



**AGENDA
PLANNING COMMISSION
CITY OF ROELAND PARK, KANSAS
4600 W 51ST STREET
JUNE 23, 2026 6:00 PM**

- I. Roll Call**
- II. Approval of Minutes**
 - A. Planning Commission Minutes - April 21, 2026
- III. Public Hearing**
- IV. Action Items**
 - A. Consider a rule exception to accommodate land conveyance between two adjacent single-family residential lots.
- V. Discussion Items**
 - A. Review Suggested Modifications to Articles 8, 11, 12, 15 and 16 of the City Zoning Code.
- VI. Other Matters Before the Planning Commission**
- VII. Adjournment**

PLANNING COMMISSION MINUTES
CITY OF ROELAND PARK, KANSAS
4600 W 51st Street, Roeland Park, KS 66205
April 21, 2026, 6:00 P.M.

Commissioners Present: Lisa Brunner, Vice Chair
Joe Kmetz
Macrina Abdouch
Josey Shaw

Commissioners Absent: Darren Nielsen, Chair
Haile Sims
Mark Kohles

Staff Present: Jennifer Jones-Lacy - Assistant City Administrator/Finance Director
Wade Holtkamp - City Building Inspector
Alex Felzein – City Attorney

I. ROLL CALL

Commissioner Lisa Brunner called the meeting to order. Ms. Jones-Lacy called the roll. Commissioners Nielsen, Sims and Kohles were absent. Also present at the meeting was Building Inspector Holtkamp, and City Attorney Alex Felzein.

II. Approval of Minutes

1. Approve Minutes from January 27, 2026, Planning Commission meeting

MOTION: COMMISSIONER BRUNNER MOVED AND COMMISSIONER ABDOUCH SECONDED TO APPROVE THE PLANNING COMMISSION MEETING MINUTES OF JANUARY 27, 2026, AS PRESENTED. (THE MOTION CARRIED 4-0.)

III. Public Comment:

There was no public comment

IV. Discussion Items

1. By-Right Housing Development Act (SB 418) Overview

Ms. Jones-Lacy presented information about SB 418 that was recently signed into law by Governor Kelly. She reviewed implications of the new law on Roeland Park’s city codes and operations, expressing that there will need to be some changes to our zoning code to no

longer require a Special Use Permit (SUP) for an accessory dwelling unit, update the City's residential design standards and allow single family homes in all residential zoning districts. She also expressed that staff will be bound by strict timelines to review development applications for housing or risk the application being automatically approved if the deadline lapses.

The Planning Commission had discussion on the new law and the pros and cons of such legislation.

2. Review of Roeland Park Moving Forward 2040 Comprehensive Plan Action Items

Ms. Jones-Lacy provided an update to the City's comprehensive plan implementation plan and what actions have been completed since adoption in 2020.

V. Adjournment

MOTION: COMMISSIONER KMETZ MOVED AND COMMISSIONER ABDOUCH SECONDED TO ADJOURN THE MEETING. (THE MOTION CARRIED 4-0.)

(Roeland Park Planning Commission Meeting Adjourned at 7:14 p.m.)

Item Number: IV. Action
Items



City of Roeland Park
Action Item Summary

Submitted By:

Wade Holtkamp, Building Inspector

Committee/Department: Administration

Title: Consider a rule exception to accommodate land conveyance between two adjacent single-family residential lots.

Item Type: Action Item

Recommendation:

Staff recommends approving the rule exception. We believe it is not contrary to the public interest and is not an unnecessary burden to the City. Both lots are currently compliant with code and zoning regulations.

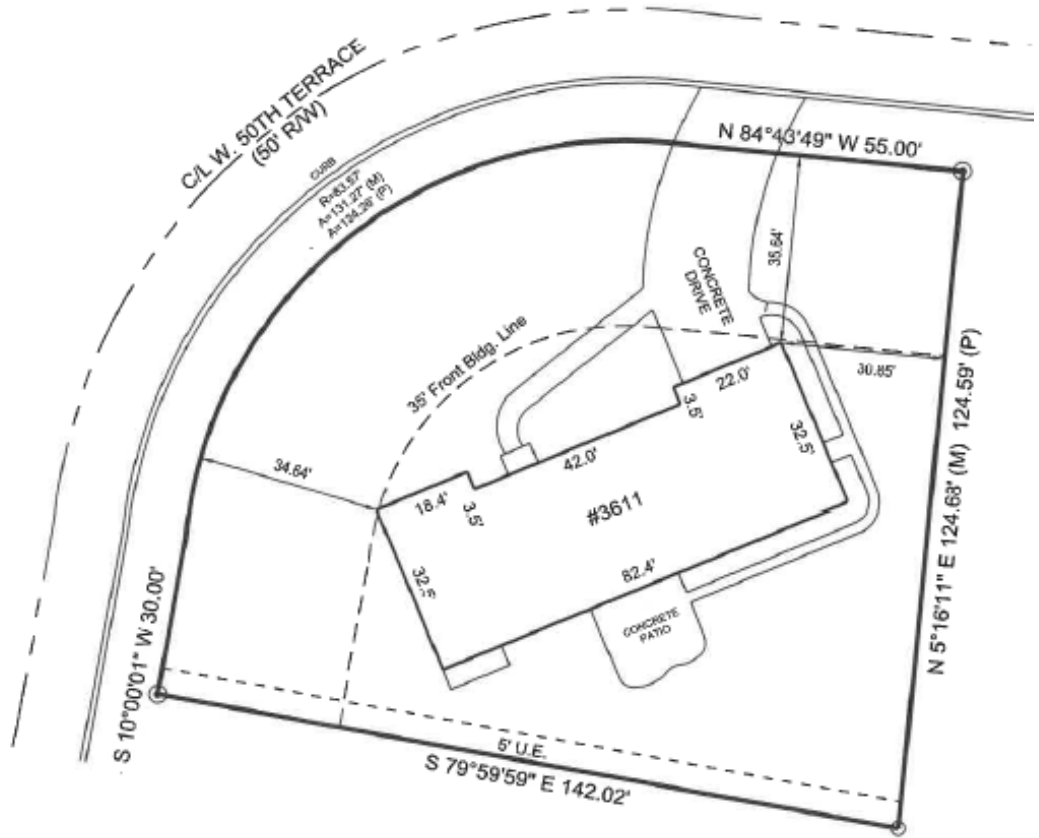
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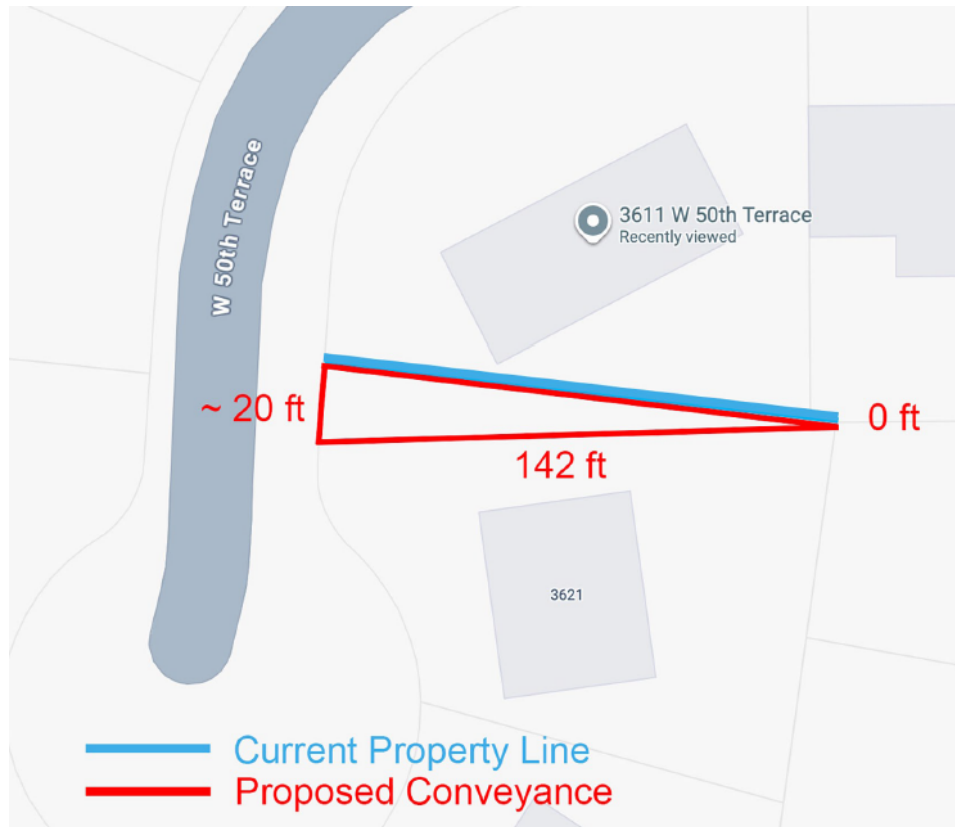
The owners of 3611 W. 50th Terrace, Matthew Roland and Katie Jaschke, submitted an application requesting a rule exception (code sec. 16-1423) to facilitate a land conveyance without replatting to acquire a small, irregularly shaped portion of the adjacent property at 3621 W. 50th Terrace, owned by Barbara Jolly.

In 2020, a contractor installed a wooden backyard fence for 3611 W. 50th Terrace with the knowledge and consent of the neighboring property owner. The fence followed the existing fence line of the neighboring property. As a result, a small portion of the fenced area extends onto the property at 3621 W. 50th Terrace. The affected area is generally pie-shaped, beginning at approximately zero feet in width near the midpoint of the fence line and widening to approximately 20 feet at its widest point. The total amount of land proposed to be purchased is 1,420 square feet to add to the existing lot that contains 14,469 square feet. The lot selling currently contains 13,285 square feet.

The neighboring property owner supports the proposed conveyance. The request would allow alignment of the legal property boundary with the existing fence line so that the fence, a raised planter, and garden may remain in their current location. This will also avoid the possibility that the fence will need to be relocated if the neighboring property is sold in the future.

A boundary survey and proposed land conveyance plot plan are shown below.









Both properties are used as single-family residences and comply with current zoning regulations. The existing wooden fence is located in the backyard and otherwise complies with the City's requirements for fence height, materials, location, and visibility. The proposed land addition will maintain both lots' minimum code standard for size.

Sec. 16-1423. - Rule Exceptions.

(a) In case of hardship caused by the size, location or configuration of land, topography or other factors which affect a specific tract or subdivision or portion thereof, the subdivider may request a rule exception from the requirements of this article relating to lot and street layout, block lengths, cul-de-sac lengths, or minimum lot dimensions. Rule exceptions shall be requested at the time of filing the application for the preliminary or final plat on forms provided by the City.

Rule exceptions shall not be approved by the Planning Commission unless it finds that the approval will not be contrary to the public interest or unnecessarily burden the City.

(b) Rule exceptions may also be granted to facilitate conveyance of land between two adjacent platted lots under the following circumstances: the sale is to an adjacent property owner; both lots in question are platted; legal descriptions of the resulting lots are prepared and recorded with the Register of Deeds following approval of the rule exception by the Planning Commission; no extension or relocation of public infrastructure is required; no easements are affected or required; and the transaction does not create nonconforming lots or nonconforming site improvements.

Application for such rule exceptions shall be requested on forms provided by the City and shall not require replatting. Rule exceptions shall not be approved by the Planning Commission unless it finds that the approval will not be contrary to the public interest or unnecessarily burden the City.

Application for Planning and Zoning Rule Exception

Applicant Information

Applicant Matthew Roland & Katie Jaschke
Primary Contact (if applicant is an entity or contractor) *Field not completed.*
Address 3611 W 50th Terrace
City Roeland Park
State KS
Zip Code 66205
Phone number 816-447-1751
Email mrolandkjaschke@gmail.com
Relationship to the Property Owner Property Owner

Property Information

List all property owners of record Matthew Roland, Katie Jaschke, Barbara Jolly
Property Address(es) 3611 W. 50th Terrace & 3621 W. 50th Terrace, Roeland Park, KS 66205

Use of property Residential
Current Zoning District *Field not completed.*

Are you filing a preliminary or final plat with the application? Not sure

Is the Rule Exception Requested to facilitate the conveyance of land between two already platted lots? Yes

If the Exception is to convey land, please confirm that all of the following are true: No extension or relocation of public infrastructure is required., No easements are affected or required, The Exception does not create a nonconforming lot or nonconforming site improvements

Nature of Request for Rule Exception Regulations for a Rule Exception

The following questions will assist the Planning Commission with assessing the impact and applicability of your request. The City's regulations regarding Rule Exceptions are as follows:

Sec. 16-1423. - Rule Exceptions.

(a) In case of hardship caused by the size, location or configuration of land, topography or other factors which affect a specific tract or subdivision or portion thereof, the subdivider may request a rule exception from the requirements of this article relating to lot and street layout, block lengths, cul-de-sac lengths, or minimum lot dimensions. Rule exceptions shall be requested at the time of filing the application for the preliminary or final plat on forms provided by the City. Rule exceptions shall not be approved by the Planning Commission unless it finds that the approval will not be contrary to the public interest or unnecessarily burden the City.

(b) Rule exceptions may also be granted to facilitate conveyance of land between two adjacent platted lots under the following circumstances: the sale is to an adjacent property owner; both lots in question are platted; legal descriptions of the resulting lots are prepared and recorded with the Register of Deeds following approval of the rule exception by the Planning Commission; no extension or relocation of public infrastructure is required; no easements are affected or required; and the transaction does not create nonconforming lots or nonconforming site improvements. Application for such rule exceptions shall be requested on forms provided by the City and shall not require replatting. Rule exceptions shall not be approved by the Planning Commission unless it finds that the approval will not be contrary to the public interest or unnecessarily burden the City.

1) Describe the proposed project and explain why an exception is requested. The owners of 3611 W. 50th Terrace, Matthew Roland and Katie Jaschke, are requesting a rule exception to facilitate the conveyance of a small, irregularly shaped portion of the adjacent property at 3621 W. 50th Terrace, owned by Barbara Jolly.

In 2020, a contractor installed a wooden backyard fence for 3611 W. 50th Terrace with the knowledge and consent of the neighboring property owner. The fence followed the existing fence line of the neighboring property. As a result, a small portion of the fenced area extends onto the property at 3621 W. 50th Terrace. The affected area is generally pie-shaped, beginning at approximately zero feet in width near the midpoint of the fence line and widening to approximately 20 feet at its widest point. The area also contains a raised planter and pollinator garden.

The neighboring property owner supports the proposed conveyance. The purpose of the

request is to align the legal property boundary with the existing fence line so that the fence, raised planter, and garden may remain in their current location. This will also avoid the possibility that the fence would need to be relocated if the neighboring property is sold in the future.

A survey and updated legal descriptions will be prepared to document the precise area to be conveyed and the resulting property boundaries.

2. Explain why the property complies with all applicable requirements of the zoning regulations, other than the one for which an Exception is being requested. If the property does not comply with all applicable Zoning Regulations, list the nonconforming condition and explain the reason for it being nonconforming.

Both properties are used as single-family residences and, to the best of the applicants' knowledge, comply with the applicable zoning regulations. The existing wooden fence is located in the backyard and otherwise complies with the City's requirements for fence height, materials, location, and visibility.

Explain why the granting of the Exception will not cause a substantial adverse affect on nearby properties.

The requested conveyance will not require the extension or relocation of public infrastructure, will not affect or require any easements, and will not create a nonconforming lot or nonconforming site improvement. The size, configuration, and residential use of both properties will remain compliant following the conveyance.

The only condition requiring the requested rule exception is that the existing fence line, raised planter, and pollinator garden extend into a small, irregularly shaped portion of the adjacent property. The proposed conveyance will align the legal property boundary with the existing fence line.

Explain how the strict application of the zoning regulations is unreasonable, or unnecessary when all facts and circumstances are considered. The applicant shall provide all facts and circumstances and place whatever

to the best of the applicants' knowledge, both properties currently comply with the applicable zoning regulations. The proposed conveyance is not expected to require the extension or relocation of public infrastructure, affect any easements, or create a nonconforming lot or site improvement. The size, configuration, and

emphasis and relevance is appropriate on each. Examples of such facts and circumstances to be considered are as follows: (1) Whether or not conditions of the property requiring the Exception were created by the applicant with prior knowledge and disregard of applicable regulations; (2) Whether or not the applicant acquired the property with knowledge of the conditions which require the Exception and whether or not the consideration for the acquisition took into account such conditions; (3) Whether or not there are reasonable alternatives which would allow the property to meet the strict application of the zoning regulations; and (4) Whether or not a granting of the Exception will result in a relative gain to the health, safety and general welfare of the community. Please attach a site plan. Attach additional documents here. Additional Documents

residential use of both properties are expected to remain compliant following the conveyance, subject to confirmation through the updated survey.

The requested rule exception is intended to align the property boundary with the existing backyard fence line. The area to be conveyed is a small, irregularly shaped portion of the adjacent property that is currently enclosed by the fence and includes a raised planter and pollinator garden. A new survey and updated legal descriptions will be prepared to document the precise area to be conveyed and confirm compliance.

[3611 Lot Map.pdf](#)
[Land Survey.pdf](#)
Field not completed.

Fiscal Impact	
Amount of Request:	
Budgeted item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

Diversity Equity & Inclusion Lens

What are the implications to intersectionality?

- Does this item benefit all racial groups?
- Does this item benefit Community for All Ages?
- Does this item exclude or disproportionately impact any social identities? If yes, what populations and why?
- What (if any) social determinants of health are impacted by this item?
- What (if any) are the unintended economic and environmental impacts of this item?
- How has the impacted community been involved?
- How will the program be communicated to all stakeholders?

ATTACHMENTS:

None

Item Number: V. Discussion
Items



City of Roeland Park
Action Item Summary

Submitted By:

Jennifer Jones-Lacy, Assistant City Administrator Director of Finance

Committee/Department: Administration

Title: Review Suggested Modifications to Articles 8, 11, 12, 15 and 16 of the City Zoning Code.

Item Type: Presentation

Recommendation:

To review recommended changes in advance of a public hearing to recommend changes to City Council.

Details:

Attached you will find a redlined version of previously unreviewed sections of the Zoning Code. The articles reviewed this evening include:

- Article 8: Vehicles and Parking
- Article 11: Communications Facilities
- Article 12: Nonconforming Situations and Vested Rights
- Article 13: Board of Zoning Appeals

The City hired Confluence to review certain articles of the Zoning Code in 2024. Since that time, staff has reviewed the remaining articles of the zoning code checking for modern day performance standards, applicability, and clarity. At the Planning Commission Meeting on November 18th, staff reviewed Articles 1,3,5, and 7 of the Zoning Code. Those recommended changes are attached for reference as it's been several months since the last review.

After staff reviews the recommended changes to the articles above with the Planning Commission, the City Attorney will draft an ordinance with all the associated changes as recommended by the Planning Commission into a draft ordinance and hold a public hearing. This draft ordinance will also include any changes as required by the new By-Right Housing Development Act, which will impact applications for rezoning, subdivision regulations and the building design guidelines.

Fiscal Impact
Amount of Request:

Budgeted item?	Budgeted Amount:
Line Item Code/Description:	

Additional Information

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ATTACHMENTS:

1. Chapter 16 - sec 1-7
2. Item Attachment Files Chapter 16 - Articles 8, 11, 12, 15 and 16

ARTICLE 1. CITY PLANNING COMMISSION

Sec. 16-101. Planning Commission Created.

There is hereby created a Planning Commission for the City of Roeland Park.

Sec. 16-102. Commission Membership; Appointment.

The City Planning Commission shall consist of seven members, one of whom may be a non-resident of the City who resides within ten miles of the City's boundaries. Three members of the commission shall be appointed by the Mayor with the consent of the City Council, and one member of the commission shall be jointly appointed by the two City Council members from each of the City's wards with the consent of the City Council. The four members appointed by City Council members each shall each be a resident of the ward from which the City Council members who made the joint appointment were elected. Commission members shall be appointed for terms of three years each. Vacancies shall be filled by appointment for the unexpired terms only. In the event that any commission member no longer resides in the ward from which the City Council members who jointly appointed the member were elected, the Governing Body shall declare a vacancy and appoint a new member to fill the vacancy. In the event any Planning Commission member fails to attend three or more regular meetings of the commission within any 12-month period of time, the Governing Body may declare a vacancy and appoint a new member who resides in that same ward to fill the vacancy. The Planning Commission shall appoint two of its members to serve as representatives from the commission to the City Council redevelopment committee. The commission shall elect one member as chairperson and one member as vice-chairperson who shall serve one year and until their successor has been elected. A secretary shall also be elected who may or may not be a member of the commission. A record of all proceedings of the commission shall be kept. Members of the commission shall serve without compensation for their service.

