

City of Westwood

Johnson County, Kansas

Municipal Code

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Table of Contents

CHAPTER 1 ADMINISTRATION

ARTICLE 1 GENERAL PROVISIONS

1-101 Code Designated

1-102 Definitions And Rules Of Construction

1-103 Existing Ordinances

1-104 Effect Of Repeal Or Amendment Of Ordinances

1-105 Catchlines Of Sections; History Notes; References

1-106 Supplementation Of Code

1-107 Amendments To Code; Effect Of New Ordinances; Amendatory Language; Repeal

1-108 Ordinances--Generally

1-109 Ordinances--Subject And Title; Amendment

1-110 Ordinances--Publication

1-111 Ordinances--Ordinance Book

1-112 Resolutions, Motions

1-113 City Records

1-114 Altering Code

1-115 Scope Of Application

1-116 General Penalty; Continuing Violations

1-117 Severability

ARTICLE 2 GOVERNING BODY

1-201 Generally

1-202 Powers Generally

1-203 Meetings

1-204 Quorum

1-205 Powers Of The Council

1-206 Powers Of The Mayor

1-207 President Of The Council

1-208 Administrative Powers

1-209 Vacancies In Governing Body; How Filled

1-210 Compensation

1-211 Expenses

1-212 (Reserved)

1-213 (Reserved)

1-214 Incorporating Code Of Procedure For Kansas Cities

1-215 Code Of Ethics

1-216 Term Of Office

ARTICLE 3 OFFICERS AND EMPLOYEES

1-301 Appointive Officers

1-302 Appointment Of City Administrator

1-303 Employees

1-304 Removal

1-305 Vacancy In Office

1-306 (Reserved)

1-307 City Administrator; Powers And Duties

1-308 Appointment Or Employment In More Than One Position

1-309 Conflict Of Interest

ARTICLE 3A OATHS AND BONDS

1-3A01 Oaths

1-3A02 Oaths Filed

1-3A03 (Reserved)

1-3A04 Surety Bonds; Appointive Officers

1-3A05 Surety Bonds; Premiums

1-3A06 Surety Bonds; Approval

1-3A07 Surety Bonds; Filing

1-3A08 Blanket Bond

ARTICLE 4 INVESTMENT OF PUBLIC FUNDS

1-401 Authority To Invest

1-402 Income From Investments

ARTICLE 5 PERSONNEL POLICY AND EMPLOYEE BENEFITS

1-501 Personnel Policies And Guidelines

1-502 Social Security

1-503 (Reserved)

1-504 Compensation

ARTICLE 6 OPEN RECORDS

1-601 Policy

1-602 Record Custodians

1-603 Local Freedom Of Information Officers

1-604 Public Request For Access

1-605 Facilities For Public Inspection

1-606 Procedures For Inspection

1-607 Appointment Of Official Custodians

1-608 Designation Of Additional Record Custodians

1-609 Appointment Of Local Freedom Of Information Officer

1-610 Requests To Be Directed To Custodians

1-611 Fee Administration

1-612 Fees To Be Charged

1-613 Fees

1-614 Prepayment Of Fees

1-615 Payment

ARTICLE 7 EMERGENCY PREPAREDNESS

1-701 Definitions

1-702 Emergency Proclamation; Action

1-703 Emergency Proclamation; Effective Upon Issuance

1-704 Emergency Proclamation; Termination

1-705 Emergency Proclamation; Violation, Penalty

1-706 Adopting The County Emergency Operations Plan

1-707 Adopting The National Incident Management System

CHAPTER 2 ANIMAL CONTROL AND REGULATION

ARTICLE 1 ANIMALS AND FOWL GENERALLY

2-101 Definitions

2-102 Cruelty To Animals

2-103 Cruelty To Animals; Exceptions

2-104 Keeping Animals

2-105 Animal Traps

2-106 Animal Confines; Shelters

2-107 (Reserved)

2-108 Vicious Animals

2-109 (Reserved)

2-110 Impoundment; Fee; Notice; Record

2-111 Redemption Of Impounded Animals

2-112 Impoundment Of Rabies Suspects

2-113 Animals Bitten By Rabid Animals

2-114 Animal Control Officer; Authority To Impound; Citation Alternative

2-115 Animal Control Officer; Capture/Destruction

2-116 Animal Control Officer; Right Of Entry; Unlawful Interference

2-117 Vehicular Accidents Involving Animals

2-118 Emergency; Proclamation

2-119 Death Of Animals

2-120 Municipal Pound Established

2-121 Breaking Pound

ARTICLE 2 DOGS AND CATS

2-201 Vaccination Required

2-202 (Reserved)

2-203 (Reserved)

2-204 Evidence Of Vaccination

2-205 Visiting Dogs And Cats

2-206 Running At Large; Fine

2-207 Impoundment; Record; Notice; Redemption; Minimum Fee

2-208 Disposition Of Unclaimed Dogs And Cats

2-209 Confinement Of Dogs And Cats In Heat

2-210 Limit On Dogs And Cats

2-211 Muzzling

ARTICLE 3 (RESERVED)

ARTICLE 4 BEES

2-401 Keeping Of Bees

2-402 License Required

2-403 Definitions

2-404 Certain Conduct Declared Unlawful

2-405 Hives

2-406 Water

2-407 General Maintenance

2-408 Queens

2-409 Colony Densities

2-410 Marking Hives; Presumption Of Beekeeping

2-411 Inspection

2-412 Public Nuisance

ARTICLE 5 ANIMAL NUISANCES

2-501 Nuisance Prohibited

2-502 Nuisance; Animal Activities Prohibited

2-503 Noisy Animals

2-504 Excrement

2-505 Female In Heat

2-506 Diseased Animals

2-507 Damage To Property

2-508 Penalty

ARTICLE 6 OTHER ANIMALS

2-601 Exotic Animals

CHAPTER 3 BEVERAGES

ARTICLE 1 BEVERAGES IN GENERAL

3-101 Definitions

3-102 Restriction On Location

3-103 Minors On Premises

3-104 Consumption On Public Property

3-105 Public Sale; Consumption

3-106 Identification Card

ARTICLE 2 CEREAL MALT BEVERAGES

3-201 License Required Of General And Limited Retailers

3-202 Application

3-202A License Application Procedures

3-203 License Granted; Denied

3-204 License To Be Posted

3-205 License, Disqualification

3-206 Restriction Upon Location

3-207 License Fee

3-208 Suspension Of License

3-209 License Suspension/Revocation By Governing Body

3-210 License Suspension/Revocation; Appeal

3-211 Change Of Location

3-212 Wholesalers And/Or Distributors

3-213 Business Regulations

3-214 Prohibited Conduct On Premises

3-215 Sanitary Conditions Required

3-216 Minors On Premises

ARTICLE 3 ALCOHOLIC LIQUOR

3-301 State License Required

3-302 Occupational Tax

3-303 Posting Of Receipt

3-304 Hours Of Sale

3-305 Business Regulations

ARTICLE 4 PRIVATE CLUBS

3-401 License Required

3-402 License Fee

3-403 Business Regulations

ARTICLE 5 DRINKING ESTABLISHMENTS

3-501 License Required

3-502 License Fee

3-503 Business Regulations

ARTICLE 6 CATERERS

3-601 License Required

3-602 License Fee

3-603 Business Regulations

3-604 Notice To Chief Of Police

ARTICLE 7 TEMPORARY PERMITS

3-701 Permit Required

3-702 Permit Fee

3-703 City Temporary Permit

3-704 Permit Regulations

CHAPTER 4 BUILDINGS AND CONSTRUCTION

ARTICLE 1 INTERNATIONAL AND NATIONAL CODES

4-101 Definitions

4-102 Conflict Clause

4-103 Clarification; Modification

4-104 (Reserved)

4-105 Liability

ARTICLE 2 BUILDING CODE

4-201 Incorporating The 2018 Edition Of The International Building Code

4-202 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Building Code

ARTICLE 3 RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS

4-301 Incorporating The 2018 Edition Of The International Residential Code For One- And Two-Family Dwellings

4-302 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Residential Code For One- And Two-Family Dwellings

ARTICLE 4 EXISTING BUILDING CODE

4-401 Incorporating The 2018 Edition Of The International Existing Building Code

4-402 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Existing Building Code

ARTICLE 5 FIRE CODE

4-501 Incorporating The 2018 Edition Of The International Fire Code

4-502 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Fire Code

ARTICLE 6 PLUMBING CODE

4-601 Incorporating The 2018 Edition Of The International Plumbing Code

4-602 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Plumbing Code

ARTICLE 7 FUEL GAS CODE

4-701 Incorporating The 2018 Edition Of The International Fuel Gas Code

4-702 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Fuel Gas Code

ARTICLE 8 MECHANICAL CODE

4-801 Incorporating The 2018 Edition Of The International Mechanical Code

4-802 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Mechanical Code

ARTICLE 9 ELECTRICAL CODE

4-901 Incorporating The 2017 Edition Of The National Electrical Code

4-902 Amended Section 90.4 Of The 2017 Edition Of The National Electrical Code

4-903 Revised, Amended, Or Deleted Sections Of The 2017 Edition Of The National Electrical Code

ARTICLE 10 ENERGY CONSERVATION CODE

4-1001 Incorporating The 2018 Edition Of The International Energy Conservation Code

4-1002 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Energy Conservation Code

ARTICLE 11 MOVING BUILDINGS

4-1101 Public Works Director; Authority

4-1102 Permit Required

4-1103 Permit Required--Application

4-1104 Permit Required--Bond, Insurance Required

4-1105 Permit Required--Fee

4-1106 Contractor; License Required; Fee

4-1107 Route; Duties Of Public Works Director

4-1108 Notice To Owners

4-1109 Duty Of Owners

4-1110 Trees

4-1110A Interfering With Poles; Wires

4-1111 Display Of Warning Lights

CHAPTER 5 BUSINESS REGULATIONS

ARTICLE 1 GENERAL REGULATIONS AND LICENSES

5-101 Definitions

5-102 License Required

5-103 Purpose

5-104 Exemptions

5-105 Occupation Fees Levied

5-106 Two Or More Businesses, Same Location
5-107 Leased Departments
5-108 License Application; Procedure
5-109 License Application; Receipt And License
5-110 Expiration Of License
5-111 Transfers
5-112 Late Payment, Penalty
5-113 Disposition Of Revenue
5-114 License To Be Displayed
5-115 Business Transactions Not Invalid
5-116 Payment Of Fine Does Not Pay Fee; Civil Action
5-117 Penalty
5-118 Sales On Public Property
5-119 New Goods Public Auction; License Fee
5-120 Right To Inspect Business Property And Rental Property

ARTICLE 2 SOLICITORS, CANVASSERS, PEDDLERS, TRANSIENT
MERCHANTS

5-201 (Reserved)
5-202 Definitions
5-203 Solicitation Permits Required
5-204 Information Required On Application For Solicitation Permit
5-205 Standards For Issuance
5-206 Application And Permit Available For Public Inspection
5-207 Fees
5-208 Contents Of Permit
5-209 Term Of Permit
5-210 Permits Nontransferable
5-211 Suspension Or Revocation Of Permits

5-212 Uniformity Of Administration Of Article

5-213 Prohibited Acts

5-214 Penalties

ARTICLE 3 DRIVE-IN BUSINESSES AND BUSINESSES WITH CURBSIDE SERVICE

5-301 Definition

5-302 Rules And Regulations

5-303 Penalty

ARTICLE 4 BATH HOUSES; MASSAGE ESTABLISHMENTS

5-401 Definitions

5-402 Permit Required

5-403 Permit Fees

5-404 Application

5-405 Application; Stockholders

5-406 Education Requirements

5-407 (Reserved)

