twenty (20) parking spaces. The illumination may be provided through the use of light fixtures on a pole, and may not be provided by building mounted light fixtures. Any building mounted fixtures shall be for aesthetic and security purposes only. No fixtures that shine outward and create a glare from street right-of-way or residential properties shall be permitted. Lighting used to illuminate parking areas shall be arranged, located or screened to direct light away from any adjoining or abutting residential district or any street right-of-way. Light poles and fixtures shall meet the following criteria:

1. The style of light poles and fixtures should reflect the architectural character of the area.
2. Maintain parking lot poles/fixtures of the same style, height, color and intensity of lighting throughout the development area. Varying styles of fixtures may be permitted if it is demonstrated that the styles contribute to an overall theme for the area.
3. The maximum pole height in commercial shopping centers and office parks shall be thirty-five (35) feet, except it shall be twenty-five (25) feet when located adjacent to residential development. The maximum pole height for individual businesses shall be twenty-five (25) feet.
4. Light fixtures shall be nonadjustable, horizontally mounted fixtures, or fixtures with less than ninety (90) degree luminary cutoff. Fixtures that project light or glare toward street right-of-way or adjoining properties shall not be permitted.

B. Illumination for parking areas shall be provided as follows:

1. Average Maintained Foot-candles: The maximum average maintained foot-candles for all parking lots shall be three (3), unless otherwise approved by the City. For purposes of this Code the average maintained foot-candles shall be calculated at eight-tenths (0.8) of initial foot-candles.
2. Minimum Foot-candles and Uniformity Ratio: The minimum amount of maintained illuminations for open parking shall be as provided in the following table:

FOOT CANDLE/UNIFORMITY TABLE

| <i>Uses</i> | <i>Foot Candles</i> | <i>Uniformity Ratio</i> |
|-----------------|---------------------|-------------------------|
| Low Activity | 0.5 | 4.1 |
| Medium Activity | 1.0 | 3.1 |
| High Activity | 2.0 | 3.1 |

- a. For purposes of interpreting the Foot Candle/Uniformity Table, the following rules shall apply: high activity uses shall include major league athletic events, major cultural or civic events, major regional shopping centers and similar uses; medium activity uses include fast food facilities, area shopping centers (fifteen [15] acres or more), hospitals, residential complex parking and similar uses; low activity uses include local merchant parking (less than fifteen [15] acre sites), industrial employee parking, educational parking and similar uses.
- b. The light fixtures shall be arranged in order to provide uniform illumination throughout the parking lot as indicated by the uniformity ratio in subparagraph B-1 of average illumination to minimum illumination.
3. The maximum maintained vertical foot-candle at an adjacent residential property line shall be one-half (.05) foot-candle measured five (5) feet above grade.

4. The required illumination within a nonresidential development shall be measured at grade.

C. Plan Submission Requirements include a point-by-point photometric plan shall be provided at the request of the City. The calculation shall be measured at grade for lighting levels within the parking lot. A cut sheet of the proposed fixtures, including the candlepower calculation, shall be submitted upon request by the City.

Related Information: Guidelines for Parking Lot and Building Mounted Lighting

9.07 LANDSCAPING AND SCREENING

The interior of parking areas shall be landscaped in accordance with the provisions set forth in this Code in reference to Landscaping and Screening. In specific cases, the City may require that any wall, fence or screen planting around a parking area shall be set back from a street if such setback will prevent adverse effects upon the appropriate use of adjacent property or will prevent a traffic hazard.

Related Information: Guidelines for Internal Parking Lot Landscaping

9.08 DEFERRED CONSTRUCTION OF PARKING SPACES

A portion of the parking area required for office or industrial development may remain unimproved until such time as the City deems that it must be improved to adequately serve the parking demand. Such delayed construction of parking may be permitted only after the City is satisfied that the initial occupancy of the premises will be adequately served by the lesser number of spaces and only after approval of a final development plan clearly indicating the location, pattern and circulation to and from the deferred parking spaces. The land area so delineated for future parking shall be brought to finished grade and landscaped, and shall not be used for building, storage, loading or other purposes.

9.09 PARKING AREAS FOR SINGLE AND TWO-FAMILY DWELLINGS

A. No driveway serving single or two-family dwelling shall be located within five (5) feet of an adjoining lot line except for a driveway serving two (2) properties. A single residential driveway serving two (2) properties must be approved by the City.

B. Parking shall be restricted to customary passenger vehicles, and emergency vehicles of not more than a size of factory designated, one (1) ton, single axle, dual wheels which are unloaded and immediately available for emergency response by an operator who is on duty or on call. However, emergency vehicles shall not be parked upon a driveway for more than twelve (12) hours during a twenty-four (24) hour period.

C. All passenger cars shall be parked on paved driveways or parking areas relating to the garage or carport and on the streets except where specifically prohibited. In areas where there are

no garages or carports, passenger cars and motor vehicles may be parked on paved driveways constructed perpendicular to the street. No parking shall be allowed in that portion of the street right-of-way not used for traffic movement, i.e., between the curb and the sidewalk, and between the curb and the front lot line.

D. In Districts R-2, R-3, R-5, and R-6 guest parking in excess of minimum parking requirements may be permitted. In no case shall the required parking be located within the guest parking area. Guest parking shall be built to meet all minimum standards of the City. Upon acceptance of guest parking by the City, the area will be maintained in the same manner as all other public streets. In no case shall boats, campers, recreational vehicles, trucks or inoperable vehicles be parked or stored in any guest parking. Any such guest parking shall be provided with landscaped areas.

E. No person shall stop, stand or park a commercial vehicle on any street, alley or lot within any residential district, except when necessarily loading or unloading property or when in the performance of a service to or upon property in the block where the vehicle is parked. The provisions of this section may not be defeated by a mere location change of a vehicle within the residential district. Residential district refers to any place or area where the property is zoned for residential occupancy including single-family, two-family and multifamily dwellings.

Related Information: Design Guidelines; Residential Neighborhood Design Manual

9.10 OFF-STREET PARKING SCHEDULE

A. Parking requirements shall be as indicated in the following table:

| LAND USES | KEY |
|--|----------------|
| Single-family dwellings | H |
| Two-family dwellings | H |
| Multifamily dwellings | I |
| Garden & Patio, Townhouse, Condos | H |
| Commercial buildings not specifically listed below | M |
| Industrial buildings not specifically listed below | J |
| Office buildings | K |
| Restaurants and cafeterias | B&E |
| Churches, armories, assembly halls, theaters, athletic fields and other seating facilities | E |
| Libraries | B&J |

| | |
|---|-------------------|
| Hotels, motor hotels, motels, apartment hotels, dormitories and similar boarding facilities | B&C |
| Hospitals, nursing or convalescent homes, or congregate care facilities | F & G |
| Mortuaries | B & E |
| Taverns or clubs serving alcoholic or cereal malt beverages | B & E |
| Dance halls and discotheques | A & D |
| Elementary and junior high schools | G |
| High schools | G & N |
| Colleges, universities, professional schools and junior colleges (public or private) | G & P |
| Shopping Centers | L1, L2, L3 |
| Convenience grocery stores | M |
| Mini-storage warehouse complexes | B & O |
| Assembly halls without fixed seats | Q |
| Gymnasiums | Q |
| Miniature golf courses | Q |

| KEY | |
|------------|---|
| A | One (1) space for each employee. |
| B | One (1) space for each two (2) employees on the largest shift. |
| C | One (1) space for each guest room or each two (2) guest beds. |
| D | One (1) space for each two (2) seats or building capacity calculated by building standards. |
| E | One (1) space for each four (4) seats or building capacity calculated by building standards |
| F | One (1) space for each four (4) beds. |
| G | One (1) space for each staff member (including visiting doctors). |
| H | Four (4) spaces two (2) enclosed |

| | |
|------------|---|
| I | One and one-half (1.5) spaces for each studio or efficiency apartment; one and three-quarter (1.75) spaces for each (1) or two (2) bedroom apartment; and two (2) spaces for each apartment having more than two (2) bedrooms. |
| J | Two and one-half (2.5) spaces for each one thousand (1,000) square feet of gross floor area, or portion thereof for buildings less than twenty-five thousand (25,000) square feet of floor area. For buildings over twenty-five thousand one (25, 001) square feet two and one-half (2.5) spaces per one thousand (1, 000) square feet of floor area devoted to office uses plus one (1) space for each one thousand (1,000) square feet of other floor area. |
| K | Three and eight-tenths (3.8) spaces for each one thousand (1,000) square feet of gross leasable floor area, or portion thereof |
| L-1 | Five (5) spaces per one thousand (1,000) square feet of gross area for centers over six hundred thousand and one (600,001) square feet. |
| L-2 | Four and one-half (4.5) spaces per one thousand (1,000) square feet of gross area for centers having one four hundred thousand and one (400,001) square feet to six hundred thousand (600,000) square feet. |
| L-3 | Four (4) spaces per one thousand (1,000) square feet of gross area for centers having twenty-five thousand (25,000) to four hundred thousand (400,000) square feet. |
| M | Four (4) spaces per one thousand (1,000) square feet of gross area. |
| N | One (1) space per four (4) students. |
| O | Two (2) spaces. |
| P | One (1) space per two (2) students. |
| Q | As determined by the City. |