Sec. 16-103. Powers and Duties.

The City Planning Commission shall operate and have those powers and duties as set forth herein or in applicable provisions of the Kansas Statutes Annotated.

ARTICLE 3. APPLICATIONS AND PROCEDURES

DIVISION I. GENERAL APPLICATIONS AND PROCEDURES

Sec. 16-301. Who May Apply; Application Fees.

- (a) Application for a zoning text amendment may only be filed by the Governing Body or the Planning Commission.
- (b) An application for rezoning to a conventional or planned zoning district or for a preliminary development plan, revised preliminary development plan, final development plan or revised final development plan for a planned zoning district may be filed by either the Governing Body, the Planning Commission or the landowner or the landowner's agent. If an application for rezoning to a planned district is filed by the Governing Body or Planning Commission, the application may be filed and approved prior to the filing or

approval of a preliminary and/or a final development plan, provided that no building permit shall be issued for development in a planned zoning district until a final development plan has been approved as required by this article.

- (c) All other applications provided for in this chapter may only be filed by the landowner or the landowner's agent.
- (d) Fees for all applications provided for in this article shall be established by the Governing Body by resolution.
- (e) All applications shall be made on forms prescribed by the City and available at City Hall.
- (f) All landowners or landowner's agents who desire to make an application provided for in this article shall, at their request, be provided with a copy of Chapter XVI of Roeland Park City Code, the Zoning and Subdivision Regulations, or those portions of Chapter XVI which they may request. The landowners or the landowners' agent shall reimburse the City for the cost of providing the requested materials in an amount established by the City Clerk.

Sec. 16-302. Applications—Proof of Ownership and/or Authorization of Agent.

- (a) Where an application has been filed by, or on behalf of, a landowner, an affidavit of ownership shall be submitted to the City.
- (b) Where an application has been filed by an agent of, a landowner, an affidavit of the landowner establishing the agent's authorization to act on behalf of the landowner shall also be submitted.
- (c) The affidavits required by this section shall be on forms prescribed by the City or in a form as is acceptable to the City Attorney, and shall be submitted at the time of filing the application.

Sec. 16-303. Pre-Application Conference.

A pre-application conference with City officials is encouraged and may, in the discretion of the Building Inspector, be required prior to submission of any application for a rezoning, special use permit or preliminary development plan. The purpose of this conference is to: acquaint the applicant with the procedural requirements of this chapter; provide for an exchange of information regarding the proposed development plan and applicable elements of this chapter, the comprehensive plan and other development requirements; advise the applicant of any public sources of information that may aid the application; identify policies and regulations that create opportunities or pose significant restraints for the proposed development; review any proposed concept plans and consider opportunities to increase development benefits and mitigate undesirable project consequences and permit City input into the general design of the project.

Sec. 16-304. Submission of Technical Studies.

- (a) The City Engineer may require applicants for rezoning, special use permits, preliminary development plans, or preliminary plats to submit technical studies as may be subject to the approval of the City Engineer. The costs of all studies shall be borne by the applicant. Any decision of the City Engineer to require any study or to disapprove the person or firm selected by the applicant to perform the study may be appealed to the Planning Commission. The decision of the Planning Commission on any appeal shall be final.
- (b) Notwithstanding the fact that the City Engineer did not require submission of any technical study in support of the application, either the Planning Commission or the Governing Body may require the submission of a study prior to taking action on the application. In that case, the persons or firms selected to perform the studies shall be subject to the approval of the entity requesting that the study be performed. Any decision of the Planning Commission or the Governing Body to require that a study be performed or to disapprove the person or firm selected by the applicant to perform the study shall be final.

Sec. 16-305. Adequate Public Facilities and Services.

- (a) At the time of submittal of a rezoning or special use permit application, the applicant shall submit proof of having reviewed the development proposal with applicable water, sewer, fire, gas and electric utility officials. Proof of this review shall be provided on forms furnished by the department of public works. The forms shall provide an opportunity for applicable water, sewer, fire, gas and electric officials to provide comments on the existing and future availability and timing of services provided by their respective districts to the subject property.
- (b) At the time of submittal of a final development plan application, the applicant shall submit proof that adequate water, sewer, fire, gas and electric services are presently available to the subject property. If adequate public facilities and services are not presently available at the time of submittal of applications for final development plans, or are not planned for the near future to appropriately serve the proposed development, as determined by the affected utility company or agency, the final development plan may be denied.

Sec. 16-306. When Applications Deemed Complete.

No application shall be deemed complete until all items required to be submitted in support of the application have been submitted. Subject to the provisions of section 16-307, however, all items required to be submitted in support of an application need not be submitted at the same time that the application is filed.

Sec. 16-307. Application and Submission Deadline.

The Building Inspector or the Planning Commission may administratively provide for submission deadlines for materials required in support of any application provided for in this chapter. Compliance with these deadlines shall generally be required in order to have the application placed on an agenda to be heard by the Planning Commission. At the discretion of the chairperson of the Planning Commission, non-agenda items may be brought before the Planning Commission for hearing; provided that, the Planning Commission, in its sole discretion, may refuse to hear non-agenda items.

Sec. 16-308. Conditional Approvals.

In approving any application, the approving authority 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 requirements, limitation on hours of operation, participation in transportation systems management programs, participation in improvement districts or other programs for financing public facilities, etc.

Sec. 16-309. Final Decision Where Ordinance Required.

In the case of approval of a zoning text amendment, rezoning, special use permit or other application where adoption of an ordinance is required, the decision approving the application shall not be deemed to be final until the ordinance has been published in an official City newspaper. In all other cases, the decision shall be deemed final as of the date that the approving authority votes to approve or deny the application.

Commented [JJ1]: These need to be adopted by ordinance?? Can we change that?

Sec. 16-310. Appeals of Final Decision.

Except where this chapter provides for an appeal to another quasi judicial or administrative body, any person, official or agency aggrieved by a final decision on an application provided for in this chapter desiring to

appeal that decision shall file the appeal in the District Court of Johnson County within 30 days of the making of the decision.

Sec. 16-311. Compliance With Subdivision Regulations.

From and after the adoption of the ordinance from which this chapter derives, compliance with Article 14, Subdivision Regulations, shall be required as a condition of the issuance of a building or zoning permit, to the extent that those regulations are applicable to the proposed development.

DIVISION II. NOTICES AND HEARINGS

Sec. 16-312. Publication Notices.

Unless otherwise specifically provided for in this chapter, all publication notices for public hearings required by this chapter shall be published in one issue of the official City newspaper, and at least 20 clear days shall elapse between the date of the publication and the date set for hearing. For purposes of this section, in computing the time both the day of publication and the day of the public hearing shall be excluded. The publication notice shall fix the time and place for the public hearing. Where the hearing is for consideration of changes in the text of the ordinance, or a general revision of the boundaries of zoning districts, the notice shall contain a statement regarding the proposed changes in the ordinance or in the boundaries of the zone or district. If the hearing is on an application which concerns specific property, the property shall be designated by legal description and general street location, and the notice shall contain a general statement regarding the purpose of the application.

Commented [JJ2]: @Alex - do we have to do legal description or is just the address okay? Would like to remove this if it's legal

Sec. 16-313. Notices to Surrounding Property Owners.

- (a) Unless otherwise specifically provided in this chapter, whenever notice to surrounding property owners is required for consideration of an application, the notice shall be given as follows. The applicant shall mail notices at least 20 days prior to the hearing to all owners of record of lands located within at least 200 feet of the property which is the subject of the application, thus notifying the property owner of the opportunity to be heard. The mailed notice shall be given by certified mail, return receipt requested, and shall be in letter form stating the time and place of the hearing, a general description of the proposal, the general street location of the property subject to the proposed change, a statement that a complete legal description of the property is available for public inspection at City Hall, and a statement explaining that the public may be heard at the public hearing. Notices shall be provided in both English and Spanish. Newspaper clippings of the publication notices shall not be used for the mailed notice. Mailed notices shall be addressed to the owners of record of the property. When the notice has been properly addressed and deposited in the mail, failure of any party to receive mailed notice shall not invalidate any action taken on the application. Mailed notice may be waived provided that a verified statement specifically indicating the waiver is signed by all property owners within the notification area and filed with the secretary of the Planning Commission, or the Board of Zoning Appeals, as the case may be, at least two business days prior to the hearing. Prior to the public hearing, the applicant shall file with the secretary of the Planning Commission, or the Board of Zoning Appeals, as the case may be, the returned receipts from the certified mailings and an affidavit stating the names and addresses of the persons to whom notice was sent; failure to submit the affidavit prior to the hearing may result in a continuance of the hearing.
- (b) In the case of rezonings and special use permits, with the exception of in-home daycares, the applicant shall place a sign on the property informing the general public that a public hearing will be held at a specific time and place concerning proposed changes in use. The sign shall be furnished by the City to the applicant, and the applicant shall maintain the sign for at least 20 clear days between the date of posting and the date set for the public hearing. The sign shall be firmly affixed and attached to a wood or metal backing or frame and

placed within five feet of the street right-of-way line in a central position on the lot, tract or parcel of land so that the sign is free of any visual obstructions surrounding the sign. If a lot, tract or parcel of land is larger than five acres, a sign as required herein shall be placed so as to face each of the streets abutting thereto. The size, style, coloring and wording of signs for rezonings and special use permits may be determined by the Governing Body by resolution. The applicant shall file an affidavit with the Planning Commission at the time of the public hearing verifying that the sign has been maintained and posted as required by this chapter and applicable resolutions; failure to submit the affidavit prior to the hearing may result in a continuance of the hearing. The sign may be removed at the conclusion of the public hearing and must be removed at the end of all proceedings on the application or upon withdrawal of the application. It shall be a public offense for any person to remove, deface or destroy any sign provided for in this subsection, except in compliance with this subsection.

(Ord. No. 961, § 4, 11-20-2017)

Sec. 16-314. Public Hearings.

Where the consideration of an application requires a public hearing, the following provisions shall apply:

- (a) The purpose of a public hearing is to allow the applicant and all other interested parties a reasonable and fair opportunity to be heard, to present evidence relevant to the application and to rebut evidence presented by others.
- (b) An accurate written summary of the proceedings shall be made for all public hearings.
- (c) The Governing Body, Planning Commission and Board of Zoning Appeals may adopt rules of procedure for public hearings by resolution or bylaws.
- (d) If an item which is subject to a public hearing is continued or otherwise carried over to a subsequent date and the public hearing has been opened, then the public hearing shall not be deemed concluded until the date on which the hearing is formally closed. No additional notices shall be required once the public hearing is opened.

Sec. 16-315. Continuances.

- (a) Any applicant or authorized agent shall have the right to one continuance of a public hearing before the Planning Commission or Board of Zoning Appeals; provided that, a written request therefor is filed with the secretary of the Planning Commission or Board of Zoning Appeals at least two business days prior to the date of the scheduled hearing. The applicant shall make every attempt to notify all persons previously notified of the continuance either by mail or telephone. In any event, the applicant shall cause written notice of the rescheduled public hearing date to be sent to surrounding property owners in the same manner and in accordance with the same time schedule as required for notice of the original hearing.
- (b) The Planning Commission, Board of Zoning Appeals or the Governing Body may grant a continuance of an application at any time for good cause shown. The record shall indicate the reason the continuance was made and any stipulations or conditions placed upon the continuance. If the Planning Commission or Board of Zoning Appeals continues a public hearing on its own motion, it may direct the secretary thereof to renotify property owners within 200 feet of the subject property, if notification was required in the first instance; if the continuance is made at the request of the applicant, the Planning Commission or Board of Zoning Appeals may direct the applicant to renotify property owners within 200 feet of the subject property. This renotification shall be by first class United States mail, postage prepaid. Where renotification is to be made by the applicant, an affidavit shall be submitted that the renotification has occurred.

(Supp. No. 17, Update 4)

Created: 2025-07-11 06:38:26 [EST]

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- (c) All motions to grant a continuance shall state the date on which the matter is to be heard. A majority vote of those members of the official body present at the meeting shall be required to grant a continuance.

DIVISION III. ZONING AMENDMENTS AND SPECIAL USE PERMITS

Sec. 16-316. Consideration of Zoning Text Amendments.

- (a) *Public hearing required.* Consideration of zoning text amendments shall require a public hearing before the Planning Commission following publication notice as provided in Section 16-312.
- (b) *Action by Planning Commission.* A majority of the members of the Planning Commission present and voting at the hearing shall be required to recommend approval, approval with conditions or denial of the zoning text amendment to the Governing Body. The Planning Commission's recommendation shall include a statement of the reasons for the recommendation.
- (c) *Governing Body action upon Planning Commission recommendation.*
- (1) In the case of a special use permit for in-home daycares, Governing Body approval is not required. Final approval will be by the Planning Commission with the Governing Body operating as the appeal board.
 - (2) When the Planning Commission submits a recommendation to approve a zoning text amendment and the Governing Body approves that recommendation, then the Governing Body shall adopt the submitted ordinance. When the Planning Commission submits a recommendation to disapprove a zoning text amendment and the Governing Body approves that recommendation, no further action need be taken by the Governing Body and the application shall be deemed terminated.
 - (3) Upon receipt of a recommendation of the Planning Commission which the Governing Body disapproves, the Governing Body may either return the recommendation to the Planning Commission for further consideration, together with a statement specifying the basis for disapproval, or may override the Planning Commission's recommendation by a two-thirds majority vote of the membership of the Governing Body. A failure to obtain a vote necessary to approve the Planning Commission's first recommendation shall constitute a disapproval. Requests, for amendments or modifications which constitute substantial changes, or requests for clarification by the Planning Commission, shall be treated as disapprovals for purposes of these procedures.
- (d) *Applications returned to Planning Commission.* Upon receipt of an application returned by the Governing Body, the Planning Commission, after considering the same, may resubmit its original recommendation giving the reasons therefor or submit a new or amended recommendation. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's statement specifying disapproval, the Governing Body may consider the course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly. Reconsideration by Governing Body. Upon receipt of the Planning Commission's recommendation after reconsideration, the Governing Body, by a simple majority thereof, may adopt or may revise or amend and adopt the recommendation by ordinance, or it need take no further action thereon.

(Ord. No. 961, § 5, 11-20-2017)

Sec. 16-317. Rezoning Applications—Submission Requirements.

The following items shall be submitted in support of any application for rezoning:

- (a) Legal description of the property.

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- (b) A statement of the reasons why rezoning is being requested.
 - (c) A preliminary development plan, except for rezonings to a single-family residence district and duplex residence district.
 - (d) All studies as may reasonably be required pursuant to Section 16-304.
 - (e) Assurances of adequate public facilities as required by Section 16-305.

(Ord. No. 960, § 1, 11-20-2017)

Sec. 16-318. Special Use Permit.

- (a) Definition: are uses which, due to their nature, are dissimilar to the normal uses permitted within a given zoning district or where product, process, mode of operation, or nature of business may prove detrimental to the health, safety, welfare or property values of the immediate neighborhood and its environs. Within the various zoning districts specific uses may be permitted only after additional requirements are complied with as established within this section.
- (b) Any of the use restrictions provided for in this article may be waived in hardship cases provided that a written application for a special use permit is made to the Governing Body.
- (c) Communications Facilities (Towers, Base Stations and Antennas).
 - (1) The definitions in Section 16-1102 shall apply to Special Use Permits for Communications Facilities.
 - (2) Each Application for a Special Use Permit for Communications Facilities shall follow the process and submit the required information listed in Section 16-1105.
 - (3) A Special Use Permit for Communications Facilities shall be subject to the performance standards listed in Section 16-1107.
 - (4) A Special Use Permit for Communications Facilities shall be for a term not less than ten years.
 - (5) A denial of a Special Use Permit for Communications Facilities shall comply with the requirements of Section 16-1108.
- (d) Day Care Facilities: Day care facilities for more than five children or adults shall:
 - (1) Be licensed with the State pursuant to K.S.A. 65-501 et seq.;
 - (2) Obtain a Special Use Permit from the Planning Commission;
 - (3) Obtain an annual City business license;
 - (4) Obtain and furnish an annual fire inspection from the Fire Marshal or designee;
 - (5) A loading zone capable of accommodating at least two automobiles for picking-up or dropping-off passengers;
 - (6) Meet all requirements of the building code applying to day cares;
 - (7) That any special use permit issued shall be for an indefinite period, and that the rights granted in said special use permit shall extend to the owner or his agent or licensee of said owner requesting such permit and shall not run with the land;
 - (8) The special use permit for the operation of a daycare may be revoked at any time by the Planning Commission upon a determination that it is in violation of the standards of this section or any other City Code requirement including City Code violations such as nuisance violations that endanger the life,

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health, property, safety, or welfare of the general public and property maintenance violations containing substandard or unsanitary conditions;

- (9) Landlord Consent. Any person applying for a business license and/or a special use permit for a daycare that will take place within a residential rental property shall submit written consent signed by the owner of the rental property to the City;
- (10) In-home daycares will be permitted to operate in a single family detached home only;
- (11) The in-home daycare provider must notify the City immediately if they are no longer operating the in-home daycare facility.

(Ord. No. 944, § 4, 11-21-2016; Ord. No. 961, § 6, 11-20-2017; Ord. No. 976, § 3, 4-15-2019)

Sec. 16-319. Special Use Permit Applications—Submission Requirements.

- (a) The following items shall be submitted in support of an application for a special use permit requested pursuant to Subsection 16-319(a).
 - (1) Legal description of the property that is covered by the application for a special use permit.
 - (2) A statement of the reasons why the special use permit is being requested.
 - (3) A preliminary development plan, or a site plan as determined by the City Building Inspector
 - (46) All studies as may reasonably be required pursuant to Section 16-304.
 - (57) Assurance of adequate public facilities as required by Section 16-305.
- (63) If the application is for a communication antenna, either a site plan or a preliminary development plan, whichever is, in the opinion of the Building Inspector, necessary in order for the City staff, Planning Commission and Governing Body to properly evaluate the application. If a preliminary development plan is not required, the Building Inspector shall specify in writing the information to be included on the required site plan. Notwithstanding a determination by the Building Inspector that only a site plan is required, the Planning Commission or Governing Body may require the submission of a preliminary development plan prior to taking action on the application.
- (74) With respect to applications for special use permits for a communication antenna or a communication tower, a statement that alternative sites or communication towers within one-half mile radius of the subject site are not available due to one or more of the following reasons, when the reasons are applicable.
 - i. Unwillingness of the owners of the alternate sites, or owners of existing or approved communication towers or structures capable of accommodating applicant's planned equipment to entertain applicant's communication facility proposal.
 - ii. Topographic limitations of alternate sites.
 - iii. Impediments adjacent to existing or approved communication towers that would obstruct adequate transmission.
 - iv. Physical site constraints that would preclude the construction of a communication tower.
 - v. Technical limitations of the communications transmission system.
 - vi. The applicant's planned equipment would exceed the structural capacity of existing and approved communication towers and facilities and structures generally capable of

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accommodating a communications transmission system, considering existing and planned use of communication towers and facilities and structures.

- vii. The applicant's planned equipment would cause radio frequency interference with other existing or planned communication towers or facilities that cannot be reasonably prevented.
- viii. Existing or approved communication towers or facilities do not have space on which applicant's planned equipment can be placed so it can function effectively and reasonably.
- ix. The applicant demonstrates that there are other limiting factors that render existing communication towers and facilities and structures unsuitable.
- x. The owner's facilities and transmission demands on structures.

(58) If the Application is for an in-home daycare, the applicant must include:

- i. Applicant's name;
- ii. Description of the particular premises in or at which the in-home daycare will be carried on;
- iii. Hours of operation;
- iv. Parking plan;
- v. If staff outside the home are employed, the number of staff and where they will park;
- vi. Proof of state licensure; and
- vii. Proof of a fire inspection.

~~(6) — All studies as may reasonably be required pursuant to Section 16-304.~~

~~(7) — Assurance of adequate public facilities as required by Section 16-305.~~

(Ord. No. 960, § 2, 11-20-2017; Ord. No. 961, § 7, 11-20-2017; Ord. No. 976, § 4, 4-15-2019)

Sec. 16-320. Reserved.