5-408 Issuance Of Permit

5-409 Permit Displayed

5-410 Revocation Or Suspension Of Permit

5-411 Facilities

5-412 Certification

5-413 Inspections

5-414 Operation Regulations

5-415 Operation Regulations; Equipment; Attire

5-416 Supervision

5-417 Employee Registers

5-418 Minors Prohibited

5-419 Advertising

5-420 Transfer Of Permits

5-421 Exceptions

5-422 City To Establish And Enforce Rules And Regulations

5-423 Restriction To Premises

ARTICLE 5 (RESERVED)

ARTICLE 6 WRECKER AND TOW SERVICES

5-601 Approval Required

5-602 Criteria For Approval

5-603 Towing And Storage Charges

5-604 Personal Property In Vehicle

5-605 Enforcement

5-606 Suspension, Revocation Of Approval

5-607 Suspension, Revocation Of Approval; Appeal

ARTICLE 7 (RESERVED)

ARTICLE 8 ADULT ENTERTAINMENT REGULATIONS

5-801 Definitions

5-802 License Required For Adult Business

5-803 License Required For Managers, Servers And Entertainers

5-804 License Limited To Requested Purposes

5-805 License Application

5-806 Examination Of Application, Issuance Of License, Disapproval

5-807 License; Ineligibility And Disqualification

5-808 Standards Of Conduct

5-809 License; Posting Or Display

5-810 Manager On Premises

5-811 Inspectors And Inspections

5-812 Suspension, Revocation, Or Non-Renewal Of License

ARTICLE 9 FRANCHISES

5-901 Title

5-902 Definitions

5-903 Franchise Requirement

5-904 Gas Distribution Systems And Gas Distribution Facilities

5-905 Preservation Of Police Power Authority And Applicability Of Regulations

5-906 Nature Of Rights Granted By Any Franchise

5-907 Indemnification Of The City

5-908 Liability Insurance And Bond Requirement

5-909 Franchise Applications

5-910 Franchise Renewal

5-911 Applicability

5-912 Federal And State Law

5-913 Failure To Enforce

5-914 Violations

ARTICLE 10 PROHIBITED DISCRIMINATION IN EMPLOYMENT, HOUSING, OR PUBLIC ACCOMMODATIONS AS TO SEXUAL ORIENTATION OR GENDER IDENTITY

5-1001 Declaration Of Policy

5-1002 Definitions

5-1003 Unlawful Practices

5-1004 Exceptions

5-1005 Defenses

5-1006 Enforcement

5-1007 City Contracts

ARTICLE 11 RENTAL PROPERTIES

5-1101 Rental Housing; Purpose

5-1102 Definitions

5-1103 License Required

5-1104 Short-Term Rental Requirements

5-1105 Right To Inspect Rental Property

CHAPTER 6 ELECTIONS

6-101 Conduct Of Election

6-102 Hours Of Voting

6-103 Terms Of Office

6-104 Election Ties

6-105 Commencement Of Terms Of Office; Oath Of Office

6-106 Declaration Of Candidacy, Nomination Petition

6-107 Nonpartisan Elections

CHAPTER 7 FIRE

ARTICLE 1 FIRE LIMITS

7-101 Fire Limits Established

ARTICLE 2 FIRE PREVENTION

7-201 Fire Prevention Code Incorporated

7-202 Fire Prevention Code; Amendments

7-203 Penalty

7-204 Burning Of Garbage, Trash, Grass, Leaves Prohibited

7-205 Accumulation Of Rubbish And Trash

7-206 Stacking Of Hay Or Straw; Exceptions

7-207 Keeping Of Packing Materials

7-208 Storage Of Ashes

7-209 Filling Gasoline Tanks Of Motor Vehicles

7-210 Fire Hazards; Generally

7-211 Fire Hazards; Inspections To Discover

7-212 Abatement Of Fire Hazards; Issuing Order

7-213 Abatement Of Fire Hazards; Service Of Order; Records

ARTICLE 3 STORAGE OF VOLATILE FLAMMABLES

7-301 Definitions

7-302 Unlawful Storage

7-303 Volatile Flammables Storage; Maximum Within City Limits

7-304 Service Stations

7-305 Penalty

CHAPTER 8 HEALTH AND WELFARE

ARTICLE 1 (RESERVED)

ARTICLE 2 GENERAL PROVISIONS

8-201 Adopted

8-202 Conflicting Provisions

8-203 Public Officer

8-204 Definitions

ARTICLE 3 HEALTH NUISANCES

8-301 Nuisances Unlawful; Defined

8-302 Complaints; Inquiry And Inspection

8-303 Right Of Entry

8-304 Order Of Violation

8-305 Order Of Violation; Contents

8-306 Failure To Comply; Penalty

8-307 Abatement

8-308 Hearing

8-309 Costs Assessed

8-310 Deposits On Public Ground Prohibited

8-311 Compost Piles--Definitions

8-312 Compost Piles--Prohibited Contents

8-313 Compost Piles--Odors

ARTICLE 4 WEEDS AND NUISANCE PLANTS

8-401 Weeds And Plants To Be Removed

8-402 (Reserved)

8-403 Public Officer; Notice To Remove

8-404 Abatement; Assessment Of Costs

8-405 Right Of Entry

8-406 Unlawful Interference

8-407 Noxious Weeds

8-408 Dead, Diseased, Or Otherwise Hazardous Tree Removal

ARTICLE 5 REFUSE DISPOSAL

8-501 Definitions

8-502 Refuse; Accumulation Prohibited

8-503 Hauling Refuse; Vehicles; Littering

8-504 Littering

8-505 Trash, Garbage, Refuse--Backyards; Occupants' Duties

8-506 Trash, Garbage, Refuse--Adjacent Alleys

8-507 Interfering With Containers

8-508 Rules And Regulations

8-509 Service Charge

8-510 (Reserved)

8-511 Placement

ARTICLE 6 SWIMMING POOLS

8-601 Enclosures

8-602 Enclosures; Dimensions

8-603 Enclosures; Gates

ARTICLE 7 JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

8-701 Findings Of Governing Body

8-702 Definitions

8-703 Nuisances Unlawful; Defined; Exceptions

8-704 Public Officer

8-705 Complaints; Inquiry And Inspection

8-706 Right Of Entry

8-707 Order Of Violation

8-708 Order Of Violation; Contents

8-709 Failure To Comply; Penalty

8-710 Abatement

8-711 Disposition Of Vehicle; Recovery Of Vehicle

8-712 Hearing

8-713 Costs Assessed

ARTICLE 8 ENVIRONMENTAL RELEASES

8-801 Definitions

8-802 Strict Liability

8-803 Recovery Of Expenses

8-804 Conflict; State Laws

ARTICLE 9 FAIR HOUSING CODE

8-901 Fair Housing

8-902 Sexual Orientation Or Gender Identity

8-903 Enforcement

8-904 Definitions

ARTICLE 10 MINIMUM HOUSING CODE

8-1001 Title

8-1002 General

8-1003 Declaration Of Policy

8-1004 Definitions

8-1005 Duty Of Occupant Or Owner Of Occupied Or Unoccupied Building
And Its Premises Or Vacant Premises

8-1006 Regulations For The Use And Occupancy Of Dwellings

8-1007 Maintenance And Repair; Dwellings

8-1008 Designation Of Unfit Dwellings

8-1009 Designation Of Blighted Premises (Residential And Nonresidential)

8-1010 Designation Of Blighted Buildings And Premises (Nonresidential)

8-1011 Inspection Of Buildings And Structures, And Premises

8-1012 Notice Of Violations; Procedures

8-1013 Public Officer: Authority

8-1014 City Administrator

8-1015 Governing Body; Authority

8-1016 Order To Correct And/Or Repair, Remove Or Demolish

8-1017 Demolition By Public Officer; Procedure And Costs

8-1018 Conflict Of Laws; Effect Or Partial Invalidity

8-1019 Governing Body; Appeals

8-1020 Right Of Petition

ARTICLE 11 DANGEROUS AND UNFIT STRUCTURES

8-1101 Purpose

8-1102 Definitions

8-1103 Enforcing Officer; Duties

8-1104 Procedure--Petition

8-1105 Procedure--Notice

8-1106 Procedure--Publication

8-1107 Procedure--Hearing, Order

8-1108 Duty Of Owner

8-1109 Duty Of Owner--Failure To Comply

8-1110 Duty Of Owner--Make Site Safe

8-1111 Assessment Of Costs

8-1112 Immediate Hazard

8-1113 Appeals From Order

8-1114 Scope Of Article

ARTICLE 12 MINIMUM PROPERTY PRESERVATION CODE

8-1201 Purpose

8-1202 Definitions

8-1203 Applicability

8-1204 Interpretation

8-1205 Minimum Standards For Exteriors Of All Buildings

8-1206 Minimum Standards For Interiors Of Rented Or Leased Dwelling Units

8-1207 Accessory Structures

8-1208 Egress

8-1209 Enforcement

8-1210 Buildings Unfit For Human Habitation

8-1211 Broken Glass And Boarding Up

8-1212 Prosecution Of Violation

8-1213 Emergency Measures

8-1214 Serious Personal Finance Exemption

8-1215 Judicial Review Of Governing Body Decisions

8-1216 Penalties

ARTICLE 13 RAT CONTROL

8-1301 Definitions

8-1302 Building Maintenance

8-1303 Notice To Rat-Stop

8-1304 Failure To Comply

8-1305 Replace Rat-Stoppage

8-1306 Notice To Eradicate Rats

8-1307 Conditions Conducive To Harborage Of Rats

8-1308 Inspections

ARTICLE 14 INSURANCE PROCEEDS FUND

8-1401 Scope And Application

8-1402 Lien Created--Generally

8-1403 Lien Created--Encumbrances

8-1404 Lien Created--Pro Rata Basis

8-1405 Procedure

8-1406 Fund Created; Deposit Of Monies

8-1407 Building Inspector; Investigation, Removal Of Structure

8-1408 Removal Of Structure; Excess Monies

8-1409 Removal Of Structure; Disposition Of Funds

8-1410 Effect Upon Insurance Policies

8-1411 Insurers; Liability

ARTICLE 15 ENVIRONMENTAL CODE

8-1501 Title

8-1502 Legislative Findings Of Fact

8-1503 Purpose

8-1504 Rules Of Construction

8-1505 Definitions

8-1506 Public Officer

8-1507 Enforcement Standards

8-1508 Unlawful Acts

8-1509 Order Of Violation

8-1510 Penalty

8-1511 Abatement

8-1512 Hearing

8-1513 Appeals

8-1514 Costs Assessed

8-1515 Construction

ARTICLE 16 ENVIRONMENTAL SANITARY CODE

8-1601 Incorporation Of County Environmental Sanitary Code

8-1602 Penalty, Scheduled Fines

ARTICLE 17 SMOKING REGULATIONS

8-1701 Purpose

8-1702 Definitions

8-1703 Prohibition Of Smoking In Buildings Which Are Places Of
Employment And All Enclosed Public Buildings

8-1704 Where Smoking Is Not Regulated

8-1705 Responsibilities Of Proprietors, Owners And Managers

8-1706 Penalty For Violation

8-1707 (Reserved)