B. Any other use not included in the parking requirements above shall be assigned a parking requirement by the City.

C. Where convention centers, conference centers, assembly halls, ballrooms or other similar facilities are built in conjunction with a hotel, office park or shopping center, the City may permit up to a thirty-five (35) percent parking space reduction for each of its uses listed above when built in conjunction with the uses listed above, due to overlapping usage of a portion of the parking spaces. Request for such shared parking must be received as part of a preliminary development plan. The request shall outline the justification in reducing the number of parking spaces. In addition, a change in use to a use other than listed above, shall conform to City parking standards.

9.11 OFF-STREET LOADING SCHEDULE

A. For purposes of this section there shall be considered to be two (2) sizes of off-street loading spaces. Each large space shall have an overhead clearance of at least fifteen (15) feet, shall be at least twelve (12) feet wide and shall be at least fifty (50) feet long, exclusive of access or

maneuvering area, platform and other appurtenances. Each small space shall have an overhead clearance of at least twelve (12) feet, shall be at least twelve (12) feet wide and shall be at least (30) feet long, exclusive of access or maneuvering area, platform and other appurtenances.

B. Off-street loading facilities 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. The number of required loading spaces which are adequate to serve the uses or categories of uses proposed, shall be in accordance with the following:

| LOADING SPACES CHART | | |
|---|---|---------------------|
| PARKING CATEGORY | GROSS FLOOR AREA IN SQ. FEET | REQUIRED NO# |
| Institutional Uses | | |
| Schools | 10,000 to 100,000 | 1 |
| Health/Medical, Recreational, Civic, Social Religious | For each additional 200,000 or fraction thereof. | 1 – Additional |
| Business Uses | | |
| Retail | 5,000 to 25,000 | 1 |
| | 25,001 to 200,000 | 1 |
| | For each additional 200,000 | 1 – Additional |
| Retail Services | 5,000 to 10,000 | 1 |
| | 10,000 to 100,000 | 1 |
| | For each additional 100,000 or fraction thereof. | 1 – Additional |
| Service/Trade | 10,000 to 200,000 | 1 |
| | For each additional 200,000 or fraction thereof. | 1 |
| Service/Miscellaneous | 5,000 to 25,000 | 1 |
| | 25,001 to 200,000 | 1 |
| | 200,001 to 400,000 | 1 |
| | For each additional 100,000 over 400,000 or fraction thereof. | 1 |
| Industrial Uses | 5,000 to 10,000 | 1 |

| | | |
|--|--|----------------|
| | 10,001 to 40,000 | 1 |
| | 40,001 to 100,000 | 1 |
| | For each additional 100,000 or fraction thereof. | 1 - Additional |

C. Off-street loading facilities shall be constructed, maintained and operated in accordance with City standards and shall be surfaced with concrete, asphalt concrete or asphalt maintained in good condition, free of weeds, dust, trash and debris.

D. Where access and drives to off-street loading facilities occur in conjunction with off-street parking facilities that provide parking at street level for more than six hundred (600) cars, provisions shall be made to maintain separate circulation routes within such facilities.

E. Any off-street loading facility shall not be used to satisfy the space requirements for any off-street parking facilities or portions thereof.

F. For the purpose of determining the amount of off-street loading, or if the number of berths to be provided by such use is not readily determinable, the number of loading areas shall be fixed by the City.

Related Information: Guidelines for Loading Dock and Service Area Screening

9.12 DRIVE-IN AND DRIVE-THROUGH STACKING DISTANCE REQUIREMENTS

A. Drive-in and drive-through restaurant facilities shall provide a minimum stacking distance of one hundred sixty (160) feet, of which eighty (80) feet shall be provided to the menu board, exclusive of any aisle or parking space. Minimum pavement lane width shall be twelve (12) feet. All other drive-in and drive-through facilities shall conform to the requirements below. The following requirements shall be followed in determining the minimum stacking length:

| TYPE OF OPERATION | MINIMUM NO. OF VEHICLES |
|---|--|
| Financial Institution w/drive-up teller | 4 veh/window or kiosk |
| Financial Institution w/drive-up ATM | 2 veh/window or kiosk |
| Car wash – self service, automatic | 4 veh/bay at entrance, 1 veh/bay at exit |
| Photo processing | 2 veh/window |
| Dry cleaning | 2 veh/window |
| Gas stations | 2 veh/pump |
| Gated parking lot entrance | 1 veh/gate |
| Gated unit or overhead door | 1 veh/door |

B. These minimum vehicle stacking requirements shall remain in force, unless the developer or applicant can present a traffic study from a professional traffic engineer which provides verifiable evidence to allow the reduction of these minimum stacking lengths. Deviation from these stacking lengths must be approved by the City.

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ARTICLE 10
LANDSCAPING AND SCREENING

10.01 STATEMENT OF INTENT

The intent of this Article is to foster aesthetically pleasing buildings, projects and developments which will protect and preserve the appearance, character, health, safety and welfare of the community. Specifically, these regulations are intended to increase the compatibility of adjacent uses requiring a buffer or screen between uses, to minimize the harmful impact of noise, dust, debris, motor vehicle headlight glare, or other artificial light intrusions, and other objectionable activities or impacts conducted or created by an adjoining or nearby use.

10.02 GENERAL REQUIREMENTS

All previous land areas shall be brought to finished grade and planted in sod, native grasses, or other appropriate ground covers. In addition to the minimum number of trees required to be planted and maintained by this Article, an appropriate number or amount of shrubs, ground cover and/or sod 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.

10.03 LANDSCAPING PLAN REQUIRED

All plans submitted in support of a building, project, plan review, special use or final plat shall include a landscaping plan. All landscaping plans shall include the following information:

- A. North arrow and scale.
- B. Topographic information and final grading adequate to identify and properly specify planting for areas needing slope protection.
- C. The location and contours, at one (1) foot intervals, of all proposed berms.
- D. The location and dimensions of all existing and proposed structures, parking lots and drives, sidewalks, refuse disposal areas, fences, above or underground utilities and storm drainage systems, freestanding electrical equipment, recreational facilities and other freestanding structural features as determined necessary by the City.
- E. The location, size, spread (at the time of planting), 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.
- F. Mature sizes of plant materials shall be drawn to scale.
- G. Location of hose connections and other watering sources.

H. All screening required by this Article.

10.04 PREFERRED LANDSCAPE TREES AND SHRUBS

The City of Bel Aire, Kansas, maintains a list of recommended trees, shrubs and grasses for planting in public areas. This list (at the end of this Article) shall be available to residents of the City upon request to aid in the selection of trees for private properties. The list of recommended trees, shrubs, and grasses are those listed in the publication, “Preferred Tree Species for South Central Kansas” by the Kansas Urban Forestry Council, and may be updated periodically. Other species may be acceptable upon approval by the City.