Editor's note(s)—Ord. No. 960, § 3, adopted Nov. 20, 2017, repealed § 16-320, which pertained to concept plans— submission requirements, contents and meetings with redevelopment committee and derived from the original codification of this code.

Sec. 16-321. Consideration of Rezoning and Special Use Permits.

- (a) *Public hearing required.* Consideration of all applications for rezoning or a special use permit shall require a public hearing before the Planning Commission, with publication notice and notice to surrounding property owners as required by Sections 16-312 and 16-313, respectively, with the exception of special use permits for in-home daycares. In the case of in-home daycares, the applicant shall notify the owners of record of lands located within 100 feet of the property which is the subject of the application by certified mail, return receipt requested or by signed statement of all property owners as specified in Section 16-313(a). All other provisions regarding notification as required by Section 16-313 apply.
- (b) *Procedures.* Except as hereinafter provided, the procedures for Planning Commission and Governing Body consideration of rezoning or special use permit applications shall conform to the procedures set forth in Section 16-316 for zoning text amendments. If the Planning Commission fails to make a recommendation, the Planning Commission shall be deemed to have recommended denial of the application. The Governing Body shall not take action on an original recommendation of the Planning Commission unless 14 days have elapsed after the date of the conclusion of the Planning Commission's public hearing held pursuant to

publication notice in order to allow the filing of a protest petition as provided in Subsection (c) provided, however, that where the right to file a protest petition has been waived in a verified statement signed by all property owners holding that right, the Governing Body may consider the recommendation at any time.

(Ord. No. 976, § 5, 4-15-2019)

Sec. 16-322. Preliminary Development Plans—When Required.

- (a) A preliminary development plan which meets the requirements of Section 16-322 shall be submitted in support of all applications for:
 - (1) Rezoning, pursuant to Section 16-317, except applications for rezoning to a single-family residence district and a duplex residence district;
 - (2) A special use permit, pursuant to Section 16-318, with the exception of applications for in-home daycare facilities; and
 - (3) A building permit for a project, which involves the construction of buildings on undeveloped land, or the redevelopment of previously developed land, in all zoning districts, except the single-family and duplex residence districts.
- (b) A preliminary development plan shall be required as to Subsection (3) above only when a final development plan has not previously been approved for the project for which the building permit is being sought or if a final development plan has been approved and then abandoned, pursuant to Section 16-330.
- (c) The Governing Body may waive the requirement for submission of a preliminary development plan for Subsection (3) above if it determines, in its sole discretion, that the nature or the content of the redevelopment does not warrant plan review.

(Ord. No. 961, § 8, 11-20-2017)

Sec. 16-323. Preliminary Development Plans—Submission Requirements and Contents.

- (a) Eight copies of the preliminary development plan shall be submitted in support of the application. The preliminary development plan shall contain the following information:
 - (1) North arrow and scale.
 - (2) With regard to the subject property only:
 - (i) Existing topography with contours at five-foot intervals, and delineating any land areas within the 100-year flood plain.
 - (ii) Proposed location of buildings and other structures, parking areas, drives, walks, screening, drainage patterns, public streets and easements.
 - (iii) Sufficient dimensions to indicate relationship between buildings, property lines, parking areas and other elements of the plan.
 - (iv) General extent and character of proposed landscaping.
 - (3) With regard to areas within 200 feet of the subject property:
 - (i) Any public streets which are of record;
 - (ii) Any drives which exist or which are proposed to the degree that they appear on plans on file with the City, except those serving single-family houses.

Commented [JJ4]: Do we need 8 copies now? You can never fit 7 copies at the dias anyway. I think we should put something in here about maybe 2-3 copies plus a digital file.

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- (iii) Any buildings which exist or are proposed to the degree that their location and size are shown on plans on file with the City. Single- and two-family residential buildings may be shown in approximate location and general size and shape.
- (iv) The location and size of any drainage structures, such as culverts, paved or earthen ditches or storm water sewers and inlets.
- (4) Preliminary sketches depicting the general style, size and exterior construction materials of the buildings proposed. Where several building types are proposed on the plan, a separate sketch shall be prepared for each type. These sketches shall include elevation drawings, but detailed drawings and perspectives are not required.
- (5) A schedule shall be included indicating total floor area, land area, parking spaces and other quantities relative to the submitted plan in order that compliance with requirements of this chapter can be determined.
- (6) Name and address of landowner.
- (7) Name and address of architect, landscape architect, planner, engineer, surveyor, or other person involved in the preparation of the plan.
- (8) Date of preparation of the plan.
- (b) The following information shall be submitted in support of the application for the preliminary development plan approval:
 - (1) All studies as may reasonably be required pursuant to section 16-304.
 - (2) Assurances of adequate public facilities as required by section 16-305

Sec. 16-324. Consideration of Preliminary Development Plans—Change as to Preliminary Development Plans.

- (a) When property is rezoned to a zoning district other than the single-family residence district or the duplex residence district, including all planned zoning districts, the preliminary development plan shall be considered and approved as a part of the rezoning application.
- (b) When submission of a preliminary development plan is required pursuant to subsection (a), it shall be considered and approved in accordance with all provisions and factors set forth in subsection 16-321(e). In addition, the following factors also shall be considered:
 - (1) The capacity of the site to accommodate the building(s), parking and drives, with appropriate open space and safe and easy ingress and egress;
 - (2) The degree of harmony between the architectural quality of the proposed building(s) and the surrounding neighborhood;
 - (3) The appropriateness of the minimum dimensions, areas of lots and yards and setbacks contained in the applicable zoning district regulations;
 - (4) The consistency of the plan with good land planning and site engineering design principles; and
 - (5) Compliance with all other applicable provisions of this chapter.
- (c) The Planning Commission shall hold a public hearing on each preliminary development plan submitted within 30 days of the date it is deemed complete pursuant to section 16-306. If the Planning Commission fails to hold a public hearing within this period, the commission shall be deemed to have made a recommendation for denial and the preliminary development plan shall be considered by the Governing Body. The applicant

Commented [JJ5]: Can we change this? There could be reasons that we don't hold the public hearing within 30 days that are circumstantial -such as staff absences/vacancies, etc.

and the Mayor with the consent of the Council may jointly agree in writing that the Planning Commission public hearing on a preliminary development plan may occur later than 30 days from the date the preliminary development plan is deemed complete, provided that a date certain for the hearing is established which is not greater than 45 days from the date the preliminary development plan is deemed complete.

- (d) Once a preliminary development plan has been approved, changes in the preliminary development plan may be made only after approval of a revised preliminary development plan. Each member of the Governing Body shall be notified immediately upon submission of a revised preliminary development plan. Changes in the preliminary development plan which are not substantial or significant may be approved by the Planning Commission, and disapproval of these plans by the Planning Commission may be appealed to the Governing Body. Provided that, if any member of the Governing Body determines that the Governing Body should consider a revised preliminary development plan that contains changes that are not substantial or significant, as defined in subsection (e) of this section, the member of the Governing Body shall notify the Mayor who shall in turn notify the Planning Commission of this determination. In this instance, the revised preliminary development plan may only be approved after rehearing by the Planning Commission and Governing Body; the hearing shall be subject to the notice and protest provisions set forth in section 16-321. Substantial or significant changes in the preliminary development plan may only be approved after rehearing by the Planning Commission and Governing Body; the rehearing also shall be subject to the public hearing and protest provisions set forth in section 16-321.
- (e) For purposes of this section, "substantial or significant changes" in the preliminary development plan shall mean any of the following:
 - (1) Increases of more than ten percent in the total floor area of all buildings covered by the plan.
 - (2) Increases of lot coverage of more than five percent. "Lot coverage" means that portion of the net site area which is covered by the ground floor of any structure, parking lots, and private streets and drives. Pools, tennis courts, sidewalks and plazas are not counted toward lot coverage. "Net site area" means the land area of a lot or tract remaining after subtraction of all public street and alley rights-of-way as are required by this chapter.
 - (3) Increases of more than ten percent in the height of any building
 - (4) Changes of architectural style which will make the project less compatible with surrounding uses.
 - (5) Changes in ownership patterns or stages of construction that will lead to a different development concept.
 - (6) Changes in ownership patterns or stages of construction that will impose substantially greater loads on streets and other public facilities.
 - (7) Decreases of more than five percent of any peripheral setback.
 - (8) Decreases of areas devoted to open space of more than five percent or the substantial relocation of these areas.
 - (9) Changes of traffic circulation patterns that will affect traffic outside of the project boundaries.
 - (10) Modification or removal of conditions or stipulations to the preliminary development plan approval.
- (f) The determination of whether a proposed revised preliminary development plan contains "substantial or significant changes" shall be made by the Building Inspector within ten business days following the date he deems the application complete. The determination of the Building Inspector may be appealed to the Planning Commission, whose decision shall be final.
- (g) In the event that the application for the revised preliminary development plan is denied, the previously approved preliminary development plan will remain in effect.

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Sec. 16-325. Recording of Preliminary Development Plans.

Following the approval of a preliminary development plan, a statement shall be recorded with the register of deeds acknowledging that a preliminary development plan has been approved for the property. The statement shall be recorded in accordance with the forms and procedure established by the City and shall contain following information:

- (a) A legal description of the property;
- (b) A specification of the nature of the plan by identifying the zoning districts which apply to the property and the rezoning case number established by the rezoning ordinance, if applicable; and
- (c) A statement that the restrictions on development established by the preliminary development plan and the rezoning ordinance shall be binding upon all successors and assigns unless amended in conformance with the procedures set forth in the City's zoning regulations.

Sec. 16-326. Final Development Plans—When Required.

Submission and approval of final development plans are required in all instances in which preliminary development plans are required pursuant to the provisions of section 16-322.

Sec. 16-327. Final Development Plans—Contents and Submission Requirements.

- (a) Eight copies of the final development plan shall be submitted in support of the application. The final development plan shall contain the following information:
 - (1) A small key map indicating the location of the property within the City.
 - (2) A site plan including the following:
 - (i) Finished grades or contours for the entire site at two foot contour intervals.
 - (ii) All existing and proposed adjacent public street right-of-way with centerline location.
 - (iii) All existing and proposed adjacent public street and public drive locations, widths, curb cuts and radii.
 - (iv) Location, width and limits of all existing and proposed sidewalks.
 - (v) Location, size and radii of all existing and proposed median breaks and turning lanes.
 - (vi) Distance between all buildings, between buildings and property lines and between all parking areas and property lines.
 - (vii) Location of all required building and parking setbacks.
 - (viii) Location, dimensions, number of stories and area in square feet of all proposed buildings.
 - (ix) Area of land on site plan in square feet or acres.
 - (x) Limits, location, size and material to be used in all proposed retaining walls.
 - (xi) Location and dimensions of all driveways, parking lots, parking stalls, aisles, loading and service areas and docks.
 - (xii) Location, height, candle power and type of outside lighting fixtures for buildings and parking lots.
 - (xiii) Location, size, type of material and message of all proposed monument or detached signs.

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- (xiv) Pertinent peripheral information to include adjacent developments, alignment and location of public and private driveways and streets, medians, public and semi-public easements.
 - (xv) Preliminary drainage design and location and existing drainage facilities.
- (3) Building elevations including the following:
- (i) Elevations of all sides of proposed buildings including notation indicating building materials to be used on exteriors and roofs.
 - (ii) Size, location, color and materials of all signs to be attached to building exteriors, unless private sign criteria have previously been approved by the Planning Commission.
 - (iii) Location, size and materials to be used in all screening of rooftop mechanical equipment.
 - (iv) Building sections.
- (4) Floor plans indicating dimensions and areas of all floors within proposed buildings.
- (5) Landscaping and screening plans which include:
- (i) Size, species, location and number of all proposed landscape materials.
 - (ii) Notation of all areas to be seeded or sodded.
 - (iii) Location, size and materials to be used for all screening, including screening of outside trash enclosure areas.
- (b) All site plans are to be drawn to a standard engineer's scale. The actual scale used will depend on the development and shall be subject to the approval of the City Engineer.
- (c) One copy of the proposed site plan and one copy of the proposed building elevations shall be reduced onto 8½ inch by 11 inch bond paper.
- (d) The following shall be submitted in support of the application for final development plan approval:
- (1) Deeds of dedication for all rights-of-way or easements required as a result of preliminary development plan approval if conveyance thereof is not to be made by plat or by the filing of the final development plan pursuant to section 16-329.
 - (2) A copy of all covenants and restrictions applicable to the development, if required by the terms of the preliminary development plan.
 - (3) Evidence of the establishment of the agency for the ownership and maintenance of any common open space and all assurances of the financial and administrative ability of the agency required pursuant to approval of the preliminary development plan, if required by the terms of the approved preliminary development plan.
 - (4) Evidence of satisfaction of any stipulations of the preliminary development plan approval which were conditions precedent to consideration of the final development plan.
 - (5) Proof of filing of the statement required by section 16-329.
 - (6) Assurances of adequate public facilities as required by section 16-305.

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Sec. 16-328. Consideration of Final Development Plans.

- (a) Each member of the Governing Body shall be notified immediately upon submission of a final development plan.

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- (b) Final development plans that contain no modifications or additions from the approved preliminary development plan shall be approved by the Planning Commission if the commission determines that the landscaping and screening plan complies with all applicable Code requirements and that the final development plan complies with the applicable factors referred to and set forth in subsection 16-320(e). Denial of final development plans by the Planning Commission may be appealed to the Governing Body by the applicant within 15 days of the denial.
 - (c) A final development plan that contains modifications from the approved preliminary development plan, but is in substantial compliance with the preliminary plan, may be approved by the Planning Commission without a public hearing, provided that the commission determines that the landscaping and screening plan complies with all applicable Code requirements and that the final development plan complies with all of the applicable factors referred to and set forth in subsection 16-321(e). Provided further that, if any member of the Governing Body determines that the Governing Body should consider a final development plan that contains changes that are not substantial or significant changes from the approved preliminary development plan as determined by subsection 16-324(e), that member shall notify the Mayor who shall notify the Planning Commission of the determination. In these instances, final development plans shall be considered by the Governing Body after the Planning Commission has recommended the approval or denial of the proposed final development plan to the Governing Body, specifying the reasons for its recommendation. If the Planning Commission fails to make a recommendation, the Planning Commission shall be deemed to have made a recommendation of denial. Any determination made by the Planning Commission under this subsection shall be appealable to the Governing Body by the applicant within 15 days of the date of the Planning Commission determination
 - (d) In the event of a determination that the proposed final development plan is not in substantial compliance with the approved preliminary development plan, the application may not be considered except at a public hearing, following publication notice and notice to surrounding property owners as provided in sections 16-313 and 16-314, respectively. The provisions of section 16-324 relating to consideration of preliminary development plans shall apply to consideration of final development plans that are determined not to be in substantial compliance with the preliminary development plan. Following the public hearing, the Planning Commission shall recommend approval or denial of the proposed final development plan to the Governing Body, specifying the reasons for its recommendation. If the Planning Commission fails to make a recommendation on the proposed final development plan, the Planning Commission shall be deemed to have made a recommendation of denial. Following receipt of the Planning Commission recommendation, the Governing Body shall either approve or disapprove the proposed final development plan by a simple majority vote of those members present and voting; provided, however, that consideration of a proposed final development plan which has been determined to be not in substantial compliance with the approved preliminary development plan shall also be subject to the protest provisions set forth in subsection 16-321(c).
 - (e) Revisions to approved final development plans which are insignificant in nature may be approved administratively by the Building Inspector. Provided, however, that in no event may revisions to approved final development plans be approved administratively if the proposed revised final plan contains "substantial or significant changes" as defined in subsection 16-324(e).

Sec. 16-329. Recording of Final Development Plan.

Following the approval of a final development plan, a statement acknowledging that a final development plan has been approved for the property shall be filed with the register of deeds. The statement shall be recorded in accordance with the forms and procedures established by the City and shall contain the following information:

- (1) A legal description of the property.

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- (2) A statement that the restrictions on development and the responsibility for continuing maintenance and compliance with the final development plan shall be binding upon all successors and assigns unless the plan is amended in conformance with the procedures set forth in the City's zoning regulations.

Sec. 16-330. Abandonment of Final Development Plan.

In the event that a plan or a section thereof is given final approval and thereafter the landowner shall abandon the plan or section thereof and shall so notify the City in writing, or in the event the landowner shall fail to commence the planned development within 18 months after final approval has been granted, then in either event the final approval shall terminate and shall be deemed null and void unless the time period is extended by the application by the landowner. Whenever a final plan or section thereof has been abandoned as provided in this section, no development shall take place on the property until a new development plan has been approved.

Sec. 16-331. Site Plans for Non-Residential Development in Residential Districts.

- (a) No permit for any construction or use of property for non-residential uses (parks, playgrounds, churches or schools) in a residential district shall be issued until a site plan for the development has been reviewed by the Planning Commission and approved by the Governing Body.
- (b) All site plans shall contain the following information:
 - (1) North arrow and scale.
 - (2) Location of existing rights-of-way, easements and infrastructure (streets, sewers, water lines, utilities, etc.).
 - (3) Size and location of existing and proposed structures and drives on the subject property, and existing structures and drives on surrounding properties.
 - (4) Location of flood plain.
 - (5) Location of proposed drives and parking areas.
 - (6) Platted setback lines.
 - (7) Elevations of proposed buildings.
 - (8) Final grades.
 - (9) Landscaping.
 - (10) Name and address of landowner.
 - (11) Name and address of architect, landscape architect, planner, engineer, surveyor or other person involved in the preparation of the plan.
 - (12) Date of preparation of the plan.
- (c) Prior to consideration of site plans by the Planning Commission, all site plans, and assurances of adequate public facilities as set forth in section 16-305, shall be submitted to the Building Inspector for review and determination that all submittal requirements are complete. The City Engineer may also require the submission of technical studies, and the provisions relating thereto set forth in section 16-304 shall be applicable, except that appeals of the determination of the Building Inspector shall go directly to the Planning Commission.
- (d) Following the determination of the Building Inspector that all submittals are complete, a public hearing on the site plan shall be scheduled before the Planning Commission, with publication notice and notice to surrounding property owners as required by sections 16-312 and 16-313.

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- (e) Following the close of the public hearing, the Planning Commission shall determine the appropriateness of the proposed site plan according to the following criteria:
- (1) The capability of the site to accommodate the building(s), parking and drives, with appropriate open space and safe and easy ingress and egress.
 - (2) The degree of harmony between the architectural quality of the proposed building(s) and the surrounding neighborhood.
 - (3) The appropriateness of the minimum dimensions and areas of lots and yards contained in the applicable zoning district regulations may be considered and increased.
 - (4) The consistency of the plan with good land planning and site engineering design principles.
 - (5) The extent to which the proposed use and associated site improvements ensure that on-site storm water is appropriately managed, control the discharge of pollutants into storm water runoff, create air pollution, noise pollution, other types of water pollution, or involves excessive removal of existing on-site vegetation or other environmental harm.
- (f) The decision of the Governing Body to approve, approve with conditions or deny the site plan shall be final.

ARTICLE 5. OVERLAY DISTRICTS

Sec. 16-501. 47th and Mission Road Area Design Review Overlay District.

Purpose and authority. The 47th and Mission Road Area Design Review Overlay District is established by this Zoning Ordinance, enacted to implement the goals and policies of the 47th and Mission Road Area Concept Plan, adopted by the cities of Westwood, Roeland Park, and the Unified Government of Wyandotte County and Kansas City, Kansas. The 47th and Mission Road Area Concept Plan was drafted pursuant to:

- i. The interlocal cooperation acts, Sections 12-2901 through 12-2909 of the Kansas Statutes Annotated;
- ii. Section 12-744(c) of the Kansas Statutes Annotated; and
- iii. The interlocal agreement between the Cities of Roeland Park, Westwood, and the Unified Government of Wyandotte County/Kansas City, Kansas (collectively "Jurisdictions").

This Ordinance translates the relevant portion of the plan within the boundaries of City into the Zoning Ordinance, in addition to all current regulations. This Ordinance will accompany a similar ordinance adopted by each jurisdiction to ensure consistent implementation of the 47th and Mission Road Area Concept Plan.