8-1708 Burning Of Garbage

CHAPTER 9 MUNICIPAL COURT

9-101 Established

9-102 Practice And Procedure

9-103 Time And Place Of Sessions

9-104 Municipal Judge; Appointment

9-105 Municipal Judge; Absence; Vacancy; Pro Tem

9-106 Municipal Judge; Powers And Duties

9-107 Municipal Judge; Salary

9-108 Court Clerk

9-109 Payment Of Fine

9-110 Payment Of Fine; Failure To Pay Separate Violation

9-111 Failure To Appear

9-112 Court Costs

CHAPTER 10 POLICE

ARTICLE 1 POLICE DEPARTMENT

10-101 Police Force

10-102 Duties Of Chief Of Police And Assistants

10-103 Chief Of Police; Powers

10-104 Arrests By Law Enforcement Personnel

10-105 City Administrator: Command; State Of Emergency

10-106 Emergency Temporary Law Enforcement Personnel

10-107 Rules Of Conduct

10-108 Reward Monies; Disposition

10-109 Canine Corps

ARTICLE 2 PROPERTY IN POLICE CUSTODY

10-201 Regulations

10-202 Disposition

10-203 Disposition; Exempt Property

10-204 Claiming Property

10-205 Proof Of Ownership

10-206 Auction

ARTICLE 3 LAW ENFORCEMENT TRUST FUND

10-301 Established

10-302 Proceeds Of Sales

10-303 Use Of Monies

10-304 Quarterly Report

10-305 Construction Of Article

ARTICLE 4 ALARM SYSTEMS

10-401 Permit Required; Unlawful Acts; Exception

10-402 Application For Permit; Non-Transferability; Exceptions

10-403 Regulations; Requirements And Duties

10-404 Nuisance Alarm Systems Prohibited

10-405 Direct Alarm Systems To Be Disconnected

10-406 Disturbing Alarms To Be Disconnected Or Modified

10-407 Notification Of Nuisance Alarms

10-408 Responsible Party

10-409 False Alarms; Fees Required

10-410 Designation Of Alarm Coordinator; Duties

10-411 Penalty

CHAPTER 11 PUBLIC OFFENSES

ARTICLE 1 UNIFORM OFFENSE CODE

11-101 Incorporating Uniform Public Offense Code

11-102 Short; Citation; Reference

11-103 Reference Applies To Amendments

11-104 Title, Chapter And Section Headings

11-105 Supplements Authorized

11-106 Effect Of Code On Past Actions And Obligations

11-107 Prohibited Acts

11-108 Civil Remedies Preserved

11-109 (Reserved)

11-110 Uniform Public Offense Code, Additions And Deletions (Reserved)

ARTICLE 2 LOCAL REGULATIONS

11-201 Alcoholic Liquor

11-202 Interference With Law Enforcement Officer

11-203 Resisting Arrest

11-204 Failure To Appear

11-205 Drugs

11-206 Blasting

11-207 Unlawful Removal Of Materials To Be Recycled

11-208 Pedestrian On Public Roadways

11-209 Disturbing The Peace

11-210 Camping On Private Property

ARTICLE 3 FIREWORKS

11-301 Definition

11-302 Use Of Fireworks Prohibited

11-303 Penalty

CHAPTER 12 PUBLIC PROPERTY

ARTICLE 1 PUBLIC USE REGULATIONS

12-101 Definitions

12-102 Rules And Regulation

12-103 Exclusive Use; When

12-104 Concessions; Carnivals; Fairs

12-105 Hold City Harmless

12-106 (Reserved)

12-107 Misconduct

12-108 (Reserved)

12-109 (Reserved)

12-110 (Reserved)

12-111 Sanitation

12-112 Prohibition Against Alcoholic Beverages And Cereal Malt Beverages

12-113 Hunting

12-114 Fires

12-115 Preservation Of Natural State

ARTICLE 2 CITY PARKS

12-201 City Laws Extended To Parks

12-202 Police Jurisdiction Over Parks

12-203 Damaging Park Property

12-204 Dangerous Weapons Not Allowed

12-205 General Regulations

12-206 City Park Rules

ARTICLE 3 COMMUNITY FORESTRY

12-301 Definitions

12-302 Creation

12-303 Duties And Responsibilities

12-304 Tree Species To Be Planted

12-305 Distances And Clearances For Planting

12-306 Public Tree Care

12-307 Clearance Over Streets And Walkways

12-308 Removal Of Stumps

12-309 Injuring Trees And Shrubs

CHAPTER 13 PUBLIC RIGHTS-OF-WAY

13-101 General

13-102 Definitions

13-103 Purpose

13-104 Policy

13-105 Administration

13-106 Requirements Of Service Provider

13-107 Mapping Requirement Of Service Provider

13-108 Service Provider's Right To Sell, Transfer, Lease, Assign, Sublet Or Dispose

13-109 Use Of The Right-Of-Way

13-110 Facility Relocation

13-111 Protection Of The Public

13-112 Right-Of-Way Vacation

13-113 Abandoned And Unusable Facilities

13-114 Permit Requirement

13-115 Permit Applications

13-116 Liability Insurance, Performance And Maintenance Bond Requirement

13-117 Right-Of-Way Permit Fees And Costs

13-118 Issuance Of Permit

13-119 Permitted Work

13-120 Right-Of-Way Repair And Restoration

13-121 Cleated Or Flanged Wheels On Pavement Prohibited

13-122 Damage Or Modification To Paving Or Curbs

13-123 Storage On Right-Of Way

13-124 Obstructing Streets

13-125 State Highway Right-Of-Way

13-126 Compliance With Law

13-127 Remedies Not Exclusive

13-128 Joint Applications

13-129 Supplementary Applications

13-130 Other Obligations

13-131 Denial Of Permit

13-132 Revocation Of Permit

13-133 Work Requirements And Inspections

13-134 Appeals Process

13-135 Indemnification

13-136 Force Majeure

13-137 Federal, State And City Jurisdiction

13-138 (Reserved)

13-139 City's Failure To Enforce

13-140 Penalties

13-141 Reservation Of Rights

13-142 Interpretation

CHAPTER 14 TRAFFIC

ARTICLE 1 STANDARD TRAFFIC ORDINANCE

14-101 Incorporating Standard Traffic Ordinance

14-102 Speed Limitations, Restrictions

14-103 Exhibition Of Speed Or Acceleration Defined

14-104 Traffic Infractions And Traffic Offenses

14-105 Penalty For Scheduled Fines And Penalties Generally

ARTICLE 2 LOCAL TRAFFIC REGULATIONS

14-201 Traffic Control Devices And Markings

14-202 Parking Or Stopping Prohibited

14-203 Unlawful Left Turns

14-204 Truck Travel Prohibited

14-205 Parking On Private Property By The Public

14-206 Park Or Parking Defined

14-207 Parking Stalls

14-208 Parking Of Disabled Vehicle

14-209 Parking Violation; Traffic Citation Issued

14-210 Failure To Appear In Response To Traffic Citation

14-211 Evidence Of Violation; Prima Facie Presumption

14-212 Separate Offense For Period Of Illegal Parking

14-213 Parking On Private Property Without Consent

14-214 Authority To Remove Vehicles

14-215 Authority To Remove Vehicles; Assessment Of Costs

14-216 Parking Recreational Vehicle

14-217 Main Trafficway And Trafficway Connector Designation

ARTICLE 3 PARADE REGULATIONS

14-301 Definitions

14-302 Permit Required

14-303 Procedure

14-304 Standards For Issuance

14-305 Application For Parade: Decision By The Chief Of Police

14-306 Appeal Procedure

14-307 Alternative Permit

14-308 Notice To City And Other Officials

14-309 Contents Of Permit

14-310 Duties Of Permittee

14-311 Public Conduct During Parades

14-312 Revocation Of Permit

ARTICLE 4 IMPOUNDMENT OF MOTOR VEHICLES

14-401 Definitions

14-402 Impounding Vehicles

14-403 Impounding Vehicles; Police Authority To Determine Storage

14-404 Notice Of Impoundment; Storage Of Vehicle

14-405 Impoundment After Request To Leave Motor Vehicle

14-406 Release Of Motor Vehicle From Impoundment

14-407 Hearing

14-408 Charges Constitute A Lien

14-409 Satisfaction Of Lien; Notice Of Public Sale

14-410 Redemption

14-411 Sale Proceeds

14-412 Statutory Procedures

14-413 Implementation Of Article

14-414 Reimbursement For Discharged Liens

CHAPTER 15 SURFACE WATER MANAGEMENT

ARTICLE 1 SURFACE WATER MANAGEMENT IN GENERAL

15-101 Definitions

15-102 Interpretations

15-103 Savings Clause

ARTICLE 2 ILLICIT DISCHARGE

15-201 Purpose And Findings

15-202 (Reserved)

15-203 Definitions

15-204 General Prohibition

15-205 Specific Prohibitions And Duties

15-206 Exceptions To Prohibited Acts

15-207 Inspection And Detection Program

15-208 Release Reporting And Cleanup

15-209 Enforcement; Designation Of Officer; Abatement; Right Of Entry; Penalty

ARTICLE 3 SEDIMENT AND EROSION CONTROL

15-301 (Reserved)

15-302 Purpose

15-303 Definitions

15-304 Land Disturbance Activity

15-305 Land Disturbance Permit

15-306 Land Disturbance Permit Inspections

15-307 For Land Disturbances Of Less Than One Acre

15-308 Fees

15-309 Additional Persons Responsible For Compliance

15-310 Compliance And Use

15-311 Enforcement Of Code Provisions

15-312 (Reserved)

15-313 Savings Clause

ARTICLE 4 POST CONSTRUCTION STORMWATER QUALITY
TREATMENT

15-401 (Reserved)

15-402 Purpose And Intent

15-403 (Reserved)

15-404 Relationship To Other Laws

15-405 Disclaimer Of Liability

15-406 Applicability

15-407 Technical Specifications And Design Criteria

15-408 Submittal Of Studies, Plans, And Specifications

15-409 Certification Of Studies, Plans, And Specifications

15-410 Stormwater Management Permit Required

15-411 Dedicated Tracts And Easements

15-412 Issuance Of Permit

15-413 Repairs During Maintenance Period

15-414 Notice Of Acceptance

15-415 As-Built Plans

15-416 Facility Maintenance

15-417 Annual Certification

15-418 Disturbance Of Constructed Facilities

ARTICLE 5 STORMWATER UTILITY (RESERVED)

CHAPTER 16 ZONING

ARTICLE 1 PURPOSE, RESPONSIBILITIES, AND PROCEDURES

DIVISION 1.1 ZONING ORDINANCE

1.1.1 (Reserved)

1.1.2 Title

1.1.3 (Reserved)

DIVISION 1.2 ZONING DISTRICT MAP

1.2.1 District Map Incorporated

1.2.2 Zoning District Use Regulations

1.2.3 Zoning District Map Interpretation

1.2.4 Zoning District Map

DIVISION 1.3 GENERAL PROVISIONS

1.3.1 Enforcement

1.3.2 Procedure

1.3.3 (Reserved)

1.3.4 Jurisdiction

1.3.5 Vesting Of Development Rights

1.3.6 Building Permit Process

1.3.7 Penalty

DIVISION 1.4 PLANNING COMMISSION

1.4.1 Commission Created

1.4.2 Commission Membership And Appointment

1.4.3 Planning Commission Bylaws

1.4.4 Comprehensive Plan Adoption And Amendment

1.4.5 Review Of The Comprehensive Plan

1.4.6 Recommendations As To Zoning Regulations

DIVISION 1.5 PLANS, PLATS, AND LOT SPLITS

1.5.1 Procedures

1.5.2 Subdivision Provisions

1.5.3 Additional Requirements

DIVISION 1.6 APPLICATIONS AND PROCEDURES

1.6.1 Who May Apply

1.6.2 Application Fees

1.6.3 Application; Proof Of Ownership And/Or Authorization Of Agent

1.6.4 Preapplication Conference

1.6.5 Submission Of Technical Studies

1.6.6 When An Application Is Deemed Complete

1.6.7 Application Submission Deadlines

1.6.8 Public Hearing Notices

1.6.9 Notice To Surrounding Property Owners

1.6.10 Posting Of Signs For Rezoning Requests And Initial Special Use Permits

1.6.11 Public Hearing Process

1.6.12 Continuances Of Applications

1.6.13 Consideration Of Text Amendments, Rezoning Requests, And Special Use Permits; Process

1.6.14 Protest Petition Procedures

1.6.15 Consideration Of Appeals

1.6.16 Consideration Of Variances

1.6.17 Criteria For Considering Applications

1.6.18 Rezoning Applications; Submission Requirements

1.6.19 Special Use Permit Applications; Submission Requirements

1.6.20 Site Plan Approval

1.6.21 Site Plan Approval Criteria

1.6.22 Site Plans And Final Development Plans; Contents And Submission Requirements

1.6.23 Preliminary Development Plan; Submission Requirements

1.6.24 Consideration Of Preliminary Development Plans

1.6.25 Substantial Changes

1.6.26 Consideration Of Final Development Plans

1.6.27 Abandonment Of Final Development Plan

1.6.28 Conditional Approvals

1.6.29 Written Findings

1.6.30 Final Decision When Ordinance Required

1.6.31 Revocation Of Special Use Permits

1.6.32 Appeals Of Final Decisions

DIVISION 1.7 (RESERVED)