10.05 STREET TREES

When planting trees, residents must keep in mind the clay soil in Bel Aire area and the knowledge that this soil will retain moisture for longer periods of time than normal soils. Most of the trees recommended in this document prefer dry soils and in some cases will not tolerate wet soils. The clay soil of Bel Aire combined with irrigation systems may pose a real challenge for trees to survive. The table below describes the soil tolerance of the species listed. Homeowners should be educated that if trees are planted with turf, the watering requirements may differ. Please refer to the following table, which describes soil tolerances and other comments of the recommended trees for Bel Aire.

A. Street trees shall be required in all residential and nonresidential districts along all local and collector streets. Street trees shall be provided as follows:

1. Street trees shall be required along street right-of-way of public or private street frontage, excluding arterial and minor arterial streets where perimeter landscaping is required by other sections of this Code. Street trees shall be spaced as uniformly as possible, with an average spacing of forty (40) linear feet between trees in all districts, but not less than one (1) tree per lot in residential districts. On a corner lot a minimum of two (2) street trees shall be required. Street trees may count toward the required number of trees within the interior of the lot only in residential districts for single-family and two-family dwellings. Exceptions to the location and spacing of trees may be allowed to accommodate for the location of utilities, street lights, driveways, storm drain structures, sidewalks, and traffic clearance zones. A formal street tree-planting scheme shall not be required if a master landscape plan is approved for a development area.
2. There must be a minimum of six (6) feet of space between the right-of-way or sidewalk and the back of curb for the trees to be planted in this area.
3. Adequate clearance between street trees and other infrastructures shall be coordinated in such a manner to allow for the location of street trees within the right-of-way, wherever practical, and shall promote the longevity of the street trees to avoid premature loss of the trees. The street tree plan shall coordinate the

locations of street trees to allow access to utilities with minimal disruption to the street trees and their supporting root systems while avoiding increased service costs to the utilities. Street trees shall observe all sight-distance requirements as determined by the City.

4. Street tree species and typical spacing requirements shall be provided with all preliminary plats and PUD plans.
5. The City Manager, or designee, shall determine when street trees are planted, which will generally be the first appropriate planting season after the danger of construction related damage is past.
6. The developer shall be responsible for planting street at the completion of each phase of development. Prior to beginning the final phase the developer shall submit a bond or another financial guarantee approved by the City that street trees will be planted in all phases yet to be completed.
7. The table below lists the street trees, and the appropriateness of each type of tree for the area. The key to the table is: **N- No, S- Somewhat, Y- Yes**

STREET TREE TIPS: Choose a tree that is right for your soil and location. A simple soil test will determine the types of plants good for your site. Before planting any tree you should take into account “permanent fixtures” including structures, sidewalks, driveways, walks and easements. Avoid planting tall growing trees under utility wires. Avoid planting thirsty rooted trees too close to sewer or drainage lines. Avoid planting fruit bearing trees over public ways.

Information in the above chart has been prepared by the Bel Aire Tree Board and was compiled from information obtained in the documents titled; “Street Trees for Kansas” by the Kansas State & Extension Forestry, Kansas State University, September 1992; and, “Preferred Tree Species for South Central Kansas” by the Kansas Urban Forestry Council, March 1992; revised; December 1992; April 1999; August 2005. Complete copies of either document are available at Bel Aire City Hall. Other species may be acceptable upon submission of horticultural criteria supporting the quality of growth in Bel Aire environment on approval of the City.

B. Prohibited Street Trees: Ailanthus, White and Silber Birch, Box Elder, Catalpa, Cottonwood, Siberian Elm, “Fruit” trees, Silver Maple, Mimosa, Pin Oak, Russian Olive, Poplar, Weeping trees, Willows, Shrubs, all Evergreens.

C. Street Tree Specifications: All street trees shall meet the City’s technical specifications for material quality, minimum size, etc. Trees shall be guaranteed for a period of not less than one (1) year.

D. Street trees on the right-of-way shall be the maintenance responsibility of the adjoining property owner.

Related Information: Guidelines for Street Plantings, as well as the above listed referenced documents.

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| Tree (Genus Name) | Common Name | Mature Height | Mature Width | Good Fall Color | Drought Tolerant | Tolerates Wet Soil |
|---|---|------------------|-----------------|-----------------------|---------------------|-----------------------|
| MAPLE (Acer) | Freeman (Acer x freemanii) | 50'-60' | 40'-50' | Y | Y | S |
| | * Cultivars: Jeffersred (Autumn Blaze) * May have shallow root system | | | | | |
| | Red (Acer rubrum) | 40'-60' | 35'-50' | Y | N | Y |
| | * Cultivars: Autumn Flame, October Glory, Red Sunset | | | | | |
| | Sugar (Acer saccharum) | 40'-60' | 30'-50' | Y | S | N |
| * Caddo (Seedling) * Cultivars: Commemoration, Legacy * All three are resistant to leaf tatter and more heat tolerant | | | | | | |
| PEAR (Pyrus) | Callery Ornamental (Pyrus calleryana) | 30'-40' | 15'-20' | Y | Y | N |
| | * Cultivars: Aristocrat, Autumn Blaza, Capital, Chanticleer (cv. Cleveland Select), Redspire * The Capital cultivar has only a 7'-8' spread * DO NOT plant Bradford pears as they are susceptible to ice, snow breakage | | | | | |
| | | | | | | |
| ASH (Fraxinus) | White Ash (Fraxinus Americana) | 45'-60'+ | 25'-50' | Y | N | N |
| | * Cultivars: Autumn Applause, Autumn Purple, Rosehill * Autumn Purple tolerates wetter soils * Young ash trees are prone to wood borers | | | | | |
| | Green Ash (Fraxinus pennsylvanica) | 40'-60' | 30'-45' | Y | Y | Y |
| | * Cultivars: Marshall seedless, Cimmaron, Urbanite, Patmore * Young ash trees are prone to wood borers when young | | | | | |
| HACKBERRY (Celtis) | Common Hackberry (Celtis occidentalis) | 40'-60' | 40'-50' | S | Y | Y |
| | * Cultivars: Prairie Pride | | | | | |
| | Sugar Hackberry (Celtis laevigata) | 40'-60' | 40'-50' | S | S | S |
| * Cultivars: All Seasons | | | | | | |
| LINDEN (Tillia) | Littleleaf Linden (Tilia cordata) | 35'-45' | 25'-40' | S | N | N |
| | * Cultivars: Greenspire * Greenspire is pyramidal | | | | | |
| | American Linden (Tilia Americana) | 50'-60'+ | 35'-40' | S | N | S |
| | * Cultivars: Redmond * Redmond is pyramidal | | | | | |
| HONEYLOCUST (Gleditsia triacanthos) | Thornless Honeylocust Gleditsia triacanthos var. inermis) | 40'-60' | 30'-50' | S | Y | S |
| | * Cultivars: Shademaster, Skyline, Maraine * Honeylocusts are susceptible to many pests * Avoid 'Sunburst' cultivar | | | | | |
| KENTUCKY COFFEETREE (Gymnocladus dioica) | Kentucky Coffeetree (Gymnocladus dioica) | 50'-60' | 30'-45' | S | Y | S |