(a) *Applicability.*

(1) *Property.*

- a. This Ordinance shall apply to all property within the City and within the 47th and Mission Road Area Design Review Overlay District, as shown in Section 15-601(L) below as the "Suggested District Boundary", which hereby replaces the "Original District Boundary" as shown. The official zoning map of The City is hereby amended to reflect the updated 47th and Mission Road Area Design Review Overlay District.
- b. The standards in this Ordinance shall apply to all property currently or subsequently zoned for commercial or multi-family use within this overlay district.
- c. Any property zoned for single-family residential use is included within this overlay district to indicate neighborhood areas to be protected by buffers and design enhancements established in this Ordinance for commercial or multi-family use. In addition, to further protect existing

neighborhoods, any property currently zoned for single-family residential use within this overlay district which is subsequently rezoned to multi-family or commercial uses must satisfy all design standards in this Ordinance.

d. Any legal nonconforming structure or use cannot increase its level of nonconformity without complying with this Ordinance.

- (2) *Type of development.* These standards shall be applied to new development, redevelopment, or exterior modifications that alters the appearance of a building or site within the overlay district including, but not limited to, building additions, facade improvements, or landscaping improvements. Only those standards required by this Ordinance and directly related to proposed development, redevelopment, or exterior modification shall be applied.

Other regulations. Within the overlay district, all City Code ordinances, policies, regulations, and plans shall apply. Where conflicts occur regarding development standards in this Ordinance, the standards established in this Ordinance shall supersede those in the conflicting ordinance, policy, regulation, or plan.

- (b) *Definitions.* For the purposes of this overlay Ordinance, the following terms and phrases shall have the meaning given in this section. All other terms and phrases shall use definitions given in the City Code Zoning Ordinance or other codes, unless context indicates that a standard dictionary definition is more appropriate. Terms and phrases not defined in this section or by any provision of the City Code shall have the standard dictionary definition.

Adjacent lot: A lot having a common border or endpoint with subject lot, or lots that would have a common border or endpoint in the absence of an existing right-of-way.

Development: The construction of man-made site elements on an improved or unimproved parcel of land.

Distinctly different hours of operation: Uses with hours of operation where 50 percent or more of one use's hours of operation, including peak hours of operation based on a parking demand study, are mutually exclusive of the hours of operation of the other uses which it proposes to share parking.

Distinctly different peak hours of operation: The peak hours of operation, based on a parking demand study, of uses proposing to share parking are mutually exclusive.

Exterior modification: Any maintenance, improvement, construction, or reconstruction of a structure or site, or any portion of a structure or site, that will result in an apparent change visible from the right-of-way or adjacent property.

Redevelopment: The reconstruction, enlargement, conversion, relocation of a manmade structure.

- (c) *Uses.*

- (1) *Underlying zoning uses.* The uses allowed in the 47th and Mission Road Area Design Review Overlay District shall be those uses allowed by the current or any future underlying zoning classification, provided that all future development and redevelopment meets the standards established in this Ordinance. Any future rezoning shall be to a use district consistent with the 47th and Mission Road Area Concept Plan.

- (2) *Overlay uses.* In addition to those uses allowed by the underlying zoning, all property zoned for commercial use within the 47th Street and Mission Road, Area Design Review Overlay District shall be allowed residential uses as a supplemental use, subject to the following:

- a. No property with an underlying zone for Commercial use may have residential uses on the ground floor or at street level.
- b. No structures with supplemental residential uses may exceed 40 feet in height or 3½ stories, whichever is less.

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- c. All structures with supplemental residential uses, whether new or existing at the time of adoption of this Ordinance, must comply with all other standards established in this Ordinance in order to be eligible for supplemental residential uses.
 - (d) *Commercial site design standards.* Commercial site design in the 47th and Mission Road Area Design Review Overlay District shall conform to the principles outlined in the 47th and Mission Road Concept Plan. The following design standards implement and shall be interpreted consistent with the Plan.
 - (1) *Building placement.* Site design in the 47th and Mission Road Area shall conform to the following design standards. The provisions of this section shall apply to new development.
 - a. *Front setback.* All new buildings shall be built to the right-of-way line unless an additional setback is required to meet the minimum sidewalk width and buffer requirements in the Pedestrian Access requirement in subsection (e) titled site access.
 - b. *Side setbacks.* The minimum side setbacks shall be:
 - 1. Property abutting residential districts shall have a side setback equivalent to that of the abutting residential district. In this case, the side setback area shall be used to provide a buffer according to subsection (i) of this article.
 - c. *Rear setback.* Minimum rear setbacks shall be as defined by the zoning regulations of the municipality that the property is located in, unless the property is abutting a residential zoned property on its rear yard property line. If abutting a residential zoned property, the setback shall be equal to the residential properties rear yard setback requirements.
 - d. *Continuous building frontage.* Building facades on the street frontage should be maximized to provide continuous corridors within the overlay district. All lot frontages should be occupied by building frontages except for entrance drives or alleys to rear parking, courtyards or patios, or any side parking. In the case of courtyards and patios, or side parking, the appearance of a continuous building frontage shall be maintained by a 2½- to four-foot fence or wall constructed out of the same material as the building facade, or by a continuous landscape element.
 - e. *Main entrance.* The main entrance of all buildings shall be oriented to the street. In the case of the corner lots, a building may have one entrance on each street or may have one corner entrance facing the intersection at a 45-degree angle.
 - (e) *Site access.*
 - (1) *Pedestrian access.* All buildings shall have a continuous sidewalk along the frontage of the lot. The sidewalk shall be seven feet wide. All sidewalks shall be buffered from vehicular traffic with a minimum three-foot buffer zone that includes landscaping, street trees, street furniture, pedestrian lighting, bicycle facilities, or other amenities that provide physical separation from vehicular traffic. *Alternative:* Sidewalks outside the Village Area (as identified as the "Suggested Village Boundary" in the 47th and Mission Road Area Design Review Overlay District) may be a minimum of five feet in width, but the three-foot buffer zone must be maintained. *Alternative:* Where unique site characteristics prevent a seven-foot sidewalk and three-foot buffer zone from being achievable in the Village Area, sidewalk widths shall be maximized on that site.
 - a. *Vehicle access.* Curb cuts in the 47th and Mission Road Area should be minimized. Wherever possible, adjacent properties are encouraged to minimize curb cuts by use of shared parking or shared access to separate parking lots.
 - b. *Connections.* Continuous pedestrian connections shall be provided through all parking lots and between parking lots and store-front sidewalks. These pedestrian connections shall primarily be pedestrian-only sidewalks but may include crosswalks across parking lot drive aisles and

driveways where necessary. The following design elements shall be used to maintain pedestrian connections and minimize conflicts with vehicles:

1. Alleys, driveways, and parking lot drive aisles shall not exceed 24 feet for two-way access or 12 feet for one-way access.
2. "Bulb outs" for pedestrian-only travel should be used to minimize the distance of pedestrian walkways across driveways, alleys, parking lots, or other vehicle access ways.
3. All pedestrian walkways across driveway[s], alleys, parking lots, or other vehicle access ways shall be distinguished from the vehicle access way by a visually identifiable path or distinctly textured surface.

(f) *Parking.*

- (1) *Required parking.* The parking required for uses in the overlay district shall be established by the applicable standards for the underlying zoning district.
 - a. *Location.* Parking shall be provided primarily behind buildings in the Village Area. Parking on commercial lots outside the Village Area should be located primarily behind the building but may be located on the side of the building.
 - b. *Shared parking.* Parking requirements in the overlay district may be met through shared parking according to the following conditions and standards:
 1. A written agreement for the joint use of the parking facilities shall be executed by the parties, approved by the City and recorded with the register of deeds for any county in which property subject to the agreement is situated. The agreement shall include any necessary cross access easements among property owners. Must meet all other shared parking standards of the said jurisdiction.
 2. Parking requirements are cumulative except that parking may be shared based on uses either on the same site or on other sites that meet the requirements of this Section 16-501, at the sole discretion of City, according to the following standards:
 3. When two or more uses have distinctly different hours of operation (e.g., commercial office and residential, or church and school), 100 percent of the required parking may be shared. Required parking shall be based on the use that demands the greatest amount of parking per the underlying Ordinance requirement.
 4. When two or more uses have distinctly different peak hours of operation (e.g., office and restaurant/entertainment), 50 percent of the required parking spaces may be shared among the uses.
 5. Shared parking shall meet jurisdiction standards. If the parking spaces are more than 800 feet from the main entrance of the building.
- (2) Direct pedestrian access, meeting the requirements of Section 16-501, is required between any shared parking and the main entrance of any building proposing to share parking.
 - a. Applicants for shared parking shall submit a statement indicating the ability of the proposed shared parking arrangement to meet the demands of all uses involved. The statement shall include hours of operation, hours of peak operation, forecasted demand, and other data indicating the appropriateness of shared parking.
 - b. Any change of use or other change causing violation of the shared parking agreement or these standards shall invalidate the shared parking eligibility, and the parking requirements of the underlying Zoning Ordinance shall be met. A plan for meeting the parking requirements of this

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(Supp. No. 17, Update 4)

Ordinance if the shared agreement is invalidated must be submitted with the proposed agreement.

- c. On-street parking. Any on-street parking, authorized by City and within 300 feet of the lot, may be credited towards the on-site parking requirements. A maximum of ten percent of the required parking may be satisfied by on-street parking credits. On-street parking spaces may be counted by more than one user in meeting this requirement.
- d. Bicycle parking. Bicycle parking facilities are required at a rate of one bicycle for every 15 required vehicle parking spaces, with a minimum of two bicycle parking spaces. Bicycle parking facilities may be counted by more than one property in meeting this requirement, as long as the facility is within 150 feet of the entrance and the total required parking is met for each property.
- e. Landscape elements. Parking lots larger than 20 spaces shall incorporate at least one internal landscape island into the lot design. Landscape islands shall be at least ten percent of the parking lot area. Each required landscape island shall be a minimum of 20 square feet and a maximum of 500 square feet. Landscape islands shall maintain a minimum five-foot width at all times. Landscape islands shall be planted with landscape elements consistent with subsection (i) of this article. Landscape elements along the perimeter of a parking lot shall not count towards the landscape island requirement. Where a parking lot incorporates internal rows of parking, each row shall be terminated with a landscape element.
- f. Lighting. Exterior lighting on commercial properties shall be designed to have minimal light trespass onto adjacent residential properties.

(g) *Lighting.*

- (1) All exterior lighting on the building must be full cut-off with non-adjustable heads to direct light 90 degrees downward. No light may cast light or glare off the property or onto the public street.
- (2) Any lighting used to illuminate an off-street parking area, sign or other structure shall be arranged as to deflect light away from any adjoining residentially zoned property or from public streets. Direct or sky-reflected glare, from floodlights or commercial operations, shall not be directed into any adjoining property. The source of lights shall be full cut-off with non-adjustable heads to direct light 90 degrees downward. Bare light bulbs shall not be permitted in view of adjacent property or public right-of-way.
- (3) Any light or combination of lights that casts light on a public street shall not exceed one foot-candle (meter reading) as measured from the centerline of the street. Any light or combination of lights that cast light on adjacent residentially zoned property shall not exceed 0.5 foot-candles (meter reading) as measured from that property line.
- (4) Applicants shall be required to submit a base meter reading as part of their application materials.

(h) *Architecture features.*

- (1) *Enhanced entrances.* All main entrances shall be enhanced by architectural details. Such details may include, but are not limited to, slightly protruding entrances, building material variations, color variations, or artistic elements and other special treatments.
- (2) *Windows.* All buildings shall be predominantly transparent at the street level, with a minimum of 40 percent and a maximum of 80 percent of the facade occupied by windows. Upper levels may be less transparent, with a minimum of 25 percent of the facade occupied by windows.
- (3) *Awnings and canopies.* Awnings or canopies are encouraged on facades to provide weather protection and shade to pedestrians, and to add visual appeal to the 47th and Mission Road Area Design Review Overlay District. Awnings and canopies may project into the building setback or right-of-way provided they are a minimum of seven and one-half feet above grade. Any awnings provided shall be fabric and

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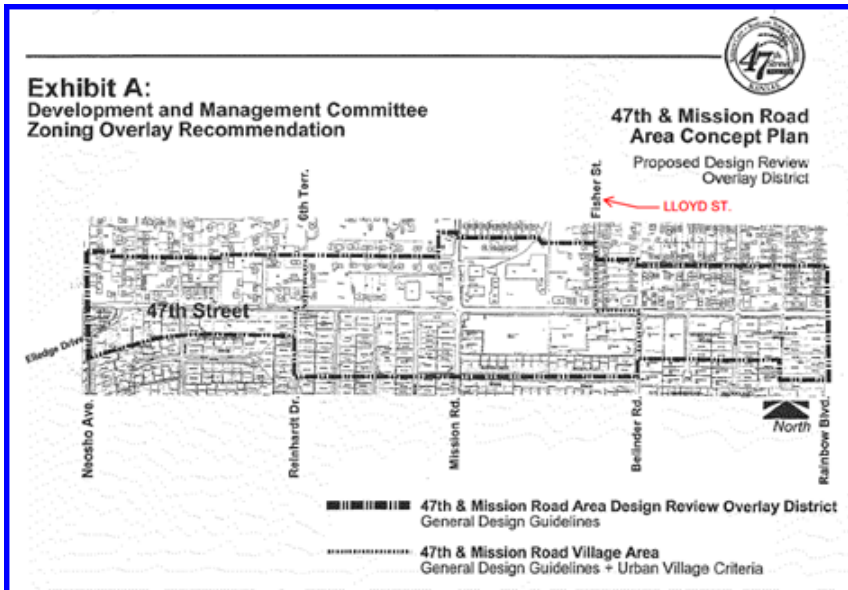
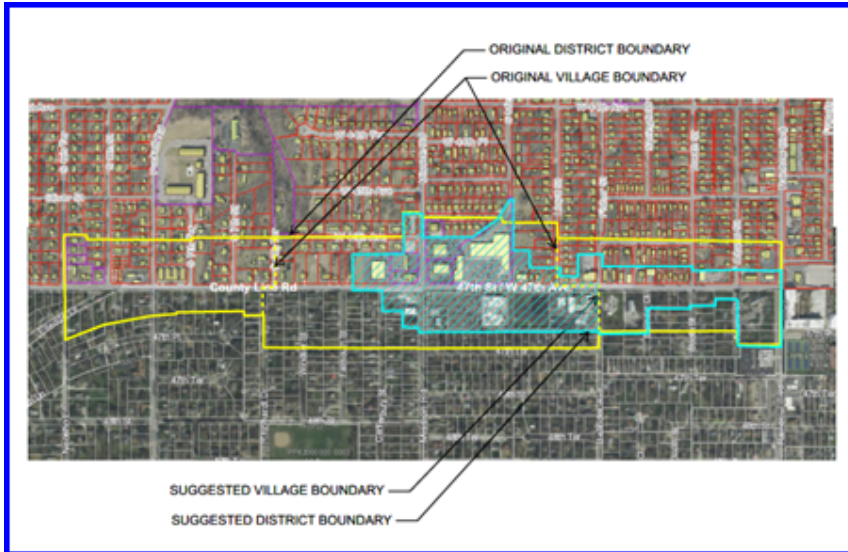
shall not be back-lit. Permanent canopies may be constructed if designed as an integral part of the structure. All awnings or canopies on a single block shall be hung at the same height above finished floor elevation of the building it is associated with.

- (4) *Facade lighting.* Facade lighting is encouraged within the overlay district. Facade lighting may be used to highlight architectural features of a building, provide secondary light to the pedestrian zone, or to enhance visibility of signs. Facade lighting shall be shielded so that the light source is applied to the building and does not provide any direct light or glare on sidewalks or streets.
 - (5) *Roof.* Flat and pitched roofs are allowed. Flat roofs shall incorporate a roof-screening element, such as a parapet or pediment, as part of the building design. Pitched roofs shall be complementary to the building design. All mechanical equipment shall be screened from view, preferably mounted to the roof and behind a parapet.
- (i) *Landscape requirements and screening.*
- (1) *Residential buffers.* All commercial uses and multi-family residential uses shall provide a landscape buffer from any single-family uses. The landscape buffer shall be of a density to provide an all-season visual screen from the single-family property. Treatments may include any combination of earth berms, walls or fences approved by the jurisdiction having authority, and tree, bush, and shrub plantings. The buffer zone shall be a minimum of ten feet in width.
 - (2) *Screening.* Specialty equipment, such as antennas, satellite dishes, trash and recycling containers, meter and utility boxes, and HVAC equipment, shall be screened from direct view from streets, sidewalks, and other areas of regular public access. Ground-mounted equipment and trash enclosures shall be screened from view with year-round landscape coverage or masonry wall enclosure consistent with the main building material. Roof-mounted equipment shall be placed far enough from the roof edge, or shall be screened with architectural elements, such as parapets, incorporated into the design of the building, so as not to be seen from the sidewalk across any adjacent street.
- (j) *Signs.* The following signs are allowed in the overlay district:
- (1) *Facade sign.* One facade sign shall be allowed per building tenant, identifying the business or tenant. A facade sign shall be allowed on each facade fronting a street utilized for pedestrian or vehicular access, except no such sign should face a local street.
 - (2) *Pedestrian signs.* One pedestrian sign shall be allowed per building tenant, identifying the business of the tenant. Pedestrian signs may be suspended from canopies or awnings, or affixed perpendicular to a building. Pedestrian signs shall not be lower than seven feet, six inches from grade level and shall not exceed ten square feet. Building-affixed pedestrian signs shall not protrude more than three feet from the building surface.
- (k) *Murals.* Murals are allowed in the overlay district.
- (1) *Definition.* A "mural" is a hand produced or machined graphic applied or affixed to the exterior of a building wall through the application of paint, canvas, tile, metal panels, applied sheet graphic or other medium generally so that the wall becomes the background surface or platform for the graphic, generally for the purpose of decoration or artistic expression, including, but not limited to, painting, fresco or mosaic.
 - (2) *Standards.*
 - a. Murals are not permitted on the primary facade. A primary facade is defined, for purposes of this section, as a building elevation that faces the adjacent street right-of-way and is the primary customer entrance. Buildings located on a block corner with the primary customer entrance located diagonally at the building corner to both intersecting streets has two primary facades.

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- b. On lots that share a property line with a residential zoning district, murals are not allowed on building walls that face a residential zoning district.
 - c. Up to 20 percent of a mural may include text or commercial copy. No more than five items of information may be included in the area used for text or commercial copy. However, murals should not include any textural reference to the associated business or shall be considered a sign.
 - d. The mural shall be kept in good condition for the life of the mural according to the maintenance schedule and responsibilities approved by the director and incorporated into the sign permit. A mural is in a state of disrepair when ten percent or more of the display surface area contains peeling, faded or flaking paint, or is otherwise not preserved in the manner in which it was originally created.
 - e. The display surface shall be kept clean, neatly painted, and free from corrosion.
 - f. Murals shall be subject to the jurisdiction ordinances and requirements.
- (l) *Public improvements and notification.* Prior to placement of any public improvements on the Capital Improvements Program, or construction of public improvements within the 47th and Mission Road Area Design Review Overlay District, the City shall send notice of the intent to construct public improvements to each jurisdiction. This notice shall provide the opportunity for the jurisdictions to coordinate for construction of public improvements consistent with the 47th and Mission Road Area Concept Plan and Streetscape Design Concept Plans.

For any proposed development, re-zoning, variance, or other action within the overlay district that would require a public hearing and notification to neighbors, notification will also be sent to the other jurisdictions.

- (1) *Depiction of 47th and Mission Road Area Design Review Overlay District and 47th and Mission Road Area Concept Plan.* The 47th and Mission Road Area Design Review Overlay District is hereby amended such that the overlay district shall consist of that area identified below as the "Suggested District Boundary." The Village Area, as used in this overlay district Ordinance, shall mean that area identified below as the "Suggested Village Boundary."



(Ord. No. 1031, § 1, 5-2-2022)

(Supp. No. 17, Update 4)

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ARTICLE 7. SPECIAL EVENTS

Sec. 16-701. Special Events; Purpose and Intent.

The purpose and intent of this article is to provide for the temporary use of land for special events in a manner consistent with its normal use and beneficial to the general welfare of the public. Furthermore, it is the intent of this article to protect nearby property owners, residents and businesses from special events that may be disruptive, obnoxious, unsafe or inappropriate given site conditions, traffic patterns, land use characteristics and the nature of the proposed use. Finally, it is the intent of this article to preserve the public health, safety and convenience.