DIVISION 1.8 BOARD OF ZONING APPEALS

1.8.1 Board Of Zoning Appeals Created

1.8.2 Meetings

1.8.3 Minutes

1.8.4 Appeals, Exceptions, Variances Generally; Procedure

ARTICLE 2 DEFINITIONS

2.1 Intent

2.2 Interpretation

2.3 Definitions

ARTICLE 3 GENERAL REGULATIONS

3.1 Applicability

3.2 Nonconforming Uses

3.3 Uses Prohibited

3.4 Allowed Uses

3.5 Temporary Structures

3.5.1 Construction Trailers, Sanitary Facilities And Roll-Off Dumpsters

3.5.2 Temporary Uses Allowed

3.5.3 Application For Other Uses

3.5.4 Manufactured Homes

3.5.5 Manufactured Structures As A Temporary Conditional Use

3.6 Yard And Garage Sales

3.7 Sale Of Seasonal Products

3.8 General Lot Standards

3.9 Stormwater Runoff Provisions

3.10 Off-Street Parking And Loading

3.11 Solar Collectors

ARTICLE 4 RESIDENTIAL ZONING DISTRICTS

DIVISION 4.1 RESIDENTIAL DISTRICTS GENERALLY

4.1.1 Intent

4.1.2 Residential Zoning Districts Described

DIVISION 4.2 USES PERMITTED WITH CONDITIONS

4.2.1 Intent

4.2.2 Customary Home Occupation

4.2.3 Churches And Civic Uses

4.2.4 Public Safety Uses

4.2.5 Group Home

4.2.6 Communications Facilities

4.2.7 Day Care Center

4.2.8 Parking Space Requirements For Uses With Conditions

4.2.9 Essential Utility Structures

DIVISION 4.3 SINGLE-FAMILY RESIDENTIAL

4.3.1 Uses Permitted By Right

4.3.2 Single-Family Primary Structure Requirements

4.3.3 Lot Exceptions

4.3.4 Accessory Structure Setback And Other Requirements

4.3.5 Accessory Structures

4.3.6 Garages

4.3.7 Building Standards

4.3.8 Building Additions; Special Conditions

4.3.9 Fence And Wall Standards

4.3.10 Driveways

4.3.11 Off-Street Parking

4.3.12 Parking Or Storage Of Boats, Trailers, Commercial And
Recreational Vehicles

4.3.13 Satellite Dishes

DIVISION 4.4 NEW INFILL HOUSES AND MAJOR ADDITIONS;
SPECIAL CONSIDERATIONS

4.4.1 Intent

4.4.2 Tree Preservation.

4.4.3 Massing

4.4.4 Sustainability (Green) Features

4.4.5 Plans And Documents

DIVISION 4.5 WAIVERS AND EXCEPTIONS

4.5.1 Purpose

4.5.2 Applicability

4.5.3 Initiation

4.5.4 Approval Criteria

4.5.5 Decision

4.5.6 Scope Of Approval

4.5.7 Recordkeeping

ARTICLE 5 COMMERCIAL ZONING DISTRICTS

DISTRICT 5.1 COMMERCIAL DISTRICTS GENERALLY

5.1.1 Intent

5.1.2 (Reserved)

5.1.3 (Reserved)

DISTRICT 5.2 C-O COMMERCIAL -- OFFICE

5.2.1 Office And Commercial District (C-O) Use Regulations

DISTRICT 5.3 C-1 COMMERCIAL MIXED-USE

5.3.1 Intent

5.3.2 Building Use And Mixed Use

5.3.3 Uses Permitted By Right

5.3.4 Uses Permitted With Conditions

5.3.5 Uses Not Permitted

5.3.6 Lot Coverage

5.3.7 Street Frontages, Setbacks, Build-To Lines, And Encroachments

5.3.8 Building Height

DIVISION 5.4 OFF-STREET PARKING AND LOADING; ALL COMMERCIAL DISTRICTS

5.4.1 General Design Standards

5.4.2 Parking Space Requirements

5.4.2.1 Minimum Parking Spaces Per Use

5.4.3 Drive-Through Services

5.4.4 Parking Space Dimensions

5.4.5 Aisle And Driveway Widths

5.4.6 Cooperative Parking

5.4.7 Parking Area Uses

DIVISION 5.5 C-O, C-1, P-1 GENERAL DISTRICT PARKING AND
LOADING REQUIREMENTS

5.5.1 Location

5.5.2 Access

5.5.3 Minimum Commercial Off-Street Loading Requirements

DIVISION 5.6 LANDSCAPING FOR ALL COMMERCIAL DISTRICTS

5.6.1 Parking Areas

5.6.2 Utility, Storage, And Loading Areas

5.6.3 Transitional Yards And Buffers

5.6.4 Satellite Dishes

5.6.5 Mechanical Equipment Placement And Screening

ARTICLE 6 PLANNED ZONING DISTRICTS

DIVISION 6.1 P-1 PLANNED PARKING DISTRICT

6.1.1 Uses Allowed

DIVISION 6.2 PD PLANNED DEVELOPMENT DISTRICT

6.2.1 Intent

6.2.2 Planned Zoning Incorporated

DIVISION 6.3 PLANNED RESIDENTIAL CLUSTER DEVELOPMENT
(PRCD) DISTRICT

6.3.1 Intent

6.3.2 Permitted Uses

6.3.3 Height And Area Regulations

6.3.4 Parking Regulations

6.3.5 Development And Performance Standards

DIVISION 6.4 PLANNED MEDIUM DENSITY RESIDENTIAL (PMDR)

6.4.1 Intent

6.4.2 Permitted Uses

6.4.3 Height And Area Regulations

6.4.4 Parking Regulations

6.4.5 Development And Performance Standards

ARTICLE 7 COMMERCIAL OVERLAY DISTRICTS

DIVISION 7.1 COMMERCIAL OVERLAY DISTRICTS, GENERALLY

7.1.1 Intent

7.1.2 Building Design

7.1.3 Pedestrian Emphasis

7.1.4 Building Entries

7.1.5 Commercial Overlay District Map

DIVISION 7.2 COD-1 47TH AND MISSION ROAD AREA OVERLAY DISTRICT

7.2.1 47th And Mission Road Area Design Review Overlay District Purpose And Authority

7.2.2 Applicability

7.2.3 Type Of Development

7.2.4 Other Regulations

7.2.5 Definitions

7.2.6 Underlying Zoning Uses

7.2.7 Overlay Uses

7.2.8 Commercial Site Design Standards

7.2.9 Building Placement

7.2.10 Site Access

7.2.11 Parking

7.2.12 Architecture Feature

7.2.13 Landscape Requirements And Screening

7.2.14 Signs

7.2.15 Multifamily Public Improvements And Notification

7.2.16 Depiction Of 47th And Mission Road Area Design Review
Overlay District And 47th And Mission Road Area Concept Plan

DIVISION 7.3 COD-2 COMMERCIAL OVERLAY DISTRICT NUMBER
2 (RAINBOW BOULEVARD -- WEST SIDE)

7.3.1 District Requirements

7.3.2 Building Standards

DIVISION 7.4 COD-3 COMMERCIAL OVERLAY DISTRICT NUMBER
3 (RAINBOW BOULEVARD -- EAST SIDE)

7.4.1 District Requirements

7.4.2 Parking

7.4.3 Building Standards

DIVISION 7.5 COD-4 COMMERCIAL OVERLAY DISTRICT NUMBER
4 (47TH PLACE AND RAINBOW BOULEVARD)

7.5.1 District Requirements

7.5.2 Building Standards

ARTICLE 8 SPECIAL USE PERMITS

8.1.1 Special Uses

8.1.2 Special Uses Designated

8.1.3 Special Uses Not Permitted

8.1.4.010 Amusement Centers And Arcades

8.1.4.015 Clubs And Drinking Establishments; Bar Or Night Club

8.1.4.020 Community Living Facility

8.1.4.025 Communications Facilities (Including Towers, Base Stations And
Antennas)

8.1.4.030 Day Care Homes, Group Day Care Homes, Child Care Centers,

Preschools, And Mother's Day Out Programs

8.1.4.035 Hospitals

8.1.4.040 Off-Street Parking Lots/Structures Of A Temporary Or Permanent Nature

8.1.4.045 Public Utility Services Or Public Service Corporations; Buildings, Structures, And Premises

8.1.4.050 Radio And Television Towers

8.1.4.055 Testing And Research Facilities, Laboratories

8.1.4.060 Temporary Uses Of Land For Commercial Or Industrial Purposes

ARTICLE 9 SIGNS

DIVISION 9.1 PURPOSE, DEFINITIONS, PROHIBITED SIGNS

9.1.1 General Regulations

9.1.2 Statement Of Purposes And Objectives

9.1.3 Definitions

9.1.4 Prohibited Signs

DIVISION 9.2 REGULATIONS APPLICABLE TO ALL DISTRICTS

9.2.1 Sign Permit

9.2.2 Signs Exempt From Permit Requirement

9.2.3 Exceptions To Permit Process

9.2.4 Traffic Hazards

9.2.5 Maintenance And Inspection

9.2.6 Public Rights-Of-Way

9.2.7 Temporary Signs

9.2.8 Sign Area Calculations

9.2.9 Setback

9.2.10 Permanent Signs Secured

9.2.11 Projecting Signs

9.2.12 Wall Signs

9.2.13 Illuminated Signs

9.2.14 Obscene Materials

9.2.15 Substitution Of Messages

DIVISION 9.3 REGULATIONS APPLICABLE TO SPECIFIC DISTRICTS

9.3.1 Residential Districts R-1(A), R-1(B), R-1(C), R-1(D), R-1(E)

9.3.2 Office And Professional Districts; C-O

9.3.3 Retail And Business Districts; CP-1, C-1, P-1

9.3.4 Planned Commercial Districts

DIVISION 9.4 SIGN STANDARDS APPLICABLE TO NEW AND EXISTING MULTI-TENANTED OFFICE BUILDINGS, MULTI-TENANTED RETAIL BUILDINGS, AND MULTI-TENANTED COMPLEXES