| Tree (Genus Name) | Common Name | Mature Height | Mature Width | Good Fall Color | Drought Tolerant | Tolerates Wet Soil |
|--|---|------------------|-----------------|-----------------------|---------------------|-----------------------|
| OAK (<i>Quercus</i>) | Bur Oak (<i>Quercus macrocarpa</i>) | 60'-80' | 50'-70' | N | Y | S |
| | Chinkapin Oak (<i>Quercus muehlenbergii</i>) | 35'-40'+ | 40'-45' | S | Y | N |
| | Northern Red Oak (<i>Quercus rubra</i>) | 60'-75' | 40'-60' | Y | N | N |
| | Sawtooth Oak (<i>Quercus acutissima</i>) | 40'-50' | 30'-45' | S | Y | S |
| | Shingle Oak (<i>Quercus imbricaria</i>) | 50'-60' | 40'-60' | S | Y | S |
| | Shumard Oak (<i>Quercus shumardii</i>) | 60'-80' | 40'-60' | Y | Y | S |
| | Swamp White Oak (<i>Quercus bicolor</i>) | 50'-70'+ | 20'-50' | Y | S | Y |
| BALD CYPRESS (<i>Taxodium distichum</i>) | Bald Cypress (<i>Taxodium distichum</i>) | 50'-70'+ | 20'-50' | Y | S | Y |
| | * Trees usually survive drought once established but defoliate as a defense mechanism | | | | | |
| AMERICAN SYCAMORE (<i>Platanus occidentalis</i>) | American Sycamore (<i>Platanus occidentalis</i>) | 70'+ | 60'-70' | S | S | S |
| | * Prefers deep, moist soil * Known for its striking mottled, peeling bark | | | | | |
| LONDON PLANETREE (<i>Platanus x acerifolia</i>) | London Planetree (<i>Platanus x acerifolia</i>) | 60'-80' | 50'-65' | N | S | Y |
| | * Cultivars: Bloodgood (best resistance to anthracnose) | | | | | |
| GINGKO (<i>Ginkgo biloba</i>) | Ginkgo (<i>Ginkgo biloba</i>) | 50'-60'+ | 25'-40' | Y | Y | N |
| | * Cultivars: (use only male cultivars): Autumn Gold, Princeton Sentry (narrow pyramidal form) * Slow-growing | | | | | |
| ELM (<i>Ulmus</i>) | Lacebark Elm (<i>Ulmus parvifolia</i>) | 40'-60' | 35'-50' | S | Y | S |
| | * Cultivars: Athena, Allee * Known for its ornamental bark | | | | | |
| GOLDENRAIN TREE (<i>Koelreuteria paniculata</i>) | Goldenrain Tree (<i>Koelreuteria paniculata</i>) | 30'-40' | 30'-40' | S | Y | N |
| MULBERRY (<i>Morus</i>) | White Mulberry (<i>Morus alba</i>) | 30'-40' | 30'-40' | N | Y | S |
| | * Use fruitless varieties only | | | | | |
| CHINESE PISTACHE (<i>Pistacia chinensis</i>) | Chinese Pistache (<i>Pistacia chinensis</i>) | 30'-35' | 30'-40' | Y | Y | N |
| | * Use cold-hardy strains if possible | | | | | |

10.06 RESIDENTIAL PERIMETER LANDSCAPING

A. In residential districts, large deciduous shade or evergreen trees shall be required within the interior of each lot at a ratio of three (3) trees for every single-family dwelling, four (4) trees for every two-family dwelling and one (1) tree for every dwelling unit for multifamily buildings. For single-family and two-family dwellings, at least one (1) required interior lot tree may be a street tree in compliance with this Section. Multifamily developments are required to have street trees in addition to the required interior lot trees. Perimeter and buffer landscaping trees shall not count toward the required number of trees within the interior of any lots.

B. When perimeter landscape buffers are required in accordance with adopted buffer design guidelines for a residential use where adjacent to a non-residential use, the landscape planting requirements shall be determined on a case-by-case basis. Such landscaping shall provide a solid visual screen.

Related Information: Guidelines for Buffers between Conventional Residential and Nonresidential Uses; Guidelines for Street Plantings

10.07 NON-RESIDENTIAL PERIMETER LANDSCAPING

A. Within the front and corner side yards where a street right-of-way separates a non-residential use from property zoned or designated on the Comprehensive Plan Map for residential use, a continuous fifteen (15) foot landscape area shall be provided with landscaping, clustered or spaced linearly and need not be placed evenly, at a rate of one (1) deciduous shade or coniferous/evergreen tree for every thirty (30) feet of linear street frontage, and screening (berms/shrubs) across one hundred (100) percent of the street frontage to a minimum height of three (3) feet as measured from the grade of the parking lot or adjacent street curb, whichever is of the higher elevation. In addition, one (1) ornamental tree shall be planted for every three (3) required deciduous shade or evergreen trees.

B. Where a street right-of-way separates a non-residential use from property zoned or designated on the Comprehensive Plan Map for non-residential use, a continuous fifteen (15) foot landscape area shall be provided with landscaping at a rate of one (1) deciduous shade or coniferous/evergreen tree for every fifty (50) feet of linear street frontage, and screening (berms/shrubs) across one hundred (100) percent of all parking and vehicular areas to a minimum height of three (3) feet as measured from the grade of the parking and vehicular use areas. In addition, one (1) ornamental tree shall be plated for every three (3) required deciduous shade or evergreen trees.

C. Within the rear and interior side yards of properties zoned commercial, a wall landscaping/berming or a fence which incorporates a landscaping treatment shall be provided at a minimum height of eight (8) feet along that portion abutting property zoned or designated on the Comprehensive Plan Map for residential use. Such screening shall be installed within a continuous twenty (20) foot landscape area. in addition, trees shall be provided at a rate of one (1) deciduous shade or coniferous/evergreen tree for every thirty (30) feet of linear property along those property

lines. Also, one (1) ornamental tree shall be planted for every three (3) required deciduous shade or evergreen trees.

D. Within the rear and interior side yards of properties zoned commercial through industrial, inclusive, a landscaping/berming or berming/masonry wall combination which incorporates a landscape treatment shall be provided at a minimum height of eight (8) to eleven (11) feet along that portion abutting property zoned or designated on the Comprehensive Plan Map for residential use. In addition, trees shall be provided at a rate in accordance with adopted buffer design guidelines. The minimum rate shall be one (1) shade or coniferous/evergreen tree for every thirty (30) feet of linear property along the property line and one (1) ornamental tree for each three (3) required shade or evergreen trees. Such screening and landscaping shall be installed within a minimum continuous twenty (20) to thirty (30) foot wide landscape area. such landscape areas, landscape plantings and screening walls/berms may be required to be increased in accordance with adopted buffer design guidelines, or by action of the City Manager or governing body. Such requirements may also be modified based on the amount of buffering provided by adjacent residential properties.

E. Where abutting property is zoned or designated on the Comprehensive Plan Map for non-residential use, a continuous ten (10) foot landscape area shall be provided with landscaping at a rate of one (1) deciduous shade or coniferous/evergreen tree for every twenty-five (25) feet of linear property, and screening (berms/shrubs) across fifty (50) percent of all parking and vehicular use areas to a minimum height of three (3) feet as measured from the grade of the parking and vehicular use areas. In addition, one (1) ornamental tree shall be planted for every three (3) required deciduous shade or evergreen trees.

F. The required perimeter landscape area shall be located outside of the fenced area of the development between the fence and the street, unless this requirement is otherwise modified by the City with site development plan approval.

Related Information: Guidelines for Buffers between Conventional Residential and Nonresidential Uses; Guidelines for Street Plantings; Guidelines for Internal Parking Lot Landscaping

10.08 DESIGN PLANTING AND CRITERIA

Minimum planting requirements shall be as follows:

A. A variety of different species (including both deciduous and coniferous/evergreen species) shall be incorporated into the site design to provide visual interest, as well as disease and pest resistance. A minimum of one-third of the plantings shall be evergreen/coniferous species.

B. Deciduous shade trees – two and one-half (2 1/2) to three (3) inch caliper as measured twelve (12) inches above ground.

C. Coniferous/evergreen trees – six (6) to eight (8) feet in height.

- D. Ornamental trees – one (1) to one and one-half (1 ½) inch caliper as measured twelve (12) inches above ground. Multi-trunk clusters (three [3] or more trunks) the smallest trunk shall be three-quarter (¾) inch.
- E. Deciduous and Coniferous/Evergreen Shrubs – Three (3) to five (5) gallon container depending upon species and spacing. Spacing from three (3) to five (5) feet apart depending upon species.
- F. Plant materials shall be placed intermittently against long expanses of building walls, fences and other barriers to create a softening effect.
- G. Ground cover plants shall be planted in a number as appropriate by species to provide fifty (50) percent surface coverage.
- H. Seeding or sodding shall be provided for total coverage within the first growing season.
- I. Sod shall be used where necessary to provide coverage and soil stabilization.
- J. Landscaping and planting areas shall be reasonable dispensed throughout the parking lot.
- K. Detention/retention basins and ponds shall be landscaped with seed/sod and maintained in accordance with City codes. Landscaping should include shade and ornamental trees, evergreens, shrubbery, hedges, and/or other live planting materials.
- L. Indigenous and drought resistant plant materials should be used wherever possible. If such plant materials are not used, then an irrigation system shall be installed to provide water during a three (3) year establishment period.
- M. Earthen berms and existing topography should, whenever practical, be incorporated into the landscape treatment of a site.
- N. Required landscape plantings shall be coordinated with the location of utilities, driveways and traffic clearance zones.