Sec. 16-702. Special Events; Defined.

The term "special event" shall mean a temporary, short-term use of land or structures, not otherwise included as permitted or accessory use by this chapter, for one or more of the following types of activities:

- (a) *Type 1.* Fund raising or non-commercial events held outside an enclosed permanent structure for non-profit religious, educational or community service organizations that periodically and routinely operate in the City; including any on-site signs and structures in conjunction with the event;
- (b) *Type 2.* Christmas tree sales;
- (c) *Type 3.* Promotional activities or devices intended to attract attention to a specific place, business, organization, event or district such as banners as defined in section 16-903(e) hereof, and attention-attracting devices as defined in section 16-903(c) hereof;
- (d) *Type 4.* Significant commercial activities intended to sell, lease, rent or promote specific merchandise, services or product lines, such as tent sales, trade shows, farmers' markets, seasonal merchandise sales or product demonstrations;
- (e) *Type 5.* Significant public events intended primarily for entertainment or amusement, such as carnivals, concerts or festivals.

The term "special events" should not include garage sales, transient merchants, or off-site promotional signs and sales.

Seasonal sales means sale of items that are placed outdoors outside of winter months such as lawn and garden materials, plants, mulch, residential play features, barbecue grills, outdoor furniture, etc.

(Ord. No. 991, § 1, 3-16-2020)

Sec. 16-703. Special Events; Permit Not Required.

- (a) Special events meeting the Type 1 definition are allowed without a special event permit provided all the following performance standards are met:
 - (1) The special event is conducted entirely on private property owned or leased by the sponsoring organization as a permanent facility or with the written permission of the property owner or lessee.

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- (2) Any structure used in conjunction with the special event shall meet all applicable yard setbacks, shall be the subject of a valid building permit, and shall be promptly removed upon the cessation of the event.
 - (3) The special event shall be restricted to hours of operation between 8:00 a.m. and 11:00 p.m., to a maximum duration of four days, and to a maximum frequency for similar events of six non-consecutive times per calendar year.
- (b) Special events meeting the Type 1 definition that include on-site signs and/or displays in conjunction with the event are allowed without a permit provided the following conditions are met:
- (1) The special event does not involve outdoor activities (i.e. people congregating or participating in outdoor activities);
 - (2) The special event does not continue for more than 31 consecutive days and the property does not exceed a total of more than 60 special event days. At least 15 days must pass between each special event;
 - (3) Any/all special event display(s) area does not exceed 500 square feet per parcel, or, should a single parcel contain more than one address, per address.
 - (4) The special event shall not endanger or be materially detrimental to the public health, safety or welfare or injurious to property or improvements in the immediate vicinity of the neighborhood special event.
 - (5) The special event shall not cause undue traffic congestion or accident potential.

(Ord. No. 949, § 1, 5-15-2017)

Sec. 16-704. Special Events; Administrative Permit Required.

Special events meeting the following standards shall be issued a special event permit administratively by the Building Inspector. In administering the provisions of this section, the Building Inspector shall be guided by applicable City policies as adopted by the Governing Body. Any applicant denied a special event permit shall be notified in writing of the reasons for the denial and have the opportunity to appeal the denial to the Governing Body. No more than two special event permits per calendar year shall be issued administratively at any location.

- (a) Special events meeting the Type 2 definition may be permitted administratively by the Building Inspector, subject to prior review and approval by the public works and police departments for traffic control and fire safety; provided that, all of the following performance standard are met:
 - (1) An application is made and a fee paid in accordance with section 16-706;
 - (2) A site plan indicating the location of the merchandise being sold, aisles, parking and sales trailers;
 - (3) A lighting plan to be approved by the fire department and Building Inspector;
 - (4) The permit may be valid from Friday after Thanksgiving until December 26th, with hours of operation from 8:00 a.m. to 10:00 p.m.;
 - (5) Any structure used in accordance with the special event shall meet all site distance (see section 16-426) and set-back requirements, shall be subject to a valid building permit, and shall be promptly removed upon cessation of tree sales; the tree sales shall be conducted only on private property in a commercial or industrial zoning district, and shall submit evidence that the property owner has granted appropriate permission for tree sales.
- (b) Special events meeting the Type 3 or Type 4 definition, and Type 1 events not meeting the standards of section 16-703, may be permitted administratively by the Building Inspector subject to the prior review

and approval of the police and fire departments. No administrative permit shall be issued unless all the following performance standards are met:

- (1) An application is made and a fee paid in accordance with section 16-706;
- (2) The special event shall not cause undue traffic congestion or accident potential given anticipated attendance and the design of adjacent streets, intersections and traffic controls;
- (3) If involving a banner, no more than one banner is displayed, and the size and design of the banner is appropriate given the size of the building to which it is attached, and within the character of the surrounding neighborhood and the banner shall be displayed for a maximum duration of 15 days per permit;
- (4) The activity shall not cause the overcrowding of parking facilities given anticipated attendance and the possible reduction in the number of available spaces caused by the event itself;
- (5) The special event shall not endanger the public health, safety, or general welfare given the nature of the activity, its location on the site, and its relationship to parking and access points;
- (6) The special event shall not impair the usefulness, enjoyment or value of adjacent property due to the generation of excessive noise that would violate Article 8 of Chapter 8 of the municipal code, smoke, odor, glare, litter, or visual pollution;
- (7) Any structure used in conjunction with the special event shall meet all site distance requirements (see section 16-426), shall be the subject of a valid building permit, and shall be promptly removed upon the cessation of the event;
- (8) The special event shall be conducted on private property in a commercial or industrial zoning district, except that non-profit organizations may conduct events on any property where the property owner has granted the appropriate permission;
- (9) The duration and hours of operation of the special event shall be consistent with the intent of the event and the surrounding land uses, but in no case shall the duration exceed ten days except as otherwise outlined in section 16-704(b)(11); and
- (10) The special event shall comply with all applicable state and federal health, safety, environmental and other applicable requirements.
- (11) Seasonal sales may be displayed in approved areas for up to six calendar months of the year. Outside storage and sales are limited to typical spring, summer and fall seasons.

(Ord. No. 991, § 1, 3-16-2020)

Sec. 16-705. Special Events; Governing Body Approval Required.

All Type 5 events and any other event not meeting the criteria of sections 16-703 or 16-704 may be granted a special event permit by the Governing Body after review and report by the Building Inspector. The permit may be subject to conditions and safeguards as the Governing Body may deem reasonably necessary to protect the public health, safety, and general welfare. These conditions may include but shall not be limited to:

- (a) Restrictions on the hours of operation, duration of the event, size of the activity, or other operation or characteristic;
- (b) The posting of performance bonds to help ensure that the operation of the event and the subsequent restoration of the site are conducted according to Governing Body expectations;
- (c) The provision of traffic control or security personnel to increase the public safety and convenience; and

Commented [JJ8]: I don't understand the second part of this section "possible reduction in the number of available spaces caused by the event itself". Of course, it would reduce the no of spaces available.

Commented [JJ9]: What if there is a band? That would create noise but it would be temporary

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- (d) Obtaining liability and personal injury insurance in forms and amounts as the Governing Body may find necessary to protect the safety and general welfare of the community.

Sec. 16-706. Application and Fee.

- (a) No special event permit shall be issued until an application has been submitted to the Building Inspector and the appropriate fee paid. The application will be made on forms provided by the City, and shall be accompanied by the following items as applicable:
 - (1) A letter from the applicant describing the proposed event, the hours of operation, the duration of the event, anticipated attendance, and any structures, signs, banners or attention-attracting devices used in conjunction with the event;
 - (2) A sketch plan showing the location of the proposed activities, structures and/or signs in relation to existing buildings, parking areas, streets and property lines; and
 - (3) A letter from the property owner or manager, if different from the applicant, agreeing to the special event.
- (b) Each application for a special event permit shall be accompanied by an application fee, except that the fee may be waived for any applicant registered with the State of Kansas as a non-profit organization. ~~The fee for Type 2 applications shall be \$25.00 and the fee for all other types of applications shall be \$50.00. Fees for special event permits will be outlined in the City's schedule of fees and charges as adopted by resolution.~~
- (c) The special event permit shall be posted on the site for the duration of the event.

ARTICLE 8. VEHICLE PARKING AND LOADING

Sec. 16-801. Parking Required for All ~~Structures~~Buildings.

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 a parking shall be provided. These 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. Parking shall be provided in quantities stated in the various zoning district regulations, except that certain occupancies which may have unusual parking needs are separately listed below. The issuance of building permits or certificates of occupancy shall require compliance with the minimum parking standards even though a development plan may have been approved previously which included fewer parking spaces due to the unknown or changing status of occupancy, except as hereinafter provided, no parking of motor vehicles shall occur except on paved parking areas required by this article.

Sec. 16-802. Improvement of Parking Areas.

All parking areas and drives leading thereto 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, unless special permission is granted by the City Engineer due to weather conditions not being satisfactory for placing ~~asphaltic~~ materials. All parking lots and drives leading thereto, except those serving one-family dwellings, shall have curbs and drainage facilities approved by the City Engineer.

Sec. 16-803. Access to Parking Areas.

Ingress and egress to all parking areas, garages and carports shall be by means of paved driveways not exceeding 35 feet in width.

Sec. 16-804. Nonconforming Status of Residential Driveways and Parking Areas Not Paved With Hard Surface.

All residential driveways and parking areas in existence prior to December 18, 1991, and not paved with a hard surface in compliance with section 16-802 of the City Code shall be considered a "nonconforming site improvement," as defined in subsection 16-1201(g). These driveways and parking areas shall not be required to be paved, but shall be required to comply with all maintenance standards established for these driveways and parking areas. To be granted "nonconforming site improvement" status, the existence and relative size and location of the driveway must be recorded with the City Clerk.

Residence and property owners will have until December 31, 1994, to register their property by showing that a driveway or parking area existed prior to December 18, 1991. After December 31, 1994, unpaved driveways and parking areas that are not registered with the City Clerk will be presumed to be unlawful unless the property owner can provide convincing evidence to the contrary.

Sec. 16-805. Maintenance of Residential Driveways and Parking Areas Not Paved With a Hard Surface.

Where permitted, residential driveways and parking areas that are not paved with a hard surface shall be maintained to meet the following standards:

- (a) The surface of the driveway or parking area shall consist of a uniform layer of gravel evenly distributed from edge to edge, and shall be free of bare spots and vegetation.
- (b) The depth of the gravel layer shall be an average of two inches and a minimum of one inch.
- (c) The material used for gravel driveway or parking area shall be rock or crushed stone not more than one inch in diameter and shall not contain dirt, sticks, construction debris or other foreign material. Sand, rock powder or other similar material less than one-eighth inch in diameter is not prohibited, but shall not be included in the measurement of minimum gravel depth.

Sec. 16-806. Dimensions of Parking Areas.

- (a) Standard parking stall dimensions shall be not less than nine feet by 18 feet, plus the necessary space for maneuvering into and out of the space. Where the end of the parking space abuts a curbed area at least five feet in width (with landscaping or sidewalk), an overhang may be permitted which would reduce the length of the parking space by two feet. The overhang shall be measured from the face of the curb. For standard parking lots, minimum dimensions shall be as follows:

PARKING CONFIGURATION

	90-degree	60-degree	45-degree
Aisle Width			
(1) One-way traffic	-	18 feet	14 feet
(2) Two-way traffic	24 feet	20 feet	20 feet
End Parking Bay Width			
(1) Without overhang	18 feet	20 feet	19 feet
(2) With overhang	16 feet	18 feet	17 feet
Center Parking Bay Width	18 feet	18 feet	16 feet

- (b) Minimum dimensions for a parallel parking space shall be nine feet by 23 feet.
- (c) Minimum parking dimensions for other configurations or for parking lots with compact car spaces shall be determined by the Governing Body.

Sec. 16-807. Handicapped Parking.

For those buildings where parking is required with the exception of single-family and duplex residential zoning districts, 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" and be identified by above-grade signs as reserved for person(s) with disabilities set forth in the following "Accessible Parking Spaces Table" and be identified by above-grade signs as reserved for person(s) with disabilities.

ACCESSIBLE PARKING SPACES TABLE

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3

Commented [JJ1]: Cece's rec.

Commented [AF2R1]: This looks like a fine edit to me, as it would not make sense to police the amount of parking stalls for a single family home or a duplex.

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	two percent of total
1,001 and over	20 plus 1 for each 100 over 1,000

These parking spaces shall conform with the requirements of the Building Code and applicable state law with regard to parking space dimensions and signage.

Sec. 16-808. Head-In Parking.

~~Head-in parking from any public right-of-way shall not be permitted.~~

Commented [JJ3]: I believe this is permitted at 47th and Mission Road in RP. Consider striking as I don't see the benefit of this

Sec. 16-809. Setbacks.

- (a) Parking areas in conventional zoning districts shall be set back as follows:
 - (1) Except as hereinafter provided, no parking area shall be located within six feet of a ~~lot~~property line.
 - (2) For one-family dwellings and two-family dwellings in any district, no parking area shall be located within two feet of a ~~lot~~property line.
 - (3) For multi-family dwellings, no parking area shall be located within 30 feet of a street right-of-way.
 - (4) No parking area for a non-residential use in any residential district shall be located within 20 feet of any street right-of-way.
 - (5) In the office building district, no parking area shall be located within 30 feet of any street right-of-way.
 - (6) In the retail business district, no parking area shall be located within 15 feet of any street right-of-way.
- (b) Parking area setbacks in planned zoning districts shall be the same as that in the most analogous conventional zoning district, subject to modifications as provided in section 16-429.
- (c) Parking area setbacks for special uses shall be determined at the time of plan approval for the special use permit.

Sec. 16-810. Lighting.

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.

Sec. 16-811. Screening.

~~Excluding residential driveways, w~~where any off-street parking area ~~that~~ abuts a) a street right-of-way, or b) any adjacent property, the parking area shall be screened by a buffer strip consisting of a wall, fence, or screen planting of an adequate height; provided that, if the subject off-street parking area is located in a commercially zoned area and abuts residentially zoned property, the wall, fence or screen planting shall be ~~a minimum of six feet in height~~; provided further that: if the off-street parking area is located in a commercially zoned area and abuts

Commented [JJ4]: Do we need to state that this excludes residential driveways?

Commented [CT5R4]: Yes, this is a good addition, since we wouldn't want to require homeowners to screen off their own driveways.

Commented [JJ6]: This is now a maximum as of 8-5-24

another commercially zoned area the wall, fence, or screen planting shall be a minimum of three feet in height. In specific cases, the Governing Body may require that any wall, fence or screen planting around a parking area shall be set back from a street if the setback will prevent adverse effects upon the appropriate use of adjacent property or will prevent a traffic hazard, but the setback need not be greater than the respective front or side yard requirement applicable to the zoning district.

Sec. 16-812. Landscaping.

The interior of parking areas shall be landscaped in accordance with the provisions set forth in ~~section 16-1007. Article 10 – Landscaping and Screening of this chapter.~~

Commented [JJ7]: Don't want to get too specific due to future changes, and that's now the wrong reference

Sec. 16-813. Deferred Construction of Parking Spaces.

A portion of the parking area required under this chapter may remain unimproved until the time as the Governing Body deems that it must be improved to adequately serve the parking demand. This delayed construction of parking may be permitted only after the Governing Body 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 landscape, and shall not be used for building, storage, loading or other purposes.

Sec. 16-814. Parking for One- and Two-Family Dwellings.

No driveway serving a one- or two-family dwelling shall be located within two feet of an adjoining lot line except for a driveway serving two properties. Paved parking areas or customary driveways in the required yards abutting streets shall not exceed 35 percent of the area of the yards.

Driveways shall be no greater than 24 feet in width or the width of the garage door opening that faces the street, whichever width is greater, and shall taper to no greater than 24 feet in width at the street right-of-way line. Additional parking of vehicles may be permitted on a surfaced area off to one side of a driveway. This auxiliary parking area shall be no more than ten feet in width and shall not encroach into the right-of-way.

There shall be no more than one driveway approach per lot, except that a corner lot may have a second driveway approach subject to the street classification. The City may grant an exception to permit a circle drive for a home based on specific traffic considerations. The 35 percent paved coverage maximum and two-foot paving setback shall be maintained in all scenarios.

(Ord. No. 1018, § 9, 11-1-2021)

Sec. 16-815. Small Car Parking.

In district CP-O, and for schools, churches and any special uses deemed by the Planning Commission and Governing Body to have low parking turnover and high user familiarity with the parking area 30 percent of the required off-street parking spaces may be designated for small cars. Parking stall dimensions for small cars shall be not less than eight feet by 16 feet, plus the necessary space or maneuvering into and out of the stall. Acceptable aisle width, layout of spaces, and overall design of the parking area shall be shown on the final development plan. A minimum of 30 parking spaces must be required before a portion of the spaces can be built to the smaller standard.

Sec. 16-816. Shared Parking Requirements.

Where convention centers, conference centers, assembly halls, ballrooms or other similar facilities are built in conjunction with hotel, office park or shopping center, the Planning Commission or Governing Body may permit the construction of fewer parking spaces, without deferral thereof, due to overlapping usage of a portion of the parking spaces. Permission for shared parking must be received as part of a preliminary development plan approval.

Sec. 16-817. Parking Areas in Commercial Districts.

In commercial zoning districts, the required parking area shall not be used for motor vehicle maintenance or repair.

Sec. 16-818. Parking for Specific Uses.

Parking for certain uses shall be as indicated in the following table:

Land Uses	Key
Churches, restaurants, cafeterias, armories, assembly halls, theaters, athletic fields and other seating facilities	D
Libraries	BG
Hotels, motor hotels, motels, apartment hotels, dormitories and similar boarding facilities	BC
Hospitals, nursing or convalescent homes, or congregate care facilities	EF
Mortuaries	BD
Taverns, clubs or drinking establishments	A
Miniature golf courses	GH

Key		
A	—	one space for each employee plus one space for each two seats or building capacity calculated by Building Code standards
B	—	one space for each two employees
C	—	one space for each guest room
D	—	one space for each three seats
E	—	one space for each three beds
F	—	one space for each staff person or visiting doctor
G	—	one space for each 200 square feet service floor area
H	—	one space for each 300 square feet outside area

When more than one parking space is requirement is indicated and referenced in the key, the parking requirements shall be cumulative.

Sec. 16-819. Parking for Uses Not Listed.

Any use not included in the parking requirements in this title shall be assigned a parking requirement by the ~~Governing Body~~ Planning Commission.

Commented [JJ8]: This may be a decision best made by the PC

Sec. 16-820. Loading Areas.

Loading areas adequate to serve the uses or categories of uses proposed shall be determined at the time of site plan or preliminary development plan approval.

ARTICLE 11. COMMUNICATIONS FACILITIES¹

Sec. 16-1101. Statement of Intent.

The Telecommunications Act of 1996 affirmed the City's authority concerning the placement, construction, and Modification of Communications Facilities. The intent of this Article is to ensure the provision of quality Wireless Services within the City limits; establish a fair and efficient process for the review and approval of Communications Facility Applications; assure an integrated, comprehensive review of environmental impacts of Communications Facilities, and promote the public health, safety, security, and general welfare of the City.

(Ord. No. 944, § 14, 11-21-2016)

Sec. 16-1102. Definitions.

For purpose of this Article, and where consistent with the context of a specific Section, the defined terms, phrases, words and abbreviations and their derivations shall have the meanings given in this Section.

Accessory Facility means an accessory facility, building, structure or equipment serving or being used in conjunction with Communications Facilities and generally located on the same Site as the Communications Facilities, including, but not limited to, utility or Transmission Equipment, power supplies, generators, batteries, cables, equipment buildings, storage sheds or cabinets, or similar structures.

Antenna means communications equipment that transmits or receives electromagnetic radio signals used in the provision of Wireless Services.

Distributed Antenna System (DAS) means a network that distributes radio frequency signals and consisting of:

- (1) Remote communications or Antenna nodes deployed throughout a desired coverage area, each including at least one Antenna for transmission and reception;
- (2) A high capacity signal transport medium that is connected to a central communications hub site; and
- (3) Radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the Antennas to provide Wireless or mobile Service within a geographic area or structure.

Small Cell Facility means a Communications Facility that meets both of the following qualifications:

- (1) Each Antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an Antenna that has exposed elements, the Antenna and all of the Antenna's exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and

¹Editor's note(s)—Ord. No. 944, §§ 1 and 24, adopted Nov. 21, 2016, repealed the former Art. 11, § 16-1101, and enacted a new Art. 11 as set out herein. The former Art. 11 pertained to towers and antennas and derived from original codification.