9.4.1 Site Plan Review

9.4.2 Compliance

9.4.3 Nonconforming Signs

9.4.4 Permit Fees

9.4.5 Appeal

ARTICLE 10 COMMUNICATION FACILITIES FOR WIRELESS SERVICES

10.1 Statement Of Intent

10.2 Definitions

10.3 Overall Policy

10.4 Application Approval Authority

10.5 Application Process And Requirements

10.6 Location Of Communications Facilities

10.7 Building And Design Standards For Communications Facilities

10.8 Denial Of Application

10.9 Emergencies And Disasters

10.10 Interpretation

APPENDIX A CHARTER ORDINANCES

CHARTER ORDINANCE NO 15

CHARTER ORDINANCE NO 16

CHARTER ORDINANCE NO 17

CHARTER ORDINANCE NO 18

CHARTER ORDINANCE NO 19

CODE COMPARATIVE TABLE 1970 CODE

CODE COMPARATIVE TABLE 1983 CODE

CODE COMPARATIVE TABLE 1993 CODE

CODE COMPARATIVE TABLE 2008 CODE

CODE COMPARATIVE TABLE CHARTER ORDINANCES

CODE COMPARATIVE TABLE LEGISLATION

CHAPTER 1 ADMINISTRATION

ARTICLE 1 GENERAL PROVISIONS

ARTICLE 2 GOVERNING BODY

ARTICLE 3 OFFICERS AND EMPLOYEES

ARTICLE 3A OATHS AND BONDS

ARTICLE 4 INVESTMENT OF PUBLIC FUNDS

ARTICLE 5 PERSONNEL POLICY AND EMPLOYEE BENEFITS

ARTICLE 6 OPEN RECORDS

ARTICLE 7 EMERGENCY PREPAREDNESS

ARTICLE 1 GENERAL PROVISIONS

1-101 Code Designated

1-102 Definitions And Rules Of Construction

1-103 Existing Ordinances

1-104 Effect Of Repeal Or Amendment Of Ordinances

1-105 Catchlines Of Sections; History Notes; References

1-106 Supplementation Of Code

1-107 Amendments To Code; Effect Of New Ordinances; Amendatory Language; Repeal

1-108 Ordinances--Generally

1-109 Ordinances--Subject And Title; Amendment

1-110 Ordinances--Publication

1-111 Ordinances--Ordinance Book

1-112 Resolutions, Motions

1-113 City Records

1-114 Altering Code

1-115 Scope Of Application

1-116 General Penalty; Continuing Violations

1-117 Severability

1-101 Code Designated

The chapters, articles and sections herein shall constitute and be designated as "The Code of the City of Westwood, Kansas," and may be so cited. The Code may also be cited as the "Westwood City Code" or "WCC."

(Code 2008, § 1-101)

1-102 Definitions And Rules Of Construction

The following definitions and rules of construction shall apply to this Code and to all ordinances unless the context requires otherwise:

Generally.

- (1) Whenever the requirements or provisions conflict, the most restrictive requirements shall apply.
- (2) Whenever the requirements or provisions are in conflict with any statute, the most restrictive requirements shall apply.
- (3) All provisions shall be liberally construed so that the intent of the city council may be effectuated.
- (4) Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings shall be construed according to such meanings.
- (5) Provisions shall be interpreted and applied so as to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.
- (6) If any manifest error is discovered consisting of the misspelling of any word, the omission of any word necessary to express the manifest intention of any provision, the use of a word to which no meaning can be attached, or the use of one word where it is manifest that a different word should have been used to express the intent of any provision, such spelling shall be corrected and such word supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the words correctly spelled, and as supplied, omitted or substituted, were used originally. However, this subsection shall not have the effect of permitting any change to be made should there exist doubt as to the meaning of the provision in question.
- (7) Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.

City. The term "city" means the City of Westwood, Kansas. Any reference to "within the City" shall mean within the corporate city limits of the City of Westwood, Kansas.

Code. The term "Code" or "this Code" means "The Code of the City of Westwood, Kansas."

Computation of time. The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day be a Saturday, Sunday, or legal holiday, that day shall be excluded, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

Conjunctions. In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows, except that the terms "and" and "or" may be interchangeable when the context so requires:

- (1) The term "and" indicates that all the connected terms, conditions, provisions or events apply.
- (2) The term "or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- (3) The term "either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

County. The term "county" means the County of Johnson in the State of Kansas.

Day. The term "day" means a calendar day beginning at 12:01 a.m. and ending at 12:00 midnight.

Delegation of authority. Whenever a provision appears requiring or authorizing the head of a department or officer of the city to do some act or perform some duty, it shall be construed to authorize such department head or officer to designate, delegate and authorize subordinates to do the required act or perform the required duty unless the terms of the provision designate otherwise.

Gender. Words of gender include all genders.

Governing body. The term "governing body" means the mayor and city council, or those persons appointed to fill a vacancy in the office of mayor or the council as provided in this Code.

In the city. The term "in the city" means and includes all territory over which the city now has, or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

Includes. The term "includes" does not limit a term to a specified example.

Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

K.A.R. The abbreviation "K.A.R." means the Kansas Administrative Regulations, as amended.

K.S.A. The abbreviation "K.S.A." means the Kansas Statutes Annotated, as amended.

May. The term "may" is to be construed as being permissive and not mandatory.

May not. The term "may not" has a prohibitory effect and states a prohibition.

Month. The term "month" means a calendar month.

Must. The term "must" is to be construed as being mandatory.

Number. Words used in the singular include the plural and words used in the plural include the singular.

Oath, affidavit. The term "oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the word "swear" is equivalent to the word "affirm."

Officers, departments, etc. Officers, departments, boards, commissions and employees referred to in this Code shall mean officers, departments, boards, commissions and employees of the city, unless the context clearly indicates otherwise. Reference to a public office or officer shall be deemed to apply to any office, officer, or employee exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

Owner. The term "owner," when applied to property, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or part of such property.

Person. The term "person" means any natural or corporate person, business association or business entity, including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Personal property. The term "personal property" includes money, goods, chattels, things in action, evidences of debt and energy.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Premises. The term "premises," as applied to real property, includes land and structures.

Property. The term "property" includes real, personal and mixed property.

Real property or real estate. The term "real property" or "real estate" includes lands, tenements and hereditaments, and all rights thereto and interest therein, equitable as well as legal.

Shall. The term "shall" is to be construed as being mandatory.

Sidewalk. The term "sidewalk" means any portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

Signature, subscription. The term "signature" or "subscription" means the handwriting of such person, or includes a mark when the person cannot write, when his or her name is written near such mark and is witnessed by a person who writes his or her own name

as a witness, or the electronic signature of the person.

State. The term "state" means the State of Kansas.

Street or highway. The term "street" or "highway" means and includes public streets, avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the city.

Tenant or occupant. The term "tenant" or "occupant," applied to a building or land, shall include any person holding a written or oral lease of, or who occupies the whole or a part of such building or land, whether alone or with others.

Tenses. Words used in the past or present tense include the future as well as the past and present.

Writing or written. The term "writing" or "written" includes any form of recorded message capable of comprehension by ordinary visual means.

Year. The term "year" means a calendar year, except where otherwise provided.

(Code 1983; Code 2008, § 1-102)

1-103 Existing Ordinances

The provisions appearing in this Code, so far as they are in substance the same as those of ordinances existing at the time of the effective date of this Code, shall be considered as continuations thereof and not as new enactments.

(Code 1983; Code 2008, § 1-103)

1-104 Effect Of Repeal Or Amendment Of Ordinances

- (a) Unless specifically provided otherwise, the repeal of an ordinance does not revive any previously repealed ordinance.
- (b) The repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal or amendment took effect, nor does such repeal or amendment affect any suit, prosecution or proceeding pending at the time of the amendment or repeal.
- (c) The repeal or amendment of an ordinance does not affect any vested right, privilege, obligation or liability.

(Code 1983; Code 2008, § 1-104)

1-105 Catchlines Of Sections; History Notes; References

- (a) The catchlines of the several sections of this Code printed in italic type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section, nor unless expressly so provided shall they be so deemed when any such section, including the catchline, is amended or reenacted.
- (b) History notes that appear in this Code after sections or subsections or that otherwise appear in footnote form are provided for the convenience of the user of the Code and have no legal effect.
- (c) Editor's notes, charter references, cross references and state law references that appear in this Code after sections or subsections or that otherwise appear in footnote form are provided for the convenience of the user of the Code and have no legal effect.
- (d) Unless specified otherwise, all references to chapters or sections are to chapters or sections of this Code.

(Code 1983; Code 2008, § 1-105)

1-106 Supplementation Of Code

- (a) Supplements to this Code shall be prepared and may be printed whenever authorized or directed by the city. A supplement to this Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of the printed supplements shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete. The new pages shall be so prepared that when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be removed from the Code by the omission thereof from reprinted or republished pages.
- (c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified code. For example, the person may:
 - (1) Arrange the material into appropriate organizational units.
 - (2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions and sections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code.
 - (3) Assign appropriate numbers to chapters, articles, divisions, subdivisions

and sections to be added to the Code.

- (4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.
- (5) Change the words "this ordinance" or similar words to "this chapter," "this article," "this division," "this subdivision," "this section" or "sections _____ to _____" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in the Code).
- (6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in the Code.

1-107 Amendments To Code; Effect Of New Ordinances; Amendatory Language; Repeal

- (a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code.
- (b) Any portion of this code may be amended by specific reference to the section number as follows: "Section ____ of the Code of the City of Westwood, Kansas, is hereby amended to read as follows: . . ." (the new provisions shall then be set out in full).
- (c) A new section not heretofore existing in the Code may be added as follows: "The Code of the City of Westwood, Kansas, is hereby amended by adding a section (or article or chapter) which reads as follows: . . ." (the new provisions shall be set out in full).
- (d) All sections, or articles, or chapters to be repealed shall be repealed by specific reference as follows: "Section (or article or chapter) ____ of the Code of the City of Westwood, Kansas, is hereby repealed."

(Code 2008, § 1-107)

1-108 Ordinances--Generally

The governing body shall have the care, management and control of the city and its finances, and shall pass all ordinances needed for the welfare of the city. No ordinance shall be valid unless a majority of all the members-elect of the city council shall vote in favor. Where the number of favorable votes is one less than required, the mayor shall have power to cast the deciding vote in favor of the ordinance, unless a number greater than a majority is otherwise required by law.

(Code 2008, § 1-108)

State law reference—K.S.A. 12-3002.

1-109 Ordinances--Subject And Title; Amendment

No ordinance shall contain more than one subject, which shall be clearly expressed in its title; and no section or sections of an ordinance shall be amended unless the amending ordinance contains the entire section or sections as amended and the section or sections amended shall be repealed.

(Code 2008, § 1-109)

State law reference—K.S.A. 12-3004.

1-110 Ordinances--Publication

(a) No ordinance, except those appropriating money, shall be in force until published in the official city newspaper by the city clerk. One publication of any such ordinance shall be sufficient unless additional publications are required by statute or ordinance. The publisher of the newspaper shall prefix such published ordinance by a line in brackets stating the month, day and year of such publication.

(b) The legal record is hereby designated as the official city newspaper.

(Code 2008, § 1-110; Ord. No. 918)

State law reference—K.S.A. 12-3007.

1-111 Ordinances--Ordinance Book

Following final passage and approval of each ordinance, the city clerk shall enter the same in the ordinance book of the city as provided by law. Each ordinance shall have appended thereto the manner in which the ordinance was passed, the date of passage, the page of the journal containing the record of the final vote on its passage, the name of the newspaper in which published and the date of publication.

(Code 2008, § 1-111)

State law reference—K.S.A. 12-3008.

1-112 Resolutions, Motions

Except where a state statute or city ordinance specifically requires otherwise, all resolutions and motions shall be passed if voted upon favorably by a majority of a quorum of the city council.

(Code 2008, § 1-112)

1-113 City Records

The city clerk or any other officer or employee having custody of city records and documents shall maintain such records and documents in accordance with K.S.A. 12-120 to 12-121 inclusive, which is incorporated by reference herein as if set out in full and as provided in the state open records act and the city policy regarding open public records.

(Code 2008, § 1-113)

State law reference—K.S.A. 12-120:121.