Related Information: Guidelines for Buffers between Conventional Residential and Nonresidential Uses; Guidelines for street Plantings; Guidelines for Internal Parking Lot Landscaping

10.09 INTERIOR LANDSCAPING WITHIN PARKING AND VEHICULAR USE AREAS

Except for those developments as listed herein, all residential and non-residential developments shall include the following interior landscaping standards within their parking and vehicular use areas:

- A. Landscaping and planting areas shall be reasonable dispersed throughout the parking lot.
- B. The interior dimensions of any planting area or landscape island shall be a minimum of one hundred sixty-five (165) square feet in area. Landscape islands shall be a minimum of nine(9) feet in width, as measured from back of curb to back of curb, and shall be constructed at a ratio of one (1) per each twenty (20) parking spaces. Each area shall be protected by vertical curbs or

similar structures, and be designed and grouped into a parking and vehicular use area to create defined aisles and entrances for on-site traffic circulation.

C. A minimum of one (1) shade tree shall be provided for every parking and vehicular use landscape island.

D. Landscape strips between parallel parking rows shall be a minimum of ten (10) feet in width. When incorporating pedestrian walkways, such strips shall be a minimum of twenty (20) feet in width to accommodate vehicular overhangs, walk, lights, posts and other appurtenances. Landscape aisles and strips shall include medium to large deciduous trees at a minimum of one (1) tree every thirty (30) linear feet, in addition to other parking lot landscape requirements.

E. Primary landscape materials shall be trees which provide shade or are capable of providing shade at maturity. Ornamental trees, evergreen trees, shrubbery, hedges and other planting materials may be used to compliment the landscaping, but shall not be the sole means of landscaping. Effective use of earth berms and existing topography is also encouraged as a component of the landscaping plan.

F. No tree, shrub, hedge or berm shall be placed which the City determines is an obstruction to visibility, or extends into a sight-distance-triangle as set forth herein.

Related Information: Guidelines for Internal Parking Lot Landscaping

10.10 BUILDING FAÇADE/FOUNDATION LANDSCAPING REQUIREMENTS

Except for those developments as utilizing a landscaping plan as approved by the Planning Commission and Governing Body, nonresidential developments shall include the following building façade and foundation landscaping standards, unless modification to these standards are otherwise approved by the City as part of site development plan approval:

A. Landscaping and planting areas shall be placed to provide a buffer between the parking lot or drives and building walls or pedestrian circulation. Landscape areas may be placed adjacent to the building wall or adjacent to the curb to coordinate with building overhangs and canopies, if any. A variety of shrubs, ornamental trees and/or shade trees are encouraged. Any trees used should accommodate pedestrian circulation.

B. Along any building façade or foundation that fronts upon a public right-of-way or a parking lot provided for the building, landscape areas shall be provided equivalent to a minimum of twenty-five (25) percent of each building façade or foundation. The landscape area may be a continuous area or comprised of several areas. Building facades along service areas are excluded, unless the service area fronts upon a public right-of-way or common access drive.

C. Each landscape area shall be planted with shrubs capable of reaching three (3) feet in height above the adjacent parking area or drive, covering a minimum of seventy-five (75) percent of the length of the landscape area. A mixture of evergreen and deciduous shrubs shall be used to maintain seasonal interest. Ornamental trees (where appropriate), or shade trees should be included in the landscape design to further buffer the building façade from the drives and parking lot areas. In areas where pedestrian circulation is anticipated, trees with a branching habit conducive to walking

under shall be used. For example, Pin Oaks are not acceptable due to their descending branching habit. Appropriate plant species should be installed so that mature tree limbs can be maintained at a minimum eight (8) foot clearance from ground level and so that shrubs do not exceed two and one-half (2 ½) feet in height for area where it is important to maintain visibility for security and safety purposes.

D. Planting areas shall have a minimum width of either six (6) feet or the equivalent of twenty (20) percent of the building façade height as measured from the ground elevation to the top of the wall or parapet, whichever is greater.

E. Building façade and foundation landscape areas shall be irrigated. Bubbler irrigation systems are encouraged in order to reduce water consumption and overspray onto pedestrian areas.

F. Landscape areas may be placed adjacent to the building wall or adjacent to the curb, with walkways, overhangs or canopies between the landscape area and building wall. Landscape areas shall generally not be placed under overhangs and canopies.

G. Berms may be incorporated in the landscape areas if positive drainage from the building is provided.

10.11 TIMEFRAME FOR COMPLETING LANDSCAPING

All required landscaping materials shall be in place prior to the time of issuance of a final Certificate of Occupancy. In periods of adverse weather conditions or construction, a temporary Certificate of Occupancy may be issued, subject to the posting of a cash escrow or irrevocable letter of credit in an amount equal to one and one-half (1 ½) times the estimated cost of the landscaping, with said estimated cost to be certified by a landscaping provider. A contract letter or bill of sale from a landscape company or garden center for the required landscape materials would be accepted in lieu of credit escrow or irrevocable letter of credit. The cash escrow or irrevocable letter of credit may be forfeited if the landscaping is not completed within the next growing season after the issuance of the temporary Certificate of Occupancy. Forfeiture of any cash escrow or irrevocable letter of credit shall not relieve the owner of the responsibility to complete the required landscaping.

10.12 SELECTION, INSTALLATION AND MAINTENANCE

A. Landscape design and species shall be used to create visual continuity throughout the development. Landscape coordination shall occur among all phases of the development area. trees, shrubs and other landscaping materials depicted on the approved development plans shall be considered to be characteristics of use (site improvements) in the same manner as parking, building materials and other details. The developer, its successor and/or subsequent owners and their agents, shall be responsible for maintenance of landscaping on the property on a continuing basis for the life of the development. Plant materials which exhibit evidence of insect pests, disease and/or damage shall be appropriately treated, and dead plants promptly removed and replaced within the next planting season after installation. All landscaping will be subject to periodic inspection by the

City's code enforcement and planning departments. Should landscaping not be installed, maintained and replaced as needed to comply with the approved plan, the owner and its agent or agents shall be considered in violation of the terms of the Certificate of Occupancy.

B. All landscape materials shall be installed in accordance with the current planting procedures established by the most recent addition of The American Standard of Nursery Stock, as published by the American Association of Nurserymen.

C. Selection of planting materials shall correspond with the preferred trees and shrubs species list as outlined herein. Substitutions shall be approved by the City, in accordance with species normally grown in south eastern Kansas.

10.13 SCREENING REQUIREMENTS

Landscaping plans for all multi-family residential, commercial, industrial and non-residential developments shall include a detailed drawing of enclosure and screening methods as provided hereinafter.

A. Unattractive elements such as trash, service and loading areas are to be located out of public view from streets, adjacent residential properties, and other highly visible areas such as parking lots, access drives, etc.

B. Refuse enclosures shall be screened from public view on all sides with a six (6) to eight (8) foot screen of either masonry and/or landscaping treatment or other compatible building material compatible with the building architecture or landscaping materials.

C. Exterior ground-mounted or building-mounted equipment including, but not limited to, mechanical equipment, utilities' meter banks and coolers shall be screened from public view with landscaping or with an architectural treatment compatible with the building architecture.

D. All rooftop equipment shall be screened from public view with an architectural treatment which is compatible with the building architecture and integral to the overall appearance of the building. The methods of screening of rooftop equipment include, but are not limited to, encasement or partition screens. Equipment screens shall be required at a height that is as high or higher than the equipment being screened. After submittal of justification and careful analysis (i.e., site line visibility study), an Administrative Exception may be granted to the screening requirements in association with one of the following criteria:

1. A building is located at a high elevation in relation to surrounding properties and it is demonstrated that rooftop equipment will not be visible.
2. A building is located in the middle of an industrial park and rooftop equipment is not visible from arterial roadways, residential properties, nor will it have a negative impact upon any sensitive areas or scenic view or vistas.
3. A building is sited in a manner where the location and setback of rooftop equipment from the building edge in relation to the elevation and visibility of surrounding properties is such that the equipment will not be visible from any distance and additional screening measures are not required.