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- (2) Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory Facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory Facilities includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

Small Cell Network means a collection of interrelated Small Cell Facilities designed to deliver Wireless Service.

Applicant means any person or entity that is engaged in the business of providing Wireless Services or the wireless infrastructure required for Wireless Services and that submits an Application pursuant to this Chapter.

Application means all necessary and appropriate documentation that an Applicant submits in order to receive approval for a Communications Facility.

Approval Authority means the Building Official for all Applications pursuant to Section 16-1104.A, and means the Governing Body for all Applications pursuant to Section 16-1104.B.

Base Station means a station that includes a structure that currently supports or houses an Antenna, transceiver, coaxial cables, power cables or other Accessory Facilities at a specific Site that enables FCC-licensed or authorized Wireless Service to mobile stations, generally consisting of radio transceivers, Antennas, coaxial cables, power supplies and other associated electronics. The term does not mean a Tower or equipment associated with a Tower; and it does not include any structure that, at the time the relevant Application is filed with the City, does not support or house equipment described in this paragraph or that was not previously approved under the applicable zoning or siting process. (A non-tower support structure - for example, a building, church steeple, water tower, sign, street light, utility pole or other non-tower structure that can be used as a support structure for Antennas or the functional equivalent of such.)

Collocation means the mounting or installation of Transmission Equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for Wireless Service.

Communications Facility means a structure, facility, or location designed, or intended to be used as, or used to support Antennas or other Transmission Equipment used in Wireless Services. This includes without limit, Towers of all types, and Base Stations, including but not limited to buildings, church steeples, water towers, signs, or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related Accessory Facilities associated with the Site. It is a structure and facility intended for transmitting and/or receiving, Wireless Services, Specialized Mobile Radio (SMR), personal communications services (PCS), commercial satellite services, microwave services, radio, television, and any commercial Wireless Service not licensed by the FCC.

Eligible Facilities Request means any request for Modification of an Existing Tower or Base Station that does not Substantially Change (see definition) the physical dimensions of such Tower or Base Station, involving:

- (1) Collocation of new Transmission Equipment;
- (2) Removal of Transmission Equipment; or
- (3) Replacement of Transmission Equipment.

Eligible Support Structure means any Tower or Base Station (see definition), provided that it is Existing at the time the relevant Application is filed.

Existing [means] a constructed Tower or Base Station is Existing if it has been reviewed and approved under the applicable zoning or siting process, provided that a Tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is Existing for purposes of this definition.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Modification or Modify means the addition, removal or change of any of the physical and noticeably visible components or aspects of a Communications Facility such as Antenna, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any noticeably visible components, vehicular access, parking, upgrade or exchange of equipment for better or more modern equipment. Modification shall not include Replacement of such components in kind. A Collocation which changes the physical configuration of the Existing facility or structure shall be considered a Modification. The Building Official shall determine when changes such as enlarging the ground-mounted equipment area, increasing the screen wall height or installing additional equipment changes the physical and noticeably visible aspects of a Communications Facility.

Replacement means Replacement of an Existing Communications Facility that exists on a previously approved Site, utility easement, or an approved special use permit area, with a new facility of comparable proportions and of comparable height or such other height that would not constitute a Substantial Change to an Existing structure to support Communications Facilities or accommodate Collocation. A Replacement includes any associated removal of the pre-Existing Communications Facilities. A Replacement Tower shall be within 15 feet, as measured horizontally along the ground, of an Existing Tower, and the Existing Tower shall be removed within 30 days from the installation of the Replacement Tower. The Building Official may approve a separation greater than 15 feet.

Site means, for Towers other than Towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the Tower and any access or utility easements currently related to the Site, and, for other Eligible Support Structures, further restricted to that area in proximity to the structure and to other Transmission Equipment already deployed on the ground.

Stealth or Stealth Technology means using the least visually and physically intrusive facility by minimizing adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding, and generally in the same area as the requested location of a Communications Facility. Specifically, this means ensuring that all Antenna arrays, cables, and other Accessory Facilities used for providing the Wireless Service are not obtrusive or noticeably visible from adjacent properties or adjacent rights-of-way. Any Accessory Facilities mounted onto a Tower or structure shall not project greater than one foot, as measured horizontally, from the surface of the Tower or structure and shall be painted or screened with materials that are a complementary color as the Tower or structure. Cables shall not be allowed to travel along the exterior of a Tower or structure. Understanding that new technologies are anticipated to change the components of Communications Facilities, the Building Official may determine if a Communications Facility or component of a Communications Facility is designed to be Stealth.

Substantial Change means a Modification that substantially changes the physical dimensions of an Eligible Support Structure (Tower or Base Station) by any of the following criteria:

- (1) Height.
 - a. For Towers not in the public rights-of-way, an increase in the height of the Tower by more than ten percent or by the height of one additional Antenna array with separation from the nearest Existing Antenna not to exceed 20 feet, whichever is greater.
 - b. For other Eligible Support Structures (e.g., Towers in the public rights-of-way or Base Stations), an increase in the height of the structure by more than ten percent or more than ten feet, whichever is greater.

Changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally (such as on buildings' rooftops); in other circumstances, changes in

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height are measured from the dimensions of the Tower or Base Station, inclusive of originally approved appurtenances and any Modifications that were approved prior to the passage of the Spectrum Act.²

- (2) Width/Girth.
 - a. For Towers not in the public rights-of-way, adding an appurtenance to the body of the Tower that protrudes from the edge of the Tower more than 20 feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater.
 - b. For other Eligible Support Structures (e.g., Towers in the public rights-of-way or Base Stations), adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet.
- (3) New equipment cabinets.
 - a. For any Eligible Support Structure (see definition), the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets.
 - b. For Towers in the public rights-of-way and Base Stations, the installation of any new equipment cabinets on the ground if there are no pre-Existing ground cabinets associated with the structure, or else the installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure.
- (4) Any excavation or deployment outside the current Site.
- (5) Defeating the Stealth Technology or concealment elements of the Eligible Support Structure.
- (6) Not complying with conditions associated with the siting approval of the construction or Modification of the Eligible Support Structure or Base Station equipment, provided however that this limitation does not apply to any Modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsections 1. through 4. above.

Transmission Equipment means equipment that facilitates transmission for any FCC-licensed or authorized Wireless Service, including, but not limited to, radio transceivers, Antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed Wireless Services and fixed Wireless Services such as microwave backhaul.

Tower means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized Antennas and their Accessory Facilities, including structures that are constructed for Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed Wireless Services and fixed Wireless Services such as microwave backhaul, and the associated Site.

Monopole means a Tower consisting of a single pole, constructed without guy wires and ground anchors.

Lattice Tower means a guyed or self-supporting three- or four-sided, open, steel frame structure used to support Antennas and Transmission Equipment.

Wireless Services means "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through Communications Facilities or any fixed or mobile Wireless Services provided using Communications Facilities.

(Ord. No. 944, § 15, 11-21-2016)

²The term Spectrum Act means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub.L. 112-96)

Sec. 16-1103. Overall Policy.

In order to ensure that the placement, construction, and Modification of Communications Facilities protect the public health, safety, security, and general welfare of the City, the following policies are hereby adopted (subject to applicable state and federal law):

- (a) Optimize the number of Communications Facilities in the City.
- (b) Encourage opportunities for user Collocation on Existing Communications Facilities, buildings and other structures and maximize Replacement strategies.
- (c) Comply fully with established planning guidelines regarding land use and performance standards.
- (d) Emphasize the use of Stealth Technology to integrate the appearance of Communications Facilities with many architectural and nature themes throughout the City and to use Existing Communications Facilities instead of building new Communications Facilities.
- (e) Protect the public interests, where practical and applicable.
- (f) Protect the public health, safety and welfare.

(Ord. No. 944, § 16, 11-21-2016)

Sec. 16-1104. Application Approval Authority.

- (a) *Administrative Approval.* The Building Official may approve Applications for Communications Facilities for the following:
 - (1) The Modification of an Existing Tower or Base Station that does not incur a Substantial Change to the Tower or Base Station or that otherwise qualifies as an Eligible Facilities Request. (See C.1 for timeframe.)
 - (2) New Small Cell/DAS Facilities on an Existing Tower, utility pole or street light in the public right-of-way. This provision is also applicable when the Existing Tower, utility pole or street light is replaced by a Tower, utility pole or street light that is not a Substantial Change from the original. (See C.1 for timeframe.)
 - (3) New Antenna (including Small Cell/DAS Facilities) on an Existing Tower or Base Station (such as a building) that does not incur a Substantial Change to the Tower/Base Station and that: (1) is permitted by right in the underlying zoning district; and (2) meets applicable performance standards. (See C.1 for timeframe.)
 - (4) New Antenna (including Small Cell/DAS Facilities) on an Existing Tower or Base Station (such as a building) that incurs a Substantial Change (see definition) to the Tower or Base Station and that: (1) is permitted by right in the underlying zoning district; and (2) meets applicable performance standards. (See C.2 for timeframe.)
 - (5) New Tower permitted by right in the underlying zoning district that meets applicable performance standards. (See C.3 for timeframe.)
 - (6) New Tower or utility pole for Small Cell/DAS Facilities in the public right-of-way. (See C.3 for timeframe.)
- (b) *Special Use Permit Approval.* A Special Use Permit (SUP) reviewed by the Planning Commission and approved by the Governing Body is required for Applications for Communications Facilities for the following:
 - (1) A Substantial Change to an Existing Tower or Base Station. (See C.2 for timeframe.)

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- (2) Any other Application for placement, installation or construction of Transmission Equipment that does not constitute an Eligible Facilities Request. (See C.2 for timeframe.)
 - (3) New Tower. (See C.3 for timeframe.)
- (c) *Application Timeframe.*
- (1) A final decision shall be issued for Applications under subsections A.1, A.2, and A.3 within 60 calendar days.
 - (2) A final decision shall be issued for Applications under subsections A.4, B.1 and B.2 within 90 calendar days.
 - (3) A final decision shall be issued for Applications under subsections A.5, A.6 or B.3 within 150 calendar days.
 - (4) The timeframes set forth in subsections C.1—C.3 begin to run when a completed Application is filed following the pre-application conference. The applicable timeframe may be tolled by mutual agreement or in cases where the City determines that the Application is incomplete. To toll the timeframe for incompleteness, the City may provide written notice to the Applicant within 30 days of receipt of the Application, clearly and specifically delineating all missing documents and information. The timeframe begins running again when the Applicant makes a supplemental submission responding to the City's notice. The City then has ten days to notify the Applicant that the supplemental submission did not provide the information identified in the original notice. The timeframe is tolled in the case of second or subsequent notices pursuant to this subsection. Second or subsequent notices may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (d) *Small Cell and DAS Facilities—Consolidated Application and Exemption.*
- (1) Consolidated Application. Pursuant to K.S.A. 66-2019, and amendments thereto, an Applicant may file one consolidated Application for a Small Cell Network up to 25 individual Small Cell Facilities of a substantially similar design. Notwithstanding, the City may require a separate Application for any Small Cell Facilities that are not of a substantially similar design.
 - (2) Exemption. No zoning or siting approval is required for the construction, installation or operation of any Small Cell or DAS Facilities located in an interior structure or upon the Site of any campus, stadium or athletic facility; provided, however, this exemption does not exempt any such facility from any applicable building or electrical code provision.

(Ord. No. 944, § 17, 11-21-2016)

Sec. 16-1105. Application Process and Requirements.

- (a) *Pre-Application Conference.* A pre-application conference is required before filing an Application for the Replacement or Modification of an Existing Communications Facility or the construction of a new Communications Facility, unless waived by the Building Official. The purpose of the pre-application conference is to ensure the Applicant understands all requirements, to establish a tentative timeline, and to determine the Approval Authority for the Application. The pre-application conference should address issues that will expedite the review and approval process. Pre-application conferences for Small Cell/DAS Facilities in the public right-of-way will be conducted with the City's Director of Public Works.
- (b) *Application Fee.* At the time the Application is filed for a Communications Facility, the Applicant will pay a non-refundable Application fee as determined in the current version of the Governing Body resolution

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establishing applicable fees; provided, the Application fee shall be subject to any applicable statutory maximum. An Application shall not be deemed submitted unless the applicable fee is paid.

- (c) *Application Requirements.* An Application for the Replacement or Modification of an Existing Communications Facility or the construction of a new Communications Facility shall include the following information and requirements, unless waived by the Building Official:
- (1) As applicable, a site plan or preliminary development plan, and if applicable, any other Special Use Permit submission requirements required pursuant to Section 16-304.
 - (2) A descriptive statement of the proposed Communications Facility. For Towers or Base Stations, the statement shall provide the capacity of the structure, including the number and type of Antennas it can accommodate.³
 - (3) An affidavit from the Applicant stating that it conducted a thorough analysis of available Collocation opportunities within the applicable search ring.⁴
 - (4) Elevation drawings of the proposed Communications Facilities showing all Towers, Base Stations, Antennas, Transmission Equipment, Accessory Equipment, cabinets, fencing, screening, landscaping, lighting, and other improvements related to the facility. Specific colors and materials shall be noted.
 - (5) Digital photo simulations of the site providing "before and after" views demonstrating the true visual impact of the proposed Communications Facilities on the surrounding environment. Staff or the Approval Authority may require photo simulations from any specific vantage point.
 - (6) A report from a licensed professional engineer which describes the Communications Facility's structural capacity, including a statement to the effect that the Communications Facility can safely accommodate all Antennas, Transmission Equipment and/or Accessory Equipment. This may include structural calculations, geotechnical foundation studies, and other data as determined by the Building Official, as applicable, and in compliance with all City codes. In the event an Existing Communications Facility is to be used, the report shall describe the condition of the Existing Communications Facility based on a physical inspection and its ability to accommodate any additional Accessory Equipment and/or Antennas.
 - (7) A landscape plan that demonstrates the effective screening of the proposed Communications Facility and any Accessory Facilities as required by the Section 16-1107.H. The landscape plan shall be sealed by a professional landscape architect, unless this requirement is waived by the Approval Authority.
 - (8) If lighting is required by the FCC or the FAA, the Applicant shall submit the proposed lighting plan and identify an available lighting alternative. If security lighting is to be used, the Applicant may be required to submit a photometric plan to ensure that lighting is unobtrusive and inoffensive and that no light is directed towards adjacent properties or rights-of-way. All lighting will meet any requirement of Section 16-1107.I.
 - (9) If an emergency power system will be utilized, the Applicant will provide: sufficient details showing the location and proposed use of the same; a proposed plan for any intended non-emergency use (e.g.,

³Pursuant to K.S.A. 66-2019, and amendments thereto, the City may not require specific information about: the Applicant's business decision regarding its designed service, customer service demand or quality of service for a particular area or Site; the specific need for the Communications Facility; or any proprietary, confidential or other business information to justify the need for the Site, including propagation maps and telecommunications traffic studies.

⁴Pursuant to K.S.A. 66-2019, and amendments thereto, the City may not evaluate the Application based on availability of other potential locations for siting, including options to Collocate.

testing); and certification that the system will not violate local health and safety requirements and local noise control ordinances.

- (10) A statement that the proposed Communications Facility and any Accessory Facilities and/or landscaping shall be maintained within City ordinances, under what arrangement, and by whom. The statement shall provide contact information for the responsible party.
 - (11) An engineer's certification that the proposed Communications Facility and the cumulative effect of all Communications Facilities on the Site comply with all FCC standards, including but not limited to, certifying that all facilities meet all provisions and regulations for radio frequency (RF) emissions or exposure, and that anticipated levels of electromagnetic radiation to be generated by all facilities on the Site, including the effective radiated power (ERP) of the Transmission Equipment, shall be within the guidelines established by the FCC.
 - (12) When applicable, a signed copy of the lease between the Applicant and the landowner or other acceptable documentation signed by the landowner evidencing the landowner's approval for the proposed Communications Facility. The lease or other documentation shall contain a provision stating that the landowner shall be responsible for the demolition and/or removal of the Communications Facility in the event the lessee fails to remove it upon abandonment of the facilities or the termination of the lease.
 - (13) Applicants for Communications Facilities in the right-of-way shall provide notice by certified mail to the owners of record of all property within 200 feet of the proposed location. The notice shall provide: (1) a description of the proposed facility; (2) the location of the proposed facility; (3) a plan sheet showing the proposed location and the facility improvements; and (4) the Applicant's contact information and a statement that the owner shall have 20 days from the date of the notice to provide the City with any input regarding the Application. Each Communications Facility location shall be provided with its own notice; notices for multiple locations, even if under the same Application, may not be provided in a single letter. No Application will be approved until the Applicant submits an affidavit affirming that the required notice was sent. For Applications requiring a Special Use Permit, the notice requirements outlined in Section 16-1108 shall apply.
 - (14) Any other information to satisfy the Performance Standards in Section 16-1107 or that, as determined by the Building Official, will assist the review and approval process for Communications Facilities.
- (d) *Independent Third Party Review.*
- (1) The Applicant may be required to provide an independent review of the Application as determined by the Building Official.
 - (2) The Building Official will select and approve a list of acceptable consultants to be used for the third party independent review.
 - (3) The scope of the third party review will be determined by the Building Official and may vary with the scope and complexity of the Application; the scope will be determined following the pre-application conference. The independent third party review will generally be focused on the technical review of Wireless Services and verification of the information submitted by the Applicant such as federal RF emissions standards, and other technical requirements to ensure that the modeling parameters and data used in developing these technical requirements are valid and representative of the proposed Communications Facility.

(Ord. No. 944, § 18, 11-21-2016)

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(Supp. No. 17, Update 4)

Sec. 16-1106. Location of Communications Facilities.

When possible, the City encourages, but does not require, new Communications Facilities to be located on Existing Communications Facilities or on existing structures (for example, commercial buildings, water towers, utility poles and street lights) whereby the new Communications Facilities can be architecturally integrated or otherwise camouflaged in a Stealth manner in order to minimize the intrusion upon the public and adjacent properties. If and when a new Tower or new Base Station is installed for Communications Facilities, said new Tower or new Base Station should be located and designed in a manner to minimize the intrusion upon the public and adjacent properties, and when possible, to be architecturally integrated or camouflaged in a Stealth manner with surrounding structures. For any new Tower or new Base Station the City's preference of location is as follows:

- (a) In an industrial area as permitted by right.
- (b) In a commercial area as permitted by right.
- (c) In a commercial area, public property or semi-public property (such as churches and schools) as permitted by Special Use Permit.
- (d) In a multi-family residential district as permitted by Special Use Permit.
- (e) In a single-family residential district as permitted by right.
- (f) In a single-family residential district as permitted by Special Use Permit.

(Ord. No. 944, § 19, 11-21-2016)

Sec. 16-1107. Performance Standards for Communications Facilities.

(a) *Height.*

- (1) Towers. The maximum height which may be approved for a Tower is 150 feet, which includes any Transmission Equipment on top of the Tower. A lightning rod, ten feet in height or less, shall not be included within the height limitations.
- (2) Towers in Right-of-Way. The maximum height which may be approved for a Tower and related Transmission Equipment in the public right-of-way is: 50 feet along a thoroughfare; 40 feet along a collector; and 20 feet along a residential street.
- (3) Base Stations. Base Stations shall comply with any applicable height requirement for its particular type of structure as set forth in the applicable zoning district.

(b) *Design and Color.*

- (1) Towers.
 - a. Design. Towers shall be a Monopole or of some other Stealth or Stealth Technology design unless required by the Approval Authority to be architecturally compatible to the surrounding development. Guy and Lattice Towers are not allowed. Furthermore, Towers must be designed in compliance with all current applicable technical, safety, and safety-related codes adopted by the City or other applicable regulatory authority.
 - b. Color and Finish. Towers shall have a galvanized finish unless an alternative Stealth or camouflaged finish is approved by the Approval Authority.
- (2) Base Stations. Base Stations shall comply with any applicable color and design requirement for its particular type of structure as set forth in the applicable zoning district, and shall blend with the surrounding buildings and/or natural environment.

(Supp. No. 17, Update 4)

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(3) Antennas.