1-114 Altering Code

It shall be unlawful for any person, firm or corporation to change or amend by additions or deletions, any part or portion of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with this Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby. This restriction shall not apply to amendments or revisions of this Code authorized by ordinance duly adopted by the governing body.

(Code 1983, § 1-110; Code 2008, § 1-114)

1-115 Scope Of Application

Any person convicted of doing any of the acts or things prohibited, made unlawful, or the failing to do any of the things commanded to be done, as specified and set forth in this Code, shall be deemed in violation of this Code and punished in accordance with WCC 1-116. Each day any violation of this Code continues shall constitute a separate offense.

(Code 1993, § 1-111; Code 2008, § 1-115)

1-116 General Penalty; Continuing Violations

(a) In this section, the term "violation of this Code" means any of the following:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense, or a violation by ordinance, by statute adopted by reference in this Code, by state rule or regulation adopted by reference in this Code, or by order, rule or regulation authorized by ordinance.
- (2) Failure to perform an act that is required to be performed by ordinance, by statute adopted by reference in this Code, by state rule or regulation adopted by reference in this Code or by order, rule or regulation

authorized by ordinance.

- (3) Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, or a violation by ordinance, by statute adopted by reference in this Code, by state rule or regulation adopted by reference in this Code or by order, rule or regulation authorized by ordinance.
- (b) In this section, the term "violation of this Code" does not include the failure of a city officer or city employee to perform an official duty unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.
- (c) Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be punished by a fine not exceeding \$1,000.00, a definite term of imprisonment for not more than 179 days, or any combination thereof.
- (d) Except as otherwise provided by law or ordinance:
 - (1) With respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense.
 - (2) With respect to violations that are not continuous with respect to time, each act constitutes a separate offense.
- (e) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise or other administrative sanctions.
- (f) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief.
- (g) Nothing in this section shall be construed to prohibit the city from prosecuting any violation of this article by means of a code enforcement system established pursuant to the authority of state law.

(Code 1993, § 1-112; Code 2008, § 1-116)

1-117 Severability

If for any reason any chapter, article, section, subsection, sentence, clause or phrase of this Code, or the application thereof to any person or circumstance, is declared to be unconstitutional or invalid or unenforceable, such decision shall not affect the validity of the remaining portions of this Code.

(Code 1983, § 1-113; Code 2008, § 1-117)

ARTICLE 2 GOVERNING BODY

1-201 Generally

[1-202 Powers Generally](#)
[1-203 Meetings](#)
[1-204 Quorum](#)
[1-205 Powers Of The Council](#)
[1-206 Powers Of The Mayor](#)
[1-207 President Of The Council](#)
[1-208 Administrative Powers](#)
[1-209 Vacancies In Governing Body; How Filled](#)
[1-210 Compensation](#)
[1-211 Expenses](#)
[1-212 \(Reserved\)](#)
[1-213 \(Reserved\)](#)
[1-214 Incorporating Code Of Procedure For Kansas Cities](#)
[1-215 Code Of Ethics](#)
[1-216 Term Of Office](#)

1-201 Generally

The governing body shall consist of a mayor and five council members to be elected as set out in WCC chapter 6.

(Code 2008, § 1-201)

1-202 Powers Generally

All powers exercised by cities of the third class or which shall hereafter be conferred upon them shall be exercised by the governing body, subject to such limitations as prescribed by law. All executive and administrative authority granted or limited by law shall be vested in the mayor and city council as governing body of the city.

(Code 2008, § 1-202)

State law reference—K.S.A. 12-103.

1-203 Meetings

- (a) Regular meetings of the governing body shall be held on the second Thursday of each month at the City Hall, 4700 Rainbow Boulevard in the city, or at any subsequently designated meeting place at 7:00 p.m. In the event the regular meeting day shall fall on any legal holiday or any day observed as a holiday by the city offices, the governing body shall fix the succeeding day not observed as a holiday as a meeting day.
- (b) Special meetings may be called by the mayor or acting mayor, on the written request of any three members of the city council, specifying the object and purpose of such meeting, which request shall be read at a meeting and entered

at length on the journal.

- (c) Regular or special meetings of the governing body may be adjourned for the completion of its business at such subsequent time and place as the governing body shall determine in its motion to adjourn.

(Code 2008, § 1-203; Ord. No. 564)

State law reference—K.S.A. 15-106.

1-204 Quorum

At all meetings of the governing body, four-fifths of the council members-elect shall constitute a quorum to do business. A minority may adjourn from day to day and may compel the attendance of absentees by a fine not exceeding \$100.00 for each offense, unless a reasonable excuse is offered.

(Code 2008, § 1-204; Chattr. Ord. No. 13)

State law reference—K.S.A. 15-106.

1-205 Powers Of The Council

The governing body may enact, ordain, alter, modify or repeal any and all ordinances not repugnant to the constitution and the law of the state and the United States, and such as it shall deem expedient for the good government of the city, the preservation of the peace and good order, the suppression of vice and immorality, the benefits of trade and commerce, and such other ordinances, rules, and regulations as may be necessary to carry such power into effect.

(Code 1993, § 1-204; Code 2008, § 1-205)

1-206 Powers Of The Mayor

The mayor shall preside at all meetings of the governing body. The mayor shall have the tie-breaking vote on all questions when the members present are equally divided. The mayor shall:

- (a) Take care that the ordinances of the city are complied with;
- (b) Sign the commissions and appointments of all officers elected or appointed;
- (c) Endorse the approval of the governing body on all official bonds;
- (d) From time to time communicate to the city council such information and recommend such measures as he or she may deem advisable;
- (e) Have the power to approve or veto any ordinance as the laws of the state shall

prescribe.

(Code 1983, § 1-205; Chatr. Ord. No. 19, § 1(1-206), 5-12-2022)

State law references—K.S.A. 301:302, 305:306, 308:309.

1-207 President Of The Council

The city council shall elect one of its own body as president of the council. The president of the council shall preside at all meetings of the council in the absence of the mayor. In the absence of both the mayor and the president of the council, the council shall elect one of its members as "acting president of the council." The president and acting president, when occupying the place of mayor, shall have the same privileges as other council members but shall exercise no veto.

(Code 1983, § 1-206; Code 2008, § 1-207)

State law reference—K.S.A. 15-310:311.

1-208 Administrative Powers

The governing body may designate whether the administration of a policy or the carrying out of any order shall be performed by a committee, an appointive officer, or the mayor. If no administrative authority is designated, it shall be vested in the mayor.

(Code 1983, § 1-211; Code 2008, § 1-208)

1-209 Vacancies In Governing Body; How Filled

In case of a vacancy in the council occurring by reason of resignation, death or removal from office or from the city, the mayor, by and with the advice and consent of a majority of the remaining council members, shall appoint some suitable elector to fill the vacancy until the next election of that office. In case any person elected as a council member neglects or refuses to qualify within 30 days, after the filing of his or her certificate of election, he or she shall be deemed to have refused to accept such office and a vacancy shall exist, and thereupon the mayor may, with the consent of a majority of the remaining council members, appoint some suitable elector to fill said vacancy. In case of a vacancy in the office of mayor, the president of the council shall become mayor until the next regular election of that office and a vacancy shall occur in the office of the council member becoming mayor.

(Code 1993, § 1-208; Code 2008, § 1-209; Chatr. Ord. No. 6, § 2, 12-12-1968)

1-210 Compensation

The salary of council members shall be \$250.00 per month, for each council member, and \$700.00 per month for the mayor.

(Code 1983, § 1-212; Code 2008, § 1-210; Ord. No. 661; Ord. No. 944)

1-211 Expenses

Each member of the governing body shall receive for his or her services and as reimbursement for his or her expenses, compensation as outlined in the governing body handbook, a copy of which is available for public inspection at the Westwood City Hall:

- (a) Mileage at the same rate as is established by law by the state for state employees for each mile traveled by the shortest route upon the performance of duties assigned by the mayor and/or council member.
- (b) Reimbursement for actual food and lodging expenses upon the performance of duties assigned by the mayor and/or council member, provided such expenses shall be documented by proper receipts.

(Code 2008, § 1-211)

1-212 (Reserved)

1-213 (Reserved)

1-214 Incorporating Code Of Procedure For Kansas Cities

There is hereby incorporated by reference for the purpose of establishing a code of procedure for the conduct of city council meetings, that certain code known as the "Code of Procedure for Kansas Cities," 2004 edition, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of said Code of Procedure for Kansas Cities shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Westwood, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. Changes to said Code shall include, but not be limited to, the change to the quorum requirement set out in WCC 1-204.

(Code 2008, § 1-214; Ord. No. 1026, § 1(1-213), 5-12-2022)

1-215 Code Of Ethics

- (a) *Declaration of policy.* The proper operation of government requires that public officials and employees be independent, impartial and responsible to the people, that governmental decisions and policy be made in the proper channels and that the public have confidence in the integrity of its government. In

recognition of those goals, there is hereby established a code of ethics for all officials and employees, whether elected or appointed, paid or unpaid. The purpose of this code is to establish ethical standards by setting forth those acts or actions that are incompatible with the best interests of the city.

- (b) *Responsibilities of public office.* Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the constitution of the state and to carry out impartially the laws of the nation, state, and city and thus to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the long-term public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach.
- (c) *Dedicated service.* All officials and employees of the city should be responsive to the political objectives expressed by the electorate and the programs developed to attain those objectives. Appointive officials and employees should adhere to the rule of work and performance established as the standard for their positions by the appropriate authority. Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.
- (d) *Fair and equal treatment.*
 - (1) *Interest in appointments.* Canvassing of members of the city council, directly or indirectly, in order to obtain preferential consideration in connection with any appointment to the municipal service shall disqualify the candidate for appointment except with reference to positions filled by appointment by the city council.
 - (2) *Use of public property.* No official or employee shall request or permit the use of city-owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or are provided as city policy for the use of such official or employee in the conduct of official business.
 - (3) *Obligations to citizens.* No official or employee shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.
- (e) *Conflict of interest.* No elected or appointive city official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his or her duties in the public interest or would tend to

impair his or her independence of judgment or action in the performance of his or her official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association. The following specific conflicts of interest are enumerated for the guidance of officials and employees:

- (1) *Incompatible employment.* No elected or appointive city official or employee shall engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of his or her official duties.
- (2) *Disclosure of confidential information.* No elected or appointive city official or employee shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the city. Nor shall he or she use such information to advance the financial or other private interest of himself, herself or others.
- (3) *Gifts and favors.* No elected or appointive city official or employee shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person, firm, or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the city; nor shall any such official or employee accept any gift, favor or thing of value that may tend to influence him or her in the discharge of his or her duties; or grant in the discharge of his or her duties any improper favor, service, or thing of value. The prohibition against gifts or favors shall not apply to:
 - a. An occasional nonpecuniary gift, of only nominal value; or
 - b. An award publicly presented in recognition of public service; or
 - c. Any gift which would have been offered or given to him or her if not an official or employee.
- (4) *Representing private interest before city agencies or courts.* No elected or appointed city official or employee whose salary is paid in whole or in part by the city shall appear on behalf of private interest before any agency of the city. He or she shall not represent private interests in any action or proceeding against the interest of the city in any litigation to which the city is a party.

(Code 2008, § 1-215; Ord. No. 1026, § 1(1-214), 5-12-2022)

1-216 Term Of Office

The term of office for all elected members of the governing body, including all members of the city council and the mayor, in those elections following the 2019 election shall commence upon their swearing-in, which shall occur at the city's December city council meeting following the certification of the election.