E. All buildings or additions in nonresidential districts shall provide an opaque screening fence or all not less than eight (8) feet in height within all rear and side yards abutting property zoned for residential purposes. Such screening shall be placed so the required perimeter landscape area is located between the property line and fence or wall. Such screening shall not be placed on property lines or within the landscape area of the development and shall not extend in front of the building line of adjacent dwellings. Such screening shall not be required where similar screening exists on the abutting residential property or where a screened storage lot is provided.

F. In industrial and commercial districts, storage of materials, products or equipment outside of a fully enclosed building shall be one hundred (100) percent screened from public view.

G. Outdoor display confinement areas shall be enclosed with materials compatible to the building architecture such as decorative fencing (i.e., wrought iron), a building wall or other similar enclosure. Limited visibility into the display confinement area may be permitted depending upon the location of the area and the visibility of the area from nearby roadways. The display merchandise may not extend above or be stacked higher than the confinement area enclosure.

H. For purposes of this Article, the phrase “screened from public view” means that the placement of an item upon the subject property makes such item not visible from adjoining properties or any “street right-of-way” at any distance.

Related Information: Guidelines for Buffers between Conventional Residential and Nonresidential Uses; Guidelines for Internal Parking Lot Landscape

10.14 TREE PRESERVATION

A. Tree Preservation: Site plans and plats shall be designed to preserve existing trees and vegetation to the greatest extent possible and shall seek to incorporate existing stands of trees as well as individual trees. Sensitivity to site grading, storm drainage, building location and orientation and parking lot configuration shall be demonstrated by the developer to ensure tree and vegetation preservation. The intent of these regulations is to recognize the need to alter the landscape during site development activities, while setting out standards necessary to ensure tree preservation to the greatest extent possible.

B. Tree Survey: The City may require applicants to submit a tree survey indicating the size and common name of trees within the application area. unless otherwise specified, the survey shall identify by common name and indicate by caliper size each tree twelve (12) inches or greater, as measured four and one-half (4 ½) feet above the ground. The tree survey shall be prepared on a topographic survey of the site to establish the tree elevation at the trunk and the drip line for individual trees and at the edge of the drip line for wooded areas. An Administrative Exception may granted for trees or wooded areas that will not be removed or will not be adversely affected by site development operations.

C. Tree Preserved – Plat or Plan Review Determination: The developer shall prepare and present a tree preservation concept plan and statement at the time he/she attends a pre-application conference with the City or submit this information with application for plat plan review. The

concept plan shall clearly indicate the general location and massing of wooded area, areas with dense shrubbery, and isolated individual mature trees and designate which areas or trees are to be preserved and which are to be removed. The City shall have the authority to review and evaluate the above and advise the applicant to proceed forward or seek alternative site design to improve preservation of existing trees.

D. Location of Improvements: When determining the location of improvements within a subdivision, and the location of structures on lots, the developer should make every reasonable effort to save existing vegetation including healthy mature trees having a minimum caliper size of four (4) inches or greater, as measured four and one-half (4 ½) feet above ground level, and all shrubbery as deemed appropriate by the City.

E. Protection of Existing Trees:

1. Existing trees and their root zones that are to be saved shall be protected from all construction activities, including earthwork operations, movement and storage of equipment and vehicles and placement of construction materials and debris. Erosion protection measures may be required to prevent siltation of the tree preservation areas during construction. Protection zones may be established by the City to ensure trees and their root zones are adequately protected and are not damaged during site development operations.
2. Every effort shall be made to locate utility easements away from tree preservation areas. However, utility easements may be located adjacent to tree preservation areas as long as adequate clearance and protection is provided for the tree preservation area during the installation of the utilities adjacent to the tree preservation easement. When utilities or infrastructure systems must cross tree preservation area, every effort shall be made to minimize tree removal in such area. If the removal of trees within these areas is determined to be excessive, the City Planner may require the developer to replace such trees.
3. To ensure protection of tree preservation area, protection zones shall be delineated on the site development plans. During the construction process, such protection zones shall be identified on the property using standard orange barricade fencing or comparable fencing material approved by the City. Such fencing shall be four (4) feet in height and supported by metal channel posts spaced at a minimum of then (10) feet on center. Such fencing shall be placed around all trees or wooded areas to be protected and shall remain erect and secure throughout all construction phases.

F. Tree Removal. Tree removal requires a permit and plan.

Exception to above: A credit may be granted for all existing hardwood and evergreen trees indicated to be preserved. Trees that measure from two and one-half (2 ½) to eight (8) inches in caliper, as measured for and one-half (4 ½) feet above ground level, may be credited on a one- (1) for-one (1) basis. Trees that measure greater than eight (8) inches in caliper may be credited on a two- (2) for-one (1) basis. Credited trees may only be located in that portion of the development project where new tree plantings would otherwise be required. Tree credits shall not be granted if one of the following conditions exists:

1. Trees posing imminent danger to the public health, welfare or safety of the residents of the City of Bel Aire. In such instances, verbal authorization to remove such trees may be given by the City.
2. Trees that are diseased, injured, in danger of falling, or too close to existing or proposed structures.
3. Trees interfering with existing utility service, or creating unsafe vision clearance.

G. Penalty: Following legal action as provided for within Article 3 of this Zoning Code, an individual found to be in violation of the prohibition against removal of trees from an approved tree preservation area may also be required by the court to replace any such removed tree with similar species or other hardwood species. Replacement trees shall meet the minimum requirements for trees as defined in Section 10.08 regarding Design Planting and Criteria at the rate of one (1) inch caliper of replacement tree for every one (1) inch caliper of tree removed.

H. Removal of Trees within Existing Tree Preservation Areas: Property owners may not remove trees meeting the minimum requirements for tree preservation without written approval from the City. Property owners removing trees without written approval may be subject to civil action or prosecution in municipal court, and be subject to the penalty as defined in Section G above.

10.15 ADMINISTRATIVE EXCEPTION

A. Notwithstanding any of the above, a property owner may seek an administrative exception to these regulations.

B. The procedure for applying for an administrative exception to these regulations shall include submission to the Zoning Administrator landscaping plans that provide for landscaping in conformance to the general spirit of this Article, with a focus upon sustainability, environmental changes and needs, and conform to the City's drought regulations. Suggestions for such changes should be supportable through advice or information available from the Kansas Extension Service.

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ARTICLE 11

FLOODPLAIN ZONING

11.01 STATEMENT OF INTENT AND PURPOSE

The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on _____, 2016.

The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare. Therefore, the Governing Body of the City of Bel Aire, Kansas, adopts these regulations as set forth within this Article.

It is the purpose of this Article to promote the public health, safety, and general welfare; to minimize those losses described in Section 11.02(A); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); and to meet the requirements of 44 CFR 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this Article to:

- A. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
- B. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
- C. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

11.02 FINDINGS OF FACT

A. **Flood Losses Resulting from Periodic Inundation** The special flood hazard areas of City of Bel Aire, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

B. **General Causes of the Flood Losses** These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

11.03 GENERAL PROVISIONS

A. **Methods Used To Analyze Flood Hazards.** The Flood Insurance Study (FIS) that is the basis of this Article uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.

1. Selection of a base flood that 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 base flood selected for this Article is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this Article. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated December 22, 2016, as amended, and/or any future revisions thereto.
2. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
3. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.
4. Delineation of floodway encroachment lines within which no development is permitted that would cause **any** increase in flood height.
5. Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

B. **Lands to Which these Floodplain Regulations Apply.** This Floodplain Zoning Article shall apply to all lands within the jurisdiction of the City of Bel Aire identified as numbered and unnumbered A Zones, AE, AO, and AH Zones, on the Index Map dated December 22, 2016 of the Flood Insurance Rate Map (FIRM) as amended, and any future revisions thereto. In all areas covered by this Floodplain Zoning Article, no development shall be permitted except through the issuance of a floodplain development permit, granted by the Governing Body, or its duly designated representative, under such safeguards and restrictions as the Governing Body, or the 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 Section 11.05.