- a. Design on Towers. Antenna bridges and platforms on Towers are not allowed. Antennas on Towers may be:
- (i) Internal;
 - (ii) A panel of slim-line design mounted parallel with the Tower;
 - (iii) A design deemed by the Approval Authority to be less obtrusive or more Stealth than the above-described designs; or
 - (iv) An omni-directional Antenna placed at the top of the Tower when it gives the appearance of being a similarly sized or smaller extension of the Tower. (The latter will be included in the Tower height calculation.)
- b. Design on Base Stations. Antennas and visible Accessory Facilities on a Base Station or other building/structure shall be comprised of materials that are consistent with the surrounding elements so as to blend architecturally with said building/structure and to camouflage their appearance in a Stealth manner. Such facilities on rooftops may require screening that is architecturally compatible with the building. As applicable, the following additional requirements apply:
- (i) Antennas may be installed on any existing building or structure (such as a water Tower but excluding single-family residences and accessory uses) three stories in height or greater but no less than 35 feet provided that the additional Antennas shall add no more than 20 feet to the height of said existing structure.
 - (ii) Antennas which are architecturally compatible to the building architecture may locate on non-residential buildings less than three stories or 35 feet in height, subject to final development plan approval (certificate of conformity in DFD district).
 - (iii) Attached Antennas on a roof shall be located as close to the center of the roof as possible; and Antennas mounted on a building or structure wall shall be as flush to the wall as technically possible, and shall not project above the top of the wall.
 - (iv) Accessory Facilities for Antennas may be permitted on the roof so long as it is screened from view in accordance with Section 16-1010. (For ground-mounted Accessory Facilities see Section 16-1107.)
- c. Color and Finish. Antennas and visible Accessory Facilities shall be colored and finished in a manner consistent with the Tower/Base Station and any surrounding elements so as to camouflage their appearance in a Stealth manner. Such facilities shall be of a neutral color that is identical to, or closely compatible with, the color of the Tower/Base Station so as to make such facilities as visually unobtrusive as possible. Antennas mounted on the side of a building or structure shall be painted to match the color of the building or structure or the background against which they are most commonly seen.

(c) *Setbacks.*

- (1) Communications Facilities in commercial and industrial zoning districts shall meet the setback requirements for other types of commercial structures of a similar size that are allowed by right in the zoning district in which the facilities are located. In the event the Communications Facilities will exceed the height allowed for other types of commercial structures in the district in which the facilities are located, the Communications Facilities shall meet the greater of the maximum setback requirements for the zoning district or a setback equal to the height of the facility, unless the Approval Authority

reasonably finds that a greater setback is required in the interest of the public health, safety and welfare.

- (2) Communications Facilities in residential zoning districts shall meet the greater of the maximum setback requirements for the zoning district or a setback equal to the height of the facility, unless the Approval Authority reasonably finds that a greater setback is required in the interest of the public health, safety and welfare. Setbacks for Towers located on residentially zoned property which is shown on the Comprehensive Plan for a use other than very-low density or low density residential shall be determined at the time of the Application.
 - (3) In addition to the above setback requirements set forth in subsections C.1 and C.2, Towers shall have a minimum setback of 200 feet from any surrounding property which is zoned as Single-Family Residence District, unless such Tower: (1) does not exceed the height requirement for other types of commercial structures in the district in which the Tower is located; (2) is a utility pole or street light or a Monopole similar in size thereof; or (3) is designed as an architecturally compatible element in terms of material, design and height to the Existing or proposed use of the Site.
 - (4) Small Cell/DAS Facilities on utility poles or street lights shall not be subject to the setback requirements in subsections C.1—C.3 above.
 - (5) The Approval Authority shall have the ability to grant a deviation from the setback requirements above subject to subsection 16-429(g).
- (d) *Accessory Facilities.* Accessory Facilities shall include only such structures and facilities necessary for transmission functions for Wireless Services, but shall not include broadcast studios, offices, vehicle storage areas, or other similar uses not necessary for the transmission function. Accessory Facilities shall be constructed of building materials consistent with the primary use of the Site and shall be subject to the applicable approval process. Where there is no primary use other than the Communications Facility, the Accessory Facility and the building materials for the Accessory Facility shall be subject to the review and approval of the Approval Authority.
- (e) *Equipment Storage.* Mobile or immobile equipment not used in direct support of a Communications Facility shall not be stored or parked on the Site of the Communications Facility unless repairs to the Communications Facility are being made or pursuant to emergency approval as set forth in Section 16-1109.
- (f) *Parking Areas and Drives.* All parking areas and drives associated with the Communications Facility shall comply with Section 16-802, except that the Approval Authority may waive the requirements for curbing and drainage facilities when they are not needed for drainage purposes. All access roads and turn-arounds shall be provided to ensure adequate emergency and service access.
- (g) *Screening.* Accessory Facilities located at the base of a Tower or Base Station shall be screened from view with a solid screen wall a minimum of six feet in height. The materials of the wall, including any proposed razor wire or other security wire, shall be of a material designed to match the architecture of the surrounding structures, and shall be subject to the review and approval of the Approval Authority. The landowner or provider shall be responsible for maintenance of the screening. The Approval Authority shall have the ability to waive or reasonably modify this requirement where the design of the Accessory Facility is architecturally compatible to the primary use of the Site or where the Accessory Facility will have no visible impact on the public right-of-way and any other nearby property.
- (h) *Landscaping.* A landscape plan shall be required in accordance with Section 16-1004. The landscape plan shall be sealed by a professional landscape architect, unless this requirement is waived by the Approval Authority. A continuous landscaped area shall be provided around the perimeter of the accessory building or screening wall; and utility boxes will comply with any applicable utility box screening requirement. All plant materials are subject to Section 16-1006 and shall include a mixture of deciduous and coniferous planting materials. Drought tolerant plant materials are encouraged. The owner or provider shall be responsible for

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maintenance of all approved landscaping. Where the visual impact of the equipment building would be minimal, the landscaping requirement may be reduced or waived by the Approval Authority.

- (i) *Lighting.* Communications Facilities shall only be illuminated as required by the FCC and/or the FAA. If lighting is required, the Approval Authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Security lighting around the base of a Tower may be provided if the lighting is shielded so that: no light is directed towards adjacent properties or rights-of-ways; the lighting avoids illuminating the Tower; and the lighting meets any other applicable City requirements.
- (j) *Utilities.* All utilities at a Communications Facility Site shall be installed underground and in compliance with applicable codes.
- (k) *Security.* All Communications Facilities shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access.
- (l) *Signage.* Signage at the Site is limited to non-illuminated warning and equipment identification signs required by the FCC or applicable regulatory body or otherwise approved by the Approval Authority.
- (m) *Building Codes and Inspection.*
 - (1) *Construction and Maintenance Standards.* To ensure structural integrity, Communications Facilities shall be constructed and maintained in compliance with the standards contained in applicable local building codes and the applicable standards for Communications Facilities published by the Electronic Industries Association, (EIA) or any applicable regulatory authority (all as amended from time to time). If upon inspection the City concludes that a Communications Facility fails to comply with such codes and standards and constitutes a danger to persons or property, then the facility owner or landowner shall have 30 days following written notice to bring such facility into compliance. If the facility owner or landowner fails to bring such facility into compliance within this period, the City may order the removal or cause the removal of such facility at the facility owner or landowner's expense. Failure of the City to inspect the facility shall not relieve the facility owner or landowner of their responsibility to comply with this provision.
 - (2) *Inspection.* At least every 24 months, the Communications Facility shall be inspected by an expert who is regularly involved in the maintenance, inspection and/or erection of Communications Facilities. At a minimum, this inspection shall be conducted in accordance with the inspection checklist provided in the Electronic Industries Association (EIA) Standard 222, Structural Standards for Steel Antenna Towers and Antenna Support Structures (as amended from time to time). A copy of the inspection record shall be provided to the City upon request. The inspection shall be conducted at the facility owner or landowner's expense.
- (n) *Operational Standards.*
 - (1) Communications Facilities shall meet or exceed all minimum structural, height, radio frequency radiation and other operational standards as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the Communications Facilities shall be brought into compliance with the revised standards and regulations within six months of the effective date of the ordinance or law from which these standards and regulations are derived, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring Communications Facilities into compliance with any revised standards and regulations shall constitute grounds for the removal of the facility at the owner or provider's expense.
 - (2) It is the responsibility of the Wireless Service provider to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.

- (o) *Removal of Abandoned Communications Facilities.* Any Communications Facility that is not operated for a continuous period of 12 months shall be considered abandoned and a nuisance, and the owner of such facility or the landowner shall remove the same within 90 days of a receipt of notice from the City. If such facility is not removed within said 90 days, the City may remove such facility at the facility owner or landowner's expense. If there are two or more users of a single Tower, then this provision shall not become effective until all users cease using the Tower.
- (p) *Unsafe Communications Facilities.* Any Communications Facility which is not maintained to a suitable degree of safety and appearance (as determined by the City and any applicable code, statute, ordinance, law, regulations or standard) will be considered a nuisance and will be upgraded or removed at the owner or provider's expense.
- (Ord. No. 944, § 20, 11-21-2016)

Sec. 16-1108. Application Denial.

- (a) The City may deny an Application for any of the following reasons:
- (1) Failure to submit any or all required Application documents and information.
 - (2) Conflict with safety and safety-related codes and requirements.
 - (3) Conflict with the historic nature or character of the surrounding area pursuant to federal or state law.
 - (4) The use or construction of a Communications Facility which is contrary to an already stated purpose of a specific zoning or land use designation.
 - (5) The placement and location of the Communications Facility would create an unacceptable risk, or the reasonable probability of such, to residents, the public, businesses, City employees, or employees of the Wireless Service provider.
 - (6) Conflict with a public health, safety and welfare issue, including, but not limited to, violation of noise ordinance, flashing or other light nuisance, and conflict with required sidewalk widths (including ADA accessibility requirements).
 - (7) Conflict with planned future public improvements.
 - (8) Conflict with or violation of any provision contained within this Chapter or any other applicable City code or with any applicable federal or state law.
 - (9) The specific portion of the public right-of-way for which the Applicant seeks use and occupancy is environmentally sensitive as defined by state or federal law.
 - (10) The Applicant has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the City for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality.
 - (11) The prohibition is based upon a recommendation of the City Engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers
- (b) In the event of a denial, the Approval Authority or the City shall notify the Applicant in writing of the City's final decision, supported by substantial evidence contained in a written record and issued contemporaneously. An Applicant's request to use or occupy a specific portion of the public right-of-way shall not be denied without reasonable notice and an opportunity for a public hearing before the City governing body. Such notice shall be made within the applicable timeframe set forth in subsection 16-1104.C. The City governing body's denial of an Applicant's request to use or occupy a specific portion of the public

Commented [JJ9]: @Legal - need to check this with law passed in 2025 to ensure we are in compliance: KS Stat § 17-1902 (2025)

Commented [CT10R9]: This statute specifically addresses applications for building in public right of ways, so I am not sure that this is the right statute here. We may need to address building on public right of ways separately, because the KS 17-1902 does not mention most of what is in this city code section.

Commented [AF11R9]: Yes, the statute Jennifer cited is about building in the ROW. This code section, really this whole Article in our code, is talking about "Communications Facilities" which means cell towers or telephone lines. Those are always going to be within City ROW. I think Jennifer has got the right statute.

right-of-way may be appealed to a district court. Such notice shall be made within the applicable timeframe set forth in subsection 16-1104.C.

- (c) Any denial shall not discriminate against the Applicant with respect to the placement of Communications Facilities of other investor-owned utilities, Wireless Service providers, wireless infrastructure providers or wireless carriers.

(Ord. No. 944, § 21, 11-21-2016)

Sec. 16-1109. Emergencies and Disasters.

In the event of a declared emergency or disaster, the City Administrator or the Building Official may authorize any temporary Towers, Base Stations, Transmission Equipment or Accessory Equipment necessary to temporarily restore Wireless Services.

(Ord. No. 944, § 22, 11-21-2016)

Sec. 16-1110. Interpretation and Severability.

The provisions of this Article shall be construed in a manner consistent with all applicable federal, state and local laws and standards regulating Communications Facilities. In the event any federal or state law or standard is mandatory or is more stringent than provisions of this Article, then such provisions shall be revised accordingly. If any section, subsection, clause, phrase or portion of this Article is for any reason held invalid or unenforceable by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(Ord. No. 944, § 23, 11-21-2016)

ARTICLE 12. NONCONFORMING SITUATIONS AND VESTED RIGHTS

Sec. 16-1201. Nonconforming Situations; Definitions.

Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this article shall have the meaning indicated when used in this article.

- (a) *Expenditure.* A sum of money paid out in return for some benefit or to fulfill some obligation. The term also includes binding contractual commitments to make future expenditures as well as any other substantial changes in position.
- (b) *Nonconforming dimension.* 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.
- (c) *Nonconforming lot.* A lot existing on December 19, 1991 (and not created for purposes of evading the restrictions of this chapter), that does not meet the minimum area requirement of the zoning district in which the lot is located.
- (d) *Nonconforming project.* Any structure, development, or undertaking that is incomplete on December 19, 1991, and would have been inconsistent with one or more of the regulations applicable to the zoning district in which it is located, if completed as proposed or planned.

Commented [AF12]: Jennifer: these edits are a reflection of the newer requirements in state statute. Unfortunately, the statute now calls for an appeal of a denial to "the city's governing body," which we take to mean only the City Council.

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- (e) *Nonconforming sign.* A sign that, on December 19, 1991, did not conform to one or more of the regulations set forth in this chapter.
 - (f) *Nonconforming site improvement.* A nonconforming situation that occurs when, on December 19, 1991, an existing site improvement on a lot, including but not limited to parking areas, storm drainage facilities, sidewalks and landscaping, no longer conformed to one or more of the regulations of this chapter applicable to the property.
 - (g) *Nonconforming use.* A nonconforming situation that occurs when property is used for a purpose or in any manner made unlawful by the use regulations or development and performance standards 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.
 - (h) *Nonconforming situation.* A situation that occurs when, on the effective date of the ordinance from which this chapter derives, an existing lot, structure or improvement, or the use of an existing lot, structure or improvement no longer conforms to one or more of the regulations applicable to the zoning district in which the lot, structure or improvement is located.

Sec. 16-1202. Continuation of Nonconforming Situations and Completions of Nonconforming Projects.

- (a) Unless otherwise specifically provided in this chapter and subject to the restrictions and qualifications set forth in Sections 16-1203 through 16-1209, nonconforming situations that were otherwise lawful on December 19, 1991, may be continued.
- (b) Nonconforming projects may be completed only in accordance with the provisions of Section 16-1209.
- (c) The burden shall be on the landowner or developer to establish entitlement to continuation of nonconforming situations completion of nonconforming projects.

Sec. 16-1203. Nonconforming Lots.

- (a) This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. For purposes of this section, a substantial structure shall include any structure in excess of 600 square feet in floor area which was constructed for a use which was a principal use permitted in the zoning district at the time of construction. A change in use of a developed nonconforming lot may be accomplished only in accordance with Section 16-1206.
- (b) When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum lot area applicable to that zoning district, then the lot may be used as proposed just as if it were conforming. However, no use that requires a greater lot size than the established minimum lot size of a particular district is permissible on a nonconforming lot.
- (c) When the use proposed for a nonconforming lot is one that is conforming in all other respects, but the applicable setback requirements cannot be complied with, then the Governing Body may allow deviations from the applicable setback requirements if it finds that:
 - (1) Development of the property is not reasonably possible for the use proposed without deviations;
 - (2) The deviations are necessitated by the size or shape of the nonconforming lot; and
 - (3) The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.
- (d) For purposes of subsection (c) above, development in compliance with the applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for

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the nonconforming lot cannot practicably be constructed and located on the lot in conformity with the setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

- (e) Subject to the following sentence, if, on the date the ordinance from which this chapter derives becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his or her successors in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where the lot is located and within 500 feet of the lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require the combination when that would be out of character with the neighborhood that has previously been developed.

Sec. 16-1204. Extension or Enlargement of Nonconforming Situations.

- (a) Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if the activity results in:
 - (1) An increase in the total amount of space or building area devoted to a nonconforming use; or
 - (2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements, or other requirements such as parking requirements.
- (b) Subject to subsection 16-1204(d), a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by the ordinance from which this chapter derives, was manifestly designed or arranged to accommodate this use. However, except as otherwise provided in section 16-1209, a nonconforming use may not be extended to additional buildings or to land outside the original building.
- (c) Except as otherwise provided in section 16-1209 a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming; provided, however, that a use that involves the removal of natural materials from the land may be expanded to other portions of the lot where the use was established at the time it became nonconforming, if ten percent or more of the earth products had already been removed on December 19, 1991, and where the development and performance standards otherwise applicable to a use were complied with.
- (d) The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in-kind and no violations of other paragraphs of this section occur.
- (e) Notwithstanding subsection (a) above, any structure used as a one-family dwelling and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of the existing nonconformities with respect to these matters as setback and parking requirements. This paragraph is subject to the limitations stated in section 16-1208.

Sec. 16-1205. Repair, Maintenance and Restoration of Property Where a Nonconforming Situation Exists.

- (a) Minor repairs to and routine maintenance of structures and property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than 50 percent of the fair market value of the structure to be renovated, shall not be permitted.
- (b) If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or restoration would not exceed 50 percent of its fair market value, then the damaged structure may be repaired or restored only in accordance with a nonconforming situation permit issued by the Building Inspector pursuant to this section. This subsection does not apply to structures used for one-family dwellings, which structures may be reconstructed pursuant to a building permit just as they may be enlarged or replaced as provided by subsection 16-1204(e).
- (c) Any repairs, renovation or restoration of a structure, pursuant to this section, which would require the issuance of any permit under Chapter IV of the City Code shall also require the issuance of a nonconforming situation permit by the Building Inspector. In support of the application for the permit, the applicant shall submit information as may be required to satisfy the City Engineer that the cost of the proposed repairs, renovation or restoration would not exceed 50 percent of the fair market value of the structure.
- (d) For purposes of this chapter:
 - (1) The "cost" of renovation or repair or restoration shall mean the fair market value of the materials and services necessary to accomplish the renovation, repair or restoration.
 - (2) The "cost" of renovation or repair or restoration shall mean the total cost of all intended work, and no person may seek to avoid the intent of this chapter by doing the work incrementally.

Sec. 16-1206. Change in Use of Property Where a Nonconforming Situation Exists.

- (a) A change in use of property (where a nonconforming situation exists) may not be made except in accordance with subsections 16-1206(b) through (e). However, this requirement shall not apply if only a sign permit is needed.
- (b) If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this title applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this title is achieved, the property may not revert to its nonconforming status.
- (c) If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this chapter applicable to that use cannot reasonably be complied with, then the change is permissible only if the Governing Body issues a nonconforming situation permit authorizing the change. This permit may be issued if the Governing Body finds, in addition to any other findings that may be required by this chapter, that the intended change will not result in a violation of section 16-1204 and that all of the applicable requirements of this chapter will be complied with that are reasonably possible. Compliance with a requirement of this chapter is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or without moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting these requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. Further, in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.

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- (d) In making a determination under subsection 16-1206(c) whenever (1) there exists a lot with one or more structures on it, and (2) a proposed change in use that does not involve any enlargement of a structure is proposed for the lot, and (3) the parking or loading requirements that would be applicable as a result of the proposed change cannot be satisfied on these lots because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded by the Governing Body as resulting in an impermissible extension or enlargement of a nonconforming situation in violation of section 16-1204. However, if the proposed use is approved, the applicant shall be required to comply with all applicable parking and loading requirements than can be satisfied without acquiring additional land, and shall also be required to obtain off-site parking if parking requirements cannot be satisfied on the lot with respect to which the land use permit is required and the off-site parking is reasonably available. If off-site parking is not reasonably available at the time the nonconforming situation permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the nonconforming situation permit.

Sec. 16-1207. Nonconforming Site Improvements.

- (a) On lots with nonconforming site improvements, no additions to, or repairs or renovations of, any structure or site improvement may be made without first either bringing the nonconforming site improvements into complete conformity with the regulations applicable to the zoning district in which the lot is located or obtaining a nonconforming situation permit pursuant to this section. Provided, however, that this section shall not apply to the following circumstances:
- (1) Repairs or restoration of a structure pursuant to subsection 16-1205(b); or
 - (2) Minor repairs or renovation of a structure or site improvement.
- (b) For purposes of this section, "minor repairs or renovation" shall mean repairs or renovation costs which do not exceed ten percent of the fair market value of a structure or site improvement.
- (c) When an addition to or repairs or renovation of, any structure or site improvement is proposed on a lot with a nonconforming site improvement(s), the Governing Body may approve a nonconforming situation permit allowing the addition or repairs or renovation if it finds that:
- (1) The nonconforming site improvement(s) is the only nonconforming situation pertaining to the property,
 - (2) Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible, and
 - (3) The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.
- (d) For purposes of subsection (c), mere financial hardship does not constitute grounds for finding that compliance with the site improvement requirements is not reasonably possible.