(Ord. No. 1019, § 2, 4-8-2021)

ARTICLE 3 OFFICERS AND EMPLOYEES

[1-301 Appointive Officers](#)

[1-302 Appointment Of City Administrator](#)

[1-303 Employees](#)

[1-304 Removal](#)

[1-305 Vacancy In Office](#)

[1-306 \(Reserved\)](#)

[1-307 City Administrator: Powers And Duties](#)

[1-308 Appointment Or Employment In More Than One Position](#)

[1-309 Conflict Of Interest](#)

1-301 Appointive Officers

The mayor, by and with the consent of the city council, and after receiving recommendation from the city administrator, may appoint a city clerk, city treasurer, city attorney, municipal judge, city prosecutor, chief of police and public works director. Such officers shall hold their respective offices for an indefinite term and may be removed by a majority vote of the total membership elected or appointed to the council and may be suspended at any time by the city administrator. All such appointments shall be entered on the journal of proceedings of the governing body.

(Code 2008, § 1-301; Chattr. Ord. No. 9, § 3; Chattr. Ord. No. 19, § 1(1-301), 5-12-2022)

State law reference—K.S.A. 155-204.

1-302 Appointment Of City Administrator

The mayor, by and with the consent of the council, shall appoint a city administrator.

(Chattr. Ord. No. 19, § 1(1-302), 5-12-2022)

1-303 Employees

- (a) The city administrator shall have authority to hire all employees other than the appointive officers identified in WCC 1-301, or such authority may be delegated to the respective department heads.
- (b) The salary ranges of employee held offices shall be fixed by resolution and the compensation of nonemployee-held offices shall be fixed by agreement.

- (c) The department head or authorized representative of any department within the city shall conduct a pre-employment investigation of all persons applying for or seeking a position as an employee of the city within such respective department. The police department shall aid the department head or authorized representative in fulfilling the requirements of this subsection by supplying any requested information it may possess regarding the person seeking employment to the requesting department head or authorized representative.

(Code 1970, § 1-209; Code 2008, § 1-303; Ord. No. 601, § 1; Ord. No. 665; Chattr. Ord. No. 19, § 1(1-303), 5-12-2022)

1-304 Removal

- (a) The city administrator may be removed either by the mayor, with the approval of a majority of the city council, or by the city council alone if at least four vote in favor of removal. If requested by the city administrator, the mayor and the city council shall grant the city administrator a public hearing within 30 days following notice of such removal. During the interim, the mayor, with the approval of a majority of the city council, may suspend the city administrator from duty, but shall continue their salary for two calendar months following the final removal date; provided, however, that if the city administrator shall be removed for acts of dishonesty or acts of moral turpitude, such salary shall not be continued.
- (b) Subject to personnel system regulations, and after receiving a recommendation from the city administrator, all other appointive officers may be removed either by the mayor, with the approval of a majority of the city council, or by the city council alone if at least four members vote in favor of removal. For good cause, the city administrator may suspend at any time any appointed officer.
- (c) Employees, other than appointed officers, may be removed by the city administrator upon recommendation of the respective department heads pursuant to the personnel policy adopted by the city council by resolution.

(Code 2008, § 1-304; Chattr. Ord. No. 19, § 1(1-304), 5-12-2022)

State law reference—K.S.A. 15-204.

1-305 Vacancy In Office

Whenever a vacancy occurs in any appointive office for whatever reason, the vacancy shall be filled by the mayor, with the consent of the council and after receiving recommendation from the city administrator.

(Code 1983, § 1-304; Code 2008, § 1-305; Chattr. Ord. No. 19, § 1(1-305), 5-12-2022)

State law reference—K.S.A. 15-209.

1-306 (Reserved)

1-307 City Administrator; Powers And Duties

The city administrator shall have the following powers and duties:

- (a) Appoint and suspend or remove all city employees and recommend to the governing body the appointment and removal of all appointive officers provided for, by, or under this article, except as otherwise provided by law, this article or personnel rules adopted pursuant to this article. The city administrator may authorize any administrative officer subject to the administrator's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency; direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law; attend all city council meetings. The city administrator shall have the right to take part in discussion but shall not vote; see that all laws, provisions of this article and acts of the city council, subject to enforcement by the city administrator or by officers subject to the administrator's direction and supervision, are faithfully executed;
- (b) Prepare and submit the annual (or biennial) budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;
- (c) Submit to the city council and make available and accessible to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year and provide information needed by the council for its annual evaluation of performance;
- (d) Make available and accessible such other reports as the city council may require concerning operations;
- (e) Keep the city council fully advised as to the financial condition and future needs of the city;
- (f) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;
- (g) Provide staff support services for the mayor and council members;
- (h) Assist the council to develop long-term goals for the city and strategies to implement these goals;
- (i) Encourage and provide staff support for partnerships with community organizations and for regional and intergovernmental cooperation and equitable programming;

- (j) Promote partnerships among council, staff, and community members in developing public policy and building a sense of community; and
- (k) Perform such other duties as are specified in this chapter or may be required by the city council.

(Code 1970, § 1-205; Code 1993, § 1-306; Code 2008, § 1-307; Ord. No. 1, Rule 4; Ord. No. 994, § 2, 10-11-2018; Chatr. Ord. No. 19, § 1(1-307), 5-12-2022)

1-308 Appointment Or Employment In More Than One Position

The same person may be appointed to more than one appointive office, or employed in more than one department, except that the same person shall not be appointed to incompatible offices. Salaries or wages of such persons shall be prorated between the proper funds of the several offices or departments.

(Code 2008, § 1-321; Ord. No. 1026, § 2(1-308), 5-12-2022)

1-309 Conflict Of Interest

- (a) No city officer or employee shall be signatory upon, discuss in an official capacity, vote on any issue concerning or otherwise participate in his or her capacity as a public official or employee in the making of any contract with any person or business:
 - (1) In which the officer or employee owns a legal or equitable interest exceeding \$5,000.00 or five percent, whichever is less, individually, or collectively with his or her spouse; or
 - (2) From which the officer or employee receives, in the current or immediately preceding or succeeding calendar year, any salary, gratuity, other compensation or a contract for or promise or expectation of any such salary, gratuity or other compensation or remuneration having a dollar value of \$1,000.00 or more; or
 - (3) In which he or she shall hold the position of officer or director, irrespective of the amount of compensation received from or ownership held in the business.
- (b) The prohibitions contained in subsection (a) of this section shall not apply to the following:
 - (1) Contracts let after competitive bidding has been solicited by published notice; and
 - (2) Contracts for property or services for which the price or rate is fixed by law.

(Code 2008, § 1-322; Ord. No. 1026, § 2(1-309), 5-12-2022)

State law reference—K.S.A. 75-4301a.

ARTICLE 3A OATHS AND BONDS

[1-3A01 Oaths](#)

[1-3A02 Oaths Filed](#)

[1-3A03 \(Reserved\)](#)

[1-3A04 Surety Bonds; Appointive Officers](#)

[1-3A05 Surety Bonds; Premiums](#)

[1-3A06 Surety Bonds; Approval](#)

[1-3A07 Surety Bonds; Filing](#)

[1-3A08 Blanket Bond](#)

1-3A01 Oaths

All officers and employees of the city, whether elected or appointed, either under the laws of the state or ordinances of the city, shall before entering upon the duties of their respective offices, take and subscribe an oath or affirmation as follows:

- (1) *Oath.* "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of Kansas and faithfully discharge the duties of _____ (here enter name of office or position). So help me God."
- (2) *Affirmation.* "I do solemnly, sincerely and truly declare and affirm that I will support the Constitution of the United States and of the State of Kansas and faithfully discharge the duties of _____ (enter name of office or position). This I do under the pains and penalties of perjury."

(Code 2008, § 1-3A01; Ord. No. 1026, § 3(1-3A01), 5-12-2022)

State law references—K.S.A. 75-4308, 54-104, 54-106.

1-3A02 Oaths Filed

All officers and employees required to take and subscribe or sign an oath or affirmation shall be supplied the forms for the purpose at the expense of the city and upon taking and subscribing or signing any such oath or affirmation, the same shall be filed with the city clerk.

(Code 1983, § 1-316; Code 2008, § 1-3A02; Ord. No. 1026, § 3(1-3A02), 5-12-2022)

1-3A03 (Reserved)

1-3A04 Surety Bonds; Appointive Officers

The following appointive city officers shall each, before entering upon duties of their offices, give a good and sufficient surety company bond to the city, duly approved, conditioned upon the faithful performance and discharge of their respective duties, and for the proper application and payment of all money or property coming into his or her hands by virtue of his or her office, in the following amounts:

- (a) City treasurer - \$100,000.00;
- (b) City administrator - \$50,000.00;
- (c) City clerk - \$50,000.00;
- (d) Building official - \$50,000.00;
- (e) Municipal court clerk - \$50,000.00.

(Code 1983, § 1-318; Code 2008, § 1-3A04; Ord. No. 2, § 6; Ord. No. 674; Ord. No. 1026, § 3(1-3A03), 5-12-2022)

State law reference—K.S.A. 78-111.

1-3A05 Surety Bonds; Premiums

All premiums on surety bonds shall be paid by the city out of the general fund.

(Code 1970, § 1-304; Code 1993, § 1-319; Code 2008, § 1-3A05; Ord. No. 1026, § 3(1-3A04), 5-12-2022)

1-3A06 Surety Bonds; Approval

All surety bonds given to the city shall be approved as to their form by the city attorney and as to their sufficiency by the governing body unless otherwise provided by the laws of the state. However, this provision shall not apply to appearance bonds for municipal court cases which have been ordered or approved by the judge and the municipal court.

(Code 1970, § 1-305; Code 1993, § 1-320; Code 2008, § 1-3A06; Ord. No. 1026, § 3(1-3A05), 5-12-2022)

1-3A07 Surety Bonds; Filing

All surety bonds shall be filed with the city clerk except the city clerk's bond which shall be filed with the city treasurer.

(Code 1970, § 1-306; Code 1993, § 1-321; Code 2008, § 1-3A07; Ord. No. 1026, § 3(1-3A06), 5-12-2022)

1-3A08 Blanket Bond

The governing body may provide for the coverage by blanket bond of such officers and employees and in such amounts as the governing body may, by resolution, designate.

(Code 1970, § 1-307; Code 1993, § 1-322; Code 2008, § 1-3A08; Ord. No. 1026, § 3(1-3A07), 5-12-2022)

ARTICLE 4 INVESTMENT OF PUBLIC FUNDS

1-401 Authority To Invest

1-402 Income From Investments

1-401 Authority To Invest

- (a) Public monies or funds of the city which are not immediately required for the purposes for which the monies were collected or received, and the investment of which is not subject to or regulated by other Kansas General Laws, may be invested in all investments prescribed by K.S.A. 12-1675 and amendments thereto.
- (b) The governing body shall, from time to time, adopt policies that will describe which investments may be purchased with temporarily idle funds of the city; provided, however, that no policy shall allow an investment that is contrary to the provisions of K.S.A. 12-1675 and amendments thereto or any other state statute.

(Ord. No. 1026, § 4(1-401), 5-12-2022)

1-402 Income From Investments

The interest and other earnings from investments made pursuant to this article shall be credited to the general fund of the city and shall be used, insofar as possible, to relieve the ad valorem tax levies of the city. A complete and detailed record of all investments made pursuant to this article shall be maintained at all times. The provisions of this section shall not apply where the credit and allocation is prohibited by state or federal statutes or law; provided, however, all interest earned from the investment of the solid waste management fund at the city shall be returned to the fund to reduce any special assessments to participants who receive solid waste collection service from the city.

(Ord. No. 1026, § 4(1-402), 5-12-2022)

ARTICLE 5 PERSONNEL POLICY AND EMPLOYEE BENEFITS

1-501 Personnel Policies And Guidelines

1-502 Social Security

1-503 (Reserved)

1-504 Compensation

1-501 Personnel Policies And Guidelines

The city will promulgate administratively a personnel policy, which shall be adopted by resolution and provided to all employees.