C. **Compliance.** No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this Floodplain Zoning Article and other applicable regulations.

D. **Abrogation and Greater Restrictions.** It is not intended by this Floodplain Zoning Article to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article imposes greater restrictions, the provisions of this Floodplain Zoning Article shall prevail. All other Articles or Code provisions inconsistent with this Floodplain Zoning Article are hereby repealed to the extent of the inconsistency only.

E. **Interpretation.** In their interpretation and application, the provisions of this Floodplain Zoning Article shall be held to be minimum requirements, shall be liberally construed in favor of the intent of the City, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

F. **Warning and Disclaimer of Liability.** The degree of flood protection required by this Floodplain Zoning Article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Floodplain Zoning Article does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This Floodplain Zoning Article shall not create a liability on the part of the City of Bel Aire, any officer or employee thereof, for any flood damages that may result from reliance on this Article or any administrative decision lawfully made there under.

G. **Severability.** If any section; clause; provision; or portion of this Floodplain Zoning Article (a.k.a Article or Floodplain Regulations) is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this Floodplain Zoning Article shall not be affected thereby.

11.04 ADMINISTRATION

A. **Floodplain Development Permit.** A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in 11.03(B). No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

B. **Designation of Floodplain Administrator.** The Zoning Administrator is hereby appointed to administer and implement the provisions of this Floodplain Zoning Article concerning Floodplain Management.

C. **Duties and Responsibilities of Floodplain Administrator.** Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this Floodplain Zoning Article have been satisfied;
2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal,

State, or local governmental agencies from which prior approval is required by Federal, State, or local law;

3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
4. Issue floodplain development permits for all approved applications;
5. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
6. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;
9. When floodproofing techniques are utilized for a particular non-residential structure, the Floodplain Administrator shall require certification from a registered professional engineer or architect.

D. Application for Floodplain Development Permit. To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;
3. Indicate the use or occupancy for which the proposed work is intended;
4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Specify whether development is located in designated flood fringe or floodway;
6. Identify the existing base flood elevation and the elevation of the proposed development;

7. Give such other information as reasonably may be required by the Floodplain Administrator;
8. Be accompanied by plans and specifications for proposed construction; and
9. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

11.05 PROVISIONS FOR FLOOD HAZARD REDUCTION

A. General Standards.

1. **Conformance to Article.** No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured homes, within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of these Floodplain Regulations are satisfied.
2. **Current Base Flood Data.** All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this Floodplain Zoning Article. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
3. **Restrictions Pending Floodway Designation.** Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
4. **Requirements.** All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured homes, and other developments shall require:
 - a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - b. Construction with materials resistant to flood damage;
 - c. Utilization of methods and practices that minimize flood damages;

- d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - e. New or replacement water supply systems and/or sanitary sewage systems 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 be located so as to avoid impairment or contamination from them during flooding; and
 - f. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
 - (1) All such proposals are consistent with the need to minimize flood damage;
 - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
 - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
 - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, of greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.
5. **Storage, Material, and Equipment.** The storage of material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning
6. **Nonconforming Use.** A structure, or the use of a structure or premises that was lawful before the passage or amendment of these floodplain regulations, but which is not in conformity with the provisions of this Floodplain Zoning Article, may be continued subject to the following conditions:
- a. If such structure, use, or utility service is discontinued for 9 months consecutive months, any future use of the building shall conform to this Floodplain Zoning Article.
 - b. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local

health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

7. **Agricultural Structures.** Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; there is no permanent retail, wholesale, or manufacturing use included in the structure; a variance has been granted from the floodplain management requirements of this Floodplain Zoning Article; and a floodplain development permit has been issued.
8. **Accessory Structures.** Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 400 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; a variance has been granted from the standard floodplain management requirements of this Floodplain Zoning Article; and a floodplain development permit has been issued.
9. **Critical Facilities.**
 - a. All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated above the .2 percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be floodproofed so that below the 500-year flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 11.04(C).
 - b. All critical facilities shall have access routes that are above the elevation of the 500-year flood.
 - c. No critical facilities shall be constructed in any designated floodway.

10. **Hazardous Materials.** All hazardous material storage and handling sites shall be located out of the special flood hazard area.
11. **Cumulative Improvement.** A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done within the last five calendar years does not exceed fifty (50) percent of the structure's current market value. If the cumulative value of the improvement exceeds fifty (50) percent of the structure's current market value, the structure must be brought into compliance with Section 11.05(B)(1) which requires elevation of residential structures to one (1) foot above the base flood elevation or the elevation/floodproofing of non-residential structures to one (1) foot above the base flood elevation.

B. Specific Standards.

1. In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in Section 11.05(A)(2), the following provisions are required:
 - a. **Residential Construction.** New construction or substantial-improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above base flood elevation. Mechanical and HVAC equipment shall be flood protected or elevated to the same level as the lowest floor. RR and MHP zoned districts must be elevated to a minimum two (2) foot above base flood level, or provide an alternate design approved by the City engineer and Zoning and Floodplain Administrator. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**
 - b. **Non-Residential Construction.** New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be dry floodproofed to a minimum of one (1) foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the Floodplain Administrator as set forth in Section 11.04(C)(7)(8)(9).
 - c. **Design Requirements.** Require, for all new construction and substantial-improvements that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically

equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
- (2) The bottom of all opening shall be no higher than one (1) 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 flood waters.

C. Manufactured Homes.

1. All manufactured homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
2. Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
 - a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to and existing manufactured home park or subdivision; or
 - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial-damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of one (1) foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**
3. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not

subject to the provisions of Section 11.05(C)(2) of this Floodplain Zoning Article, be elevated so that either:

- a. The lowest floor of the manufactured home is a minimum of one (1) foot above the base flood level; or
- b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

D. **Areas of Shallow Flooding.** (AO and AH zones) Located within the areas of special flood hazard as described in Section 11.03(B) are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

1. *AO Zones*

- a. All new construction and substantial-improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).
- b. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that level so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

2. *AH Zones*

- a. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Section 11.05(B).

- b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

E. **Floodway.** Located within areas of special flood hazard established in Section 11.03(B), are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

1. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.
2. The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.
3. If Section 11.05(E)(2) is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of Section 11.05.
4. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in Section 11.05(A)(2).

F. **Recreational Vehicles.** Recreational Vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and Ao zones on the community's Firm either:

1. Be on the site for fewer than 180 consecutive days, or
2. Be fully licensed and ready for highway use*; or
3. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this Floodplain Zoning Article.

*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

11.06 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

A. **Establishment of Appeal Board.** The Board of Zoning Appeals, as established by the City of Bel Aire shall hear and decide appeals and requests for variances from the floodplain management requirements of this Floodplain Zoning Article.

B. **Responsibility of Appeal Board.** Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board, as defined in Section 11.06 (A).

The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Floodplain Zoning Article.

C. **Further Appeals.** Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

D. **Floodplain Management Variance Criteria.** In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this Floodplain Zoning Article, and the following criteria:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;
10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

E. Conditions for Approving Floodplain Management Variances.

1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, repair, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provide the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within any designated floodway if any increase in flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) determination that the granting of a variance 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 laws or Articles.
6. A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Floodplain Zoning Article.

F. Conditions for Approving Variances for Agricultural Structures

Any variance granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Section 11.06 (D) and (E) of this Article.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for agricultural structures that are constructed at-grade and wet-floodproofed:

1. All agricultural structures considered for a variance from the floodplain management regulations of this Floodplain Zoning Article shall demonstrate that the varied structure is located in wide, expansive floodplain areas and no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farm houses, cannot be considered agricultural structures.
2. Use of the varied structures must be limited to agricultural purposes in Zone A only as identified on the community's Flood Insurance Rate Map (FIRM).
3. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Section 11.05(A) (4)(b) of this Article.
4. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with Section 11.05(A)(4)(a) of this Article. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
5. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Section 11.05(A)(4)(d) of this Article.
6. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Section 11.05(B)(1)(c) of this Article.
7. The agricultural structures must comply with the floodplain management floodway encroachment provisions of Section 11.05(E)(2) of this Article. No variances may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.
8. Major equipment, machinery, or other contents must be protected from any flood damage.
9. No disaster relief assistance under any program administered by any Federal agency shall pay for any repair or restoration costs of the agricultural structures.
10. A community shall notify the applicant in writing over the signature of a community official that: (1) the issuance of a variance to construct a structure below base flood level 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 flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Floodplain Zoning Article.