Sec. 16-1208. Abandonment and Discontinuance of Nonconforming Situations.

- (a) When a nonconforming use is discontinued for a consecutive period of 180 days, or discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.
- (b) If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of 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

all of the regulations applicable to the preexisting use unless the Governing Body issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. The permit may be issued if the Governing Body finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or without moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

(c) For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 180 days shall not result in a loss of the right to rent the apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

~~(d) When a structure or operation made nonconforming by the ordinance from which this chapter derives was vacant or discontinued on December 19, 1991, the 180-day period for purposes of this section began to run on December 19, 1991.~~

~~Sec. 16-1209. Completion of Nonconforming Projects—Vested Rights.~~

~~(a) All nonconforming projects on which construction was begun at least 180 days before December 19, 1991, as well as all nonconforming projects that are at least ten percent completed in terms of the total expected cost of the project on December 19, 1991, may be completed in accordance with the terms of their permits, so long as those permits were validly issued and remain unrevoked and unexpired, and a vested rights permit is obtained from the public works director. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction.~~

~~(b) Except as provided in subsection 16-1209(a) or in 16-1210, all work on any nonconforming projects shall cease on the effective date of the ordinance from which this chapter derives, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a vested rights permit issued in accordance with this section by the Governing Body. The Governing Body shall approve a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his or her position in some substantial way in reasonable reliance on the development regulations as they existed before the effective date of the ordinance from which this chapter derives and thereby would be unreasonably prejudiced if not allowed to complete its project as proposed. In considering whether these findings may be made, the Governing Body shall be guided by the following, as well as other relevant considerations:~~

~~(1) All expenditures made to obtain, or pursuant to a validly issued and unprovoked building, land use or sign permit shall be considered as evidence of reasonable reliance on the development regulations that existed before December 19, 1991.~~

~~(2) Except as otherwise provided in subdivision (b)(1), no expenditures made more than 180 days before December 19, 1991, may be considered as evidence of reasonable reliance on the development regulations that existed before December 19, 1991. An expenditure is made at the time a person incurs a binding obligation to make that expenditure.~~

~~(3) To the extent that expenditures are recoverable with a reasonable effort, a person shall not be considered prejudiced by having made those expenditures. For example, a person shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.~~

Commented [JJ13]: Can we delete this? There should not be any projects in construction still that stated in 1991!

Commented [CT14R13]: We are good to delete this!

- (4) ~~To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a person shall not be considered prejudiced by having made these expenditures.~~
 - (5) ~~An expenditure shall be considered substantial if it is significant in dollar amount and in terms of the total estimated cost of the proposed project and the ordinary business practices of the developer.~~
 - (6) ~~A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the development regulations affecting the proposed development site could not be attributed to that person.~~
 - (7) ~~Even though a person had actual knowledge of a proposed change in the development regulations affecting a development site, the Governing Body may still find that the person acted in good faith if the person did not proceed with his plans in a deliberate attempt to circumvent the effects of the proposed ordinance. For example, the Governing Body may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that at the time the expenditures were made, either there was considerable doubt about whether any ordinance would ultimately be passed or it was not clear that the proposed ordinance would prohibit the intended development, and the developer had legitimate business reasons for making expenditures.~~
- (c) ~~When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under subsection 16-1209(b). In addition to the matters and subject to the guidelines set forth in subsection 16-1209(b)(6), the Governing Body shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:~~
- (1) ~~Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural or engineering work,~~
 - (2) ~~Whether any improvements, such as streets or utilities, have been installed in phases not yet completed, and~~
 - (3) ~~Whether utilities and other facilities installed in completed phases have been constructed in a manner or location or to a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in utilities or other facilities cannot be recouped if the approved, but uncompleted, phases are constructed in conformity with existing regulations.~~
- (d) ~~The Governing Body shall not consider any application for a vested rights permit authorized by subsection 16-1209(b) that is submitted more than 60 days after December 19, 1991. The Governing Body may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year from the effective date of the ordinance from which this chapter derives.~~

Sec. 16-1210. Completion of Single-Family Residential Developments.

Nothing in this chapter shall prevent the developer of a single-family residential development from developing in accordance with the terms of a final plat duly recorded in the office of the Register of Deeds of Johnson County. Provided, however, [for development rights vested prior to July 1, 2009](#), if construction is not commenced on any land within five years of the recording of the plat, the development rights shall expire. [Provided, further, that if construction has commenced on any project, but is thereafter abandoned for a period in excess of five years, the project may only be completed in accordance with the provisions of section 16-1209.](#)

[For development rights vested on and after July 1, 2009, development rights in such land use shall vest upon recording of a plat of such land. If construction is not commenced on such land within 10 years of recording a plat,](#)

Commented [JJ15]: Same with this section - can we delete it?

Commented [AF16R15]: Jennifer, we recommend keeping this one and adding the date (7/1/09) as it is at least conceivable that there might be developer rights still existing from 2009. We added language to make the date clear.

Commented [AF17]: We recommend removing this sentence as we plan on deleting Section 16-1209.

[the development rights in such shall expire. For purposes of this section, residential developments may include single family housing; multiple family housing such as apartments, duplexes, townhomes and similar configurations; condominiums; and manufactured and modular homes.](#)

Sec. 16-1211. Nonconforming Signs.

- (a) Subject to the remaining restrictions of this section, and the provisions of section 16-1208, nonconforming signs that were otherwise lawful on the effective date of the ordinance from which this chapter derives may be continued.
- (b) No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign. Without limiting the generality of the foregoing, no nonconforming sign may be enlarged or altered in a manner as to aggravate the nonconforming condition, nor may illumination be added to any nonconforming sign.
- (c) A nonconforming sign may not be moved or replaced, and the message may not be changed except to bring the sign into complete conformity with this chapter, except for "sign maintenance" as defined in section 4-903 of the City Code.
- (d) Subject to the other provisions of this section, nonconforming signs may be maintained and repaired so long as the cost of the work within any 12-month period does not exceed 50 percent of the value (tax value if listed for tax purposes) of the sign. No work shall be done without the person proposing to do the work first submitting information as may be required to satisfy the City Engineer that the cost of the work would not exceed 50 percent of the value of the sign.
- (e) If a nonconforming sign, other than an outdoor advertising sign, advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed within 30 days after abandonment by the sign owner, owner of the property where the sign is located, or other person having control over the sign.
- (f) If a nonconforming outdoor advertising sign remains blank for a continuous period of 180 days, that billboard shall be deemed abandoned and shall, within 30 days after abandonment, be altered to comply with this article or be removed by the sign owner, owner of the property where the sign is located, or other person having control over the sign. For purposes of this section, a sign is "blank" if:
 - (1) It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
 - (2) The advertising message it displays becomes illegible in whole or substantial part; or
 - (3) The advertising copy paid for by a person other than the sign owner or promoting an interest other than the rental of the sign has been removed.

ARTICLE 15. BOARD OF ZONING APPEALS

Sec. 16-1501. Board of Zoning Appeals Created.

There is hereby created a Board of Zoning Appeals for the City of Roeland Park in accordance with the provisions of the Kansas Statutes Annotated. The word "board" when used in this article shall be construed to mean the Board of Zoning Appeals.

Sec. 16-1502. Composition of Board.

The board shall consist of five residents of the City to be appointed by the Mayor by and with the consent of the City Council. The term of office of the members of the board shall be for three years excepting that the five members first appointed shall serve respectively for terms of one for one year; two for two years; and two for three years. The presence of three members of the board shall constitute a quorum for the transaction of business, provided, however, that the concurring vote of three members of the board shall be necessary to effect a ruling in favor of an appellant or applicant.

Sec. 16-1503. Chairperson; Removal or Members.

The board shall elect the chairperson who shall serve or until a successor is elected. The board may adopt reasonable regulations for the conduct of its affairs. Board members may be removed for cause by a majority vote of the Governing Body.

Sec. 16-1504. Powers and Duties.

The board shall operate and have those powers and duties as set forth herein or in applicable provisions of the Kansas Statutes Annotated.

Sec. 16-1505. Fees.

When an application is filed with the board pursuant to its rules there shall accompany each application a fee in an amount established by resolution of the Governing Body.

Sec. 16-1506. Appeals to The Board of Zoning Appeals.

- (a) Appeals may be taken by any person aggrieved, or by any officer of the City or any government body or agency affected by any order, requirement, decision, or determination made by any administrative official of the City in the enforcement of Chapter XVI, or of any ordinance adopted pursuant thereto.
- (b) No appeal, pursuant to this section, shall be heard by the board until the individual appealing the order, requirement, decision or determination has met with the administrative official who made the determination to receive a full explanation of the zoning requirements in question as currently interpreted. No notice of appeal shall be processed until it has been deemed complete by the Building Inspector, the fee paid, and all required additional information submitted.
- (c) The appeal shall be taken within a reasonable time as provided by the rules of the board. An appeal shall be initiated by filing with the person whose decision is being appealed and with the board a notice of appeal specifying the decision being appealed from and a statement as to the reason of the appeal. The notice must be accompanied by the fee set by the Governing Body, pursuant to section 16-1505. The Building Inspector or the board may require that drawings or photos of the property in question and a list of all surrounding property owners be submitted to the board prior to consideration of the appeal by the board.
- (d) When all requirements established in subsections (b) and (c) have been complied with, the Building Inspector shall notify the chairman and the chairman shall schedule a meeting of the board and shall send copies of the notice to the board members. At least twenty days prior to the board meeting, an official notice to the public shall be published in the official City newspaper explaining the appeal and the time and place of the scheduled hearing. A copy of the notice shall be mailed to each party to the appeal and to the Planning Commission. At the hearing, any party may appear in person or by an agent or by an attorney.

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- (e) An appeal stays all proceedings and furtherance of action appealed from unless the Building Inspector certifies to the board, after the notice of appeal has been filed, that, by reason of facts stated in the notice, a stay would cause imminent peril to life or property.
 - (f) At its next meeting, the board shall hear all facts and testimony from all parties wishing to be heard concerning the appeal. The appeal shall be heard by the board at the next meeting following compliance with the requirements established in subsections (b), (c) and (d).
 - (g) In its deliberations, the board must only consider whether or not the interpretation in question conformed to the specific language of the ordinance being enforced. The board may not declare the zoning regulations unfair or attempt to act contrary to their purpose. The board may clarify ambiguities or resolve conflicts between opposing sections. Since the board's decisions will affect future application of the regulation in question, the specific hardship of the applicant should not be considered when reaching a determination on an appeal filed pursuant to this section.
 - (h) The board may either affirm, reverse, or modify the order, requirement or interpretation at issue. If the decision of the board is not made at the meeting where the hearing was held, a written decision, shall be mailed to affected parties.

Sec. 16-1507. Variances.

- (a) When an applicant feels that the strict application of the requirements of the zoning regulations have created an undue hardship, the applicant may request a variance from the board.
- (b) A variance should be issued only to the specific restrictions on physical construction; not to permissible land uses within a given district, and only if it reasonably constitutes the minimum variance necessary and the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done.
- (c) To initiate a request for a variance the applicant or his authorized agent shall submit a completed application on the form provided by the City to the building inspector and pay the appropriate fee as set forth in section 16-1505. The application shall be accompanied by a sketch map showing proposed and existing structures and uses of the property for which the variance is being requested and of immediately adjacent properties. The Building Inspector may require applicant to submit photos of the subject property. No application shall be processed until it has been deemed completed by the Building Inspector, the fee paid and all additional information submitted.
- (d) When all requirements established in subsections (b) and (c) have been complied with, the Building Inspector shall notify the chairman, and the chairman shall schedule a regular meeting of the board and send to the board members copies of the application and all additional information submitted. At least 20 days prior to the board meeting, an official notice to the public shall be published in the official City newspaper explaining the variance request and the time and place of the scheduled hearing, and a copy of the notice shall be mailed to the applicant, the Planning Commission, and to all owners of record of lands located within 100 feet of the property which is the subject of the application for variance. The form of the notice and the procedure for providing the notice shall be in accordance with subsection (a).
- (e) At the scheduled meeting of the board, it shall hear all facts and testimony from all parties wishing to be heard concerning the requested variance. In each case, the board shall not grant a variance unless by a vote of three members of the board finds, based upon the evidence presented, facts which conclusively support all the following findings.
 - (1) *Uniqueness.* The variance requested arises from conditions which are unique to the property in question, which are not ordinarily found in the same zoning district, and which are not caused by the action of the property owners or applicant. These conditions include the particular physical surroundings, shape, or topographical condition of the specific property involved which would result in

a practical difficulty or unnecessary hardship for the applicant, as distinguished from a mere inconvenience, if the requested variance was not granted.

- (2) *Adjacent property.* The granting of the variance will not be materially detrimental or adversely affect the rights of adjacent property owners or residents
 - (3) *Hardship.* The strict application of the provisions of the zoning regulations from which a variance is requested will constitute unnecessary hardship upon the applicant. Although the desire to increase the profitability of the property may be an indication of hardship, it shall not be a sufficient reason by itself to justify the variance.
 - (4) *Public interest.* The variance desired will not adversely affect the public health, safety, morals, order, convenience, or general welfare of the community. The proposed variance shall not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.
 - (5) *Spirit and intent.* Granting the request for variance should not be opposed to the general spirit and intent of the zoning regulations.
- (f) The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decisions of the board and the vote upon each question. Records of all official actions of the board shall be filed in City hall and shall be public record.
- (g) The board may either grant, grant conditionally, or deny the application for a variance. If the decision of the board is not made at the meeting at which the hearing was held, a written decision shall be sent to affected parties and the Planning Commission.

Sec. 16-1508. Appeals From Board of Zoning Appeals.

Any person or an official of a government agency dissatisfied with any order or determination of the board may bring an action to determine the reasonableness of any order or determination within thirty days after the making of the order or determination, in the District Court of Johnson County, Kansas.

ARTICLE 16. ADMINISTRATION AND ENFORCEMENT

~~DIVISION I. 47th AND MISSION ROAD AREA DEVELOPMENT AND MANAGEMENT COMMITTEE~~

Commented [JJ18]: This committee was dissolved

~~Sec. 16-1601. 47th and Mission Road Area Development and Management Committee Established.~~

~~The 47th and Mission Road Area Development and Management Committee ("committee") is hereby established, effective upon the passage of a similar ordinance by the City of Westwood, Kansas, and the Unified Government of Wyandotte County/Kansas City, Kansas. The committee is established for the following purposes:~~

- ~~(1) Implement the objectives of 47th and Mission Road Area Concept Plan (Concept Plan), as adopted and amended by the City;~~
- ~~(2) Review the development applications within the 47th and Mission Road area, as authorized by the City through ordinances;~~

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- (3) — Make recommendations as to whether development applications are in compliance with the concept plan and all ordinances adopted by the City to implement the concept plan;
 - (4) — Coordinate efforts for cooperation among the City of Roeland Park, Kansas, the City of Westwood, Kansas, and the Unified Government of Wyandotte County/Kansas City, Kansas, in planning and construction of public improvements within the 47th and Mission Road area to ensure that public improvements are in compliance with the concept plan and consistent among the City of Roeland Park, Kansas, the City of Westwood, Kansas, and the Unified Government of Wyandotte County/Kansas City, Kansas;
 - (5) — Promote development within the 47th and Mission Road area that is in compliance with the concept plan and all ordinances adopted by the City of Roeland Park, Kansas, the City of Westwood, Kansas, and the Unified Government of Wyandotte County/Kansas City, Kansas, to implement the concept plan, including business recruitment and business retention and redevelopment;
 - (6) — Coordinate with business owners for special events and promotions;
 - (7) — Work with neighborhood associations to achieve long-term goals of the concept plan; and
 - (8) — Pursue grants to help with public funding and implementation of the concept plan.

Sec. 16-1602. Appointment and Terms.

- (a) — The committee shall consist of nine members, three of which shall be appointed by the City of Roeland Park, Kansas, three by the City of Westwood, Kansas, and three by the Unified Government of Wyandotte County/Kansas City, Kansas.
- (b) — The Mayor shall appoint three members to the committee, with the advice and consent of the City Council, and consistent with the qualification requirements in section 16-1603.
- (c) — Of the three initial appointments, one shall be for one year, one shall be for two years, and one shall be for three years.
- (d) — Upon the expiration of any initial appointment, successor appointments shall all be for a period of three years.
- (e) — Committee members shall serve their full term, or until a successor is appointed.
- (f) — Committee members may be appointed to more than one successive term.
- (g) — Vacancies, by resignation, incapacitation, dismissal, or otherwise, shall be filled in the same manner as an initial term, and shall be for the duration of the vacated committee member's term.
- (h) — Committee members may be dismissed for cause after a hearing before the City Council.

Sec. 16-1603. Qualifications.

- (a) — Committee members may serve in any other elected or appointed position.
- (b) — The Mayor shall appoint three committee members, each having one of the following designations: a current Planning Commission member, a current City Councilmember, and a current resident from Ward 2.
- (c) — If the qualifications in subsection (b), above, cannot be satisfied, a committee member shall, at a minimum, have at least one of the following special qualifications that will enable him/her to fulfill the purposes of this section:
 - (1) — A resident with professional experience in a development profession such as planning, architecture, real estate development, or engineering;

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- (2) ~~A business owner within the 47th and Mission Road Area Design Review Overlay District;~~
 - (3) ~~A resident with experience in other elected or appointed municipal positions dealing with planning, zoning, or community development;~~
 - (4) ~~A resident with membership in a neighborhood association or committee within the area covered by 47th and Mission Road Area Design Review Overlay District; or~~
 - (5) ~~A resident with any other demonstrated civic involvement that will enable the committee member to understand and enhance the implementation of the 47th and Mission Road area concept plan.~~

Sec. 16-1604. Powers and Duties.

- (a) ~~The committee is authorized to adopt bylaws for conducting its business, consistent with the purposes and authority granted by section 16-1601 of the City Code.~~
- (b) ~~After discussion of an application, the committee shall make a recommendation to the Planning Commission, or Board of Zoning Appeals, as the case may be, on the application's compliance with the 47th and Mission Road area concept plan, and the standards associated with the 47th and Mission Road Area Design Review Overlay District.~~
- (c) ~~The committee may continue an application once after discussion, if the committee feels it has received incomplete information or it needs more information to make a recommendation. However, any continuance must be reheard before the committee within one month, unless the applicant agrees on the record to a greater duration. Additionally, the applicant may elect to proceed to the Planning Commission or Board of Zoning Appeals, as the case may be, upon the understanding that the application will automatically carry a "recommendation to deny due to incomplete application" from the committee.~~
- (d) ~~To assist the committee in its duties, the planning department, other staff, or appointed consultants shall prepare a staff report on each application within the 47th and Mission Road area specifically addressing the application's compliance with the 47th and Mission Road area concept plan, and the standards of this article. The staff report shall be submitted to the secretary of the committee at least five business days before the scheduled committee meeting.~~
- (e) ~~The committee may use funds designated by any jurisdiction or awarded by any local, state, or federal grant, to retain staff members or consultants to review applications or otherwise assist in implementing the 47th and Mission Road area concept plan.~~
- (f) ~~All committee meetings shall be open to the public, with notice published and records kept in accordance with the laws of the State of Kansas. The secretary of the committee shall be the custodian of records for the committee.~~

DIVISION V. ENFORCEMENT

Sec. 16-1605. Penalty.

Any person, firm or corporation who violates or disobeys, omits, neglects or refuses to comply with this chapter shall, upon conviction, be fined not less than \$10.00 nor more than \$500.00, or be imprisoned for not more than six months, or be both fined and imprisoned. Each day that a violation is permitted to exist shall constitute a separate offense. The City shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provisions of this article and to abate nuisances maintained in violation thereof; and in addition to other remedies, institute injunction mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration,

conversion, maintenance or use, or to correct or abate such violation or to prevent the occupancy of the building, structure or land.