(Code 2008, § 1-501; Ord. No. 1026, § 5(1-501), 5-12-2022)

1-502 Social Security

Ordinance No. 308 passed by the governing body of the city and signed by the mayor on January 12, 1961, which ordinance extends the benefits of the Social Security Act to the city employees, is incorporated by reference herein and made a part thereof as if the same had been set out in full herein.

(Code 1993, § 1-501; Code 2008, § 1-502; Ord. No. 308; Ord. No. 1026, § 5(1-502), 5-12-2022)

State law reference—K.S.A. 40-2301.

1-503 (Reserved)

1-504 Compensation

The salary ranges of employee held offices shall be fixed by resolution and the compensation of nonemployee-held offices shall be fixed by agreement.

(Code 1983; Code 2008, § 1-504; Ord. No. 1026, § 5(1-503), 5-12-2022)

ARTICLE 6 OPEN RECORDS

[1-601 Policy](#)

[1-602 Record Custodians](#)

[1-603 Local Freedom Of Information Officers](#)

[1-604 Public Request For Access](#)

[1-605 Facilities For Public Inspection](#)

[1-606 Procedures For Inspection](#)

[1-607 Appointment Of Official Custodians](#)

[1-608 Designation Of Additional Record Custodians](#)

[1-609 Appointment Of Local Freedom Of Information Officer](#)

[1-610 Requests To Be Directed To Custodians](#)

[1-611 Fee Administration](#)

[1-612 Fees To Be Charged](#)

[1-613 Fees](#)

[1-614 Prepayment Of Fees](#)

[1-615 Payment](#)

1-601 Policy

- (a) It is hereby declared to be the policy of the city that all public records which are made, maintained or kept by or are in the possession of the city, its officers and employees, shall be open for public inspection as provided by, and subject to the restrictions imposed by, the Kansas Open Records Act.
- (b) Any person, upon request, shall have access to such open public records for the purpose of inspecting, abstracting or copying such records while they are in the possession, custody and control of the appointed or designated record custodian thereof, or his or her designated representative.

(Code 1993; Code 2008, § 1-601)

1-602 Record Custodians

- (a) All city officers and employees appointed or designated as record custodians under this article shall protect public records from damage and disorganization; prevent excessive disruption of the essential functions of the city; provide assistance and information upon request; ensure efficient and timely action and response to all applications for inspection of public records; and shall carry out the procedures adopted by this city for inspecting and copying open public records.
- (b) The official custodian shall prominently display or distribute or otherwise make available to the public a brochure in the form prescribed by the local freedom of information officer that contains basic information about the rights of a requester, the responsibilities of a public agency, and the procedures for inspecting or obtaining a copy of public records under the Kansas Open Records Act. The official custodian shall display or distribute or otherwise make available to the public the brochure at one or more places in the administrative offices of the city where it is available to members of the public who request public information in person.

(Code 2008, § 1-602)

1-603 Local Freedom Of Information Officers

The local freedom of information officer shall:

- (a) Prepare and provide educational materials and information concerning the Kansas Open Records Act;
- (b) Be available to assist the city and members of the general public to resolve disputes relating to the Kansas Open Records Act;
- (c) Respond to inquiries relating to the Kansas Open Records Act;
- (d) Establish the requirements for the content, size, shape and other physical

characteristics of a brochure required to be displayed or distributed or otherwise made available to the public under the Kansas Open Records Act. In establishing such requirements for the content of the brochure, the local freedom of information officer shall include plainly written basic information about the rights of a requester, the responsibilities of the city, and the procedures for inspecting and obtaining a copy of public records under the Act.

(Code 2008, § 1-603)

1-604 Public Request For Access

All city offices keeping and maintaining open public records shall establish office hours during which any person may make a request for access to an open public record. Such hours shall be no fewer than the hours each business day the office is regularly open to the public. For any city office not open Monday through Friday, hours shall be established by the record custodian for each such day at which time any person may request access to an open public record.

(Code 1993, § 1-603; Code 2008, § 1-604)

1-605 Facilities For Public Inspection

All city offices keeping and maintaining open public records shall provide suitable facilities to be used by any person desiring to inspect and/or copy an open public record. The office of the city clerk, being the principal recordkeeper of the city, shall be used as the principal office for providing access to and providing copies of open records to the maximum extent practicable. Requesters of records shall be referred to the office of the city clerk except when the requested records are not in that office and are available in another city office.

(Code 1993, § 1-603; Code 2008, § 1-605)

1-606 Procedures For Inspection

Any person requesting access to an open public record for purposes of inspecting or copying such record, or obtaining a copy thereof, shall abide by the procedures adopted by the governing body for record inspection and copying, including those procedures established by record custodians as authorized by the governing body. Such procedures shall be posted in each city office keeping and maintaining open public records.

(Code 1993, § 1-605; Code 2008, § 1-606)

1-607 Appointment Of Official Custodians

The following city officers are hereby appointed as official custodians for purposes of

the Kansas Open Records Act and are hereby charged with responsibility for compliance with that Act with respect to the hereinafter listed public records:

- (a) *City clerk*. All public records kept and maintained in the city clerk's office and all other public records not provided for elsewhere in this section.
- (b) *City treasurer*. All public records not on file in the office of the city clerk and kept and maintained in the city treasurer's office.
- (c) *Chief of police*. All public records not on file in the office of the city clerk and kept and maintained in the city police department.
- (d) *City attorney*. All public records not on file in the office of the city clerk and kept and maintained in the city attorney's office.
- (e) *Clerk of the municipal court*. All public records not on file in the office of the city clerk and kept and maintained in the municipal court.

(Code 1993, § 1-606; Code 2008, § 1-607)

1-608 Designation Of Additional Record Custodians

- (a) Each of the official custodians appointed in WCC 1-607 are hereby authorized to designate any subordinate officers or employees to serve as record custodian. Such record custodians shall have such duties and powers as are set out in the Kansas Open Records Act.
- (b) Whenever an official custodian shall appoint another person as a record custodian, he or she shall notify the city clerk of such designation and the city clerk shall maintain a register of all such designations.

(Code 1993, § 1-607; Code 2008, § 1-608)

1-609 Appointment Of Local Freedom Of Information Officer

The city clerk is hereby appointed as the local freedom of information officer and charged with all of the duties as set forth in WCC 1-603.

(Code 2008, § 1-609)

1-610 Requests To Be Directed To Custodians

- (a) All members of the public, in seeking access to, or copies of, a public record in accordance with the provisions of the Kansas Open Records Act, shall address their requests to the custodian charged with responsibility for the maintenance of the record sought to be inspected or copied.
- (b) Whenever any city officer or employee appointed or designated as a custodian

under this article is presented with a request for access to, or copy of, a public record which record the custodian does not have in his or her possession and for which he or she has not been given responsibility to keep and maintain, the custodian shall so advise the person requesting the record. Further, the person making the request shall be informed as to which custodian the request should be addressed to, if such is known by the custodian receiving the request.

(Code 1993, § 1-609; Code 2008, § 1-610)

1-611 Fee Administration

The city clerk is hereby authorized to provide the clerk's office, and the office of each record custodian, with sufficient cash to enable the making of change for record fee purposes. Each custodian shall transmit all record fee monies collected to the city treasurer not less than monthly. Each custodian shall maintain duplicates of all records and copy request forms, completed as to the amount of fee charged and collected, which amounts shall be periodically audited by the clerk and/or finance officer and treasurer of the city.

(Code 1993, § 1-610; Code 2008, § 1-611)

1-612 Fees To Be Charged

When a request has been made for inspection of any public record or any record to which the requestor may by law have access, a fee shall be charged as established by the governing body.

(Ord. No. 827, § 1; Code 2008, § 1-612; Ord. No. 1026, § 6(1-612), 5-12-2022)

1-613 Fees

Fees for the inspection or copying of any record of the city shall be adopted from time to time by resolution of the governing body and listed in the city's master fee schedule.

1-614 Prepayment Of Fees

- (a) A record custodian may demand prepayment of the fees established by this article whenever he or she believes this to be in the best interest of the city. The prepayment amount shall be an estimate of the inspection and/or copying charges accrued in fulfilling the record request. Any overage or underage in the prepayment shall be settled prior to inspection of the requested record or delivery of the requested copies.
- (b) Prepayment of inspection and/or copying fees shall be required whenever, in the best estimate of the record custodian, such fees are estimated to exceed \$50.00.

- (c) Where prepayment has been demanded by the record custodian, no record shall be made available to the requester until such prepayment has been made.

(Code 1993, § 1-613; Code 2008, § 1-614; Ord. No. 1026, § 6(1-613), 5-12-2022)

1-615 Payment

All fees charged under this article shall be paid to the custodian of the records inspected and/or copied unless the requester has established an account, for purposes of billing and payment, with the city.

(Code 1993, § 1-614; Code 2008, § 1-615; Ord. No. 1026, § 6(1-614), 5-12-2022)

ARTICLE 7 EMERGENCY PREPAREDNESS

1-701 Definitions

1-702 Emergency Proclamation; Action

1-703 Emergency Proclamation; Effective Upon Issuance

1-704 Emergency Proclamation; Termination

1-705 Emergency Proclamation; Violation, Penalty

1-706 Adopting The County Emergency Operations Plan

1-707 Adopting The National Incident Management System

1-701 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Disaster means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, earthquake, wind, storm, epidemics, pandemics, air contamination, blight, drought, infestation, explosion, or riot.

(Ord. No. 1008, § 1, 3-26-2020)

1-702 Emergency Proclamation; Action

Whenever, in the judgment of the mayor or in the event of his or her inability to act, the president of the council determines that an emergency exists as a result of a public or natural disaster, or other civil disobedience causing danger of injury or damages to persons or property, he or she shall have power to impose by proclamation any or all of the following regulations necessary to preserve the health, safety, peace and order of the city:

- (a) To impose a curfew upon all or any portion of the city requiring all persons in such designated curfew areas to remove themselves from the public streets,

alleys, parks or other public places or buildings; provided, however, that physicians, nurses and ambulance operators performing medical services, utility personnel maintaining essential public services, firefighters, city authorized or requested law enforcement officers and personnel, and such other individuals and/or individuals performing specified activities may be exempted from such curfew;

- (b) To order the closing of any public buildings and business establishments anywhere within the city for the period of the emergency, such businesses to include, but not be limited to, those selling intoxicating liquors, cereal malt beverages, gasoline or firearms;
- (c) To designate any public street, thoroughfare or vehicle parking areas closed to motor vehicles and pedestrian traffic;
- (d) To call upon regular and auxiliary law enforcement, peacekeeping and/or public safety agencies and organizations within or without the city to assist in preserving and keeping the peace, and to ensure the public health, safety and welfare within the city.

(Ord. No. 1008, § 2, 3-26-2020)

1-703 Emergency Proclamation: Effective Upon Issuance

The proclamation of emergency provided in this article shall become effective upon its issuance and publication on the city's website and further dissemination to the public by appropriate news media or other outlets designated for informing the general public.

(Ord. No. 1008, § 3, 3-26-2020)

1-704 Emergency Proclamation: Termination

Any emergency proclaimed in accordance with the provisions of this article shall terminate after seven days from the issuance thereof, or upon the issuance of a proclamation determining an emergency no longer exists, whichever occurs first; provided, however, that such emergency may be extended for such additional periods of time as determined necessary by resolution of the governing body.

(Ord. No. 1008, § 4, 3-26-2020)

1-705 Emergency Proclamation: Violation, Penalty

Any person who willfully fails or refuses to comply with the orders of duly authorized law enforcement officers or personnel charged with the responsibility of enforcing the proclamation of emergency authorized in this article shall be guilty of a misdemeanor, and, upon