11. Wet flood proofing construction techniques must be reviewed and approved by the Community and a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

G. Conditions for Approving Variances for Accessory Structures.

Any variance granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Section 11.06 (D) and (E).

In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-flood proofed.

1. Use of the accessory structures must be solely for parking and limited storage purposes in zone A only as identified on the community's Flood Insurance Rate Map (FIRM).
2. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with the provisions of Section 11.04(A)(4)(b) this Floodplain Zoning Article.
3. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Section 11.04(A)(4)(a) of this Floodplain Zoning Article. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
4. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with the provisions of Section 11.05(A)(4)(d).
5. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Section 11.05(B)(1)(c) of this Article.

6. The accessory structures must comply with the floodplain management floodway encroachment provisions of Section 11.05(E)(2) of this Article. No variances may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
7. Equipment, machinery, or other contents must be protected from any flood damage.
8. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.
9. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level 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 flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Article.
10. Wet-floodproofing construction techniques must be reviewed and approved by the community and registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

H. Conditions for Approving Variances for Temporary Structures. Any variance granted for a temporary structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in Section 11.06 (D) and (E) of this Floodplain Zoning Article.

1. A temporary structure may be considered for location within the one percent annual chance flood event, also referred to as the 100-year floodplain only when all of the following criteria are met:
 - a. Use of the temporary structure is unique to the land to be developed and cannot be located outside of the floodplain nor meet the NFIP design standards;
 - b. Denial of the temporary structure permit will create an undue hardship on the property owner;
 - c. Community has adopted up-to-date NFIP and building regulations to direct placement and removal of the temporary structure; and,
 - d. Community has sufficient staff to monitor the placement, use, and removal of the temporary structure throughout the duration of the permit.
2. Once all of the above conditions are met, an application for a special use permit must be made to the Governing Body. The Governing Body shall consider all applications for special use permits for a temporary structure based on the following criteria:

- a. The placement of any temporary structure within the special flood hazard areas as shown on the community's adopted FEMA/NFIP map shall require an approved special use permit. The special use permit shall be valid for a period not to exceed 180 days.
- b. Special use permits applications, for a temporary structure to be located in special flood hazard areas, shall conform to the standard public hearing process prior to any community action on the permit request.
- c. An emergency plan for the removal of the temporary structure that includes specific removal criteria and time frames from the agency or firm responsible for providing the manpower, equipment, and the relocation and disconnection of all utilities shall be required as part of the special use permit application for the placement of any temporary structure.
- d. On or before the expiration of the end of the 180 day special use permit period, the temporary structure shall be removed from the site. All utilities, including water, sewer, communication, and electrical services shall be disconnected.
- e. To ensure the continuous mobility of the temporary structure for the duration of the permit, the temporary structure shall retain its wheels and tires, licenses, and towing appurtenance on the structures at all times.
- f. Under emergency flooding conditions, the temporary structure shall be removed immediately or as directed by the community and as specified in the emergency removal plan.
- g. Location of any temporary structure within the regulatory floodway requires the provision of a "no-rise" certificate by a registered professional engineer.
- h. Violation of or non-compliance with any of the stated conditions of the special use permit during the term thereof, shall make the permit subject to revocation by resolution of the governing body of the community. Issuance of permit revocation notice shall be made to the landowner, the occupant of the land, and to the general public.
- i. Any deviation from the approved site plan shall be deemed a violation of the special use permit approval and the uses allowed shall automatically be revoked. The subsequent use of the land shall be as it was prior to the special permit approval. In event of any violation, all permitted special uses shall be deemed a violation of this Floodplain Zoning Article and shall be illegal, non-conforming uses and shall be summarily removed and abated.
- j. If the temporary structure is to be returned to its previously occupied site, the process for issuing a special use permit must be repeated in full. Any subsequent permit shall be valid for 180 days only.

11.07 PENALTIES FOR VIOLATION

Violation of the provisions of this Floodplain Zoning Article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this Article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

11.08 AMENDMENTS

The regulations, restrictions, and boundaries set forth in this Floodplain Zoning Article may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Bel Aire. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this Floodplain Zoning Article are in compliance with the NFIP regulations.

11.09 DEFINITIONS

Unless specifically defined below, words or phrases used in this Floodplain Zoning Article shall be interpreted so as to give them the same meaning they have in common usage and to give this Floodplain Zoning Article its most reasonable application.

"100-year Flood" *see "base flood."*

"Accessory Structure" means the same as *"appurtenant structure."*

"Actuarial Rates" *see "risk premium rates."*

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Agricultural Commodities" means agricultural products and livestock.

"Agricultural Structure" means any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.

"Appeal" means a request for review of the Floodplain Administrator's interpretation of any provision of this Article or a request for a variance.

"Appurtenant Structure" means a structure that is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of Special Flood Hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation (BFE) " " The computed elevation to which floodwater is anticipated to rise during the base flood.

"Basement" means any area of the structure having its floor subgrade (below ground level) on all sides.

"Building" *see "structure."*

"Chief Engineer" means the chief Engineer of the Division of Water Resources, Kansas Department of Agriculture.

"Chief Executive Officer" or "Chief Elected Official" means the official of the community who is charged with the authority to implement and administer laws, Articles, and regulations for that community.

"Community" means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"Elevated Building" means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Eligible Community" or "Participating Community" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

"Existing Construction" means for the purposes of determining rates, structures for which the *"start of construction"* commenced before the effective date of the FIRM or before January 1,

1975, for FIRMs effective before that date. *"Existing construction"* may also be referred to as *"existing structures."*

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

"Flood Boundary and Floodway Map (FBFM)" means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

"Flood Elevation Determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood Elevation Study" means an examination, evaluation and determination of flood hazards and if appropriate, corresponding water surface elevations.

"Flood Fringe" means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

"Flood Hazard Map" means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"Flood Insurance Study (FIS)" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

"Floodplain" or "Flood-prone Area" means any land area susceptible to being inundated by water from any source (*see "flooding"*).

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

"Floodplain Management Regulations" means zoning Articles, subdivision regulations, building codes, health regulations, special purpose Articles (such as floodplain and grading Articles) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

"Floodway" or "Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodway Encroachment Lines" means the lines marking the limits of floodways on Federal, State and local floodplain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

"Functionally Dependent Use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been

approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

"Lowest Floor" means 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 floodproofing design requirements of this Floodplain Zoning Article.

"Manufactured Home" means a structure, transportable in one or more sections, that 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** a *"recreational vehicle."*

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map" means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

"Market Value" or "Fair Market Value" means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

"Mean Sea Level" means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

"New Construction" means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of construction"* commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

"(NFIP)" means the National Flood Insurance Program (NFIP).

"Participating Community" also known as an *"eligible community,"* means a community in which the Administrator has authorized the sale of flood insurance.

“Permit” means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

"Principally Above Ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

“Reasonably Safe From Flooding” means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational Vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Remedy A Violation" means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

"Risk Premium Rates" means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *"Risk premium rates"* include provisions for operating costs and allowances.

"Special Flood Hazard Area" *see "area of special flood hazard."*

"Special Hazard Area" means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

"Start of Construction" includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, 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, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling 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.

"State Coordinating Agency" means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *"Structure"* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation, or a travel trailer, without wheels on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Substantial-Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial-Improvement" means 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 term 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 that have been identified by the local 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."*

"Temporary Structure" means a structure permitted in a district for a period not to exceed 180 days and is required to be removed upon the expiration of the permit period. Temporary structures may include recreational vehicles, temporary construction offices, or temporary business facilities used until permanent facilities can be constructed, **but at no time shall it include manufactured homes used as residences.**

"Variance" means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure per State law.

"Violation" means 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 the elevation certificate, other certifications, or other evidence of compliance required by this Article is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain riverine areas.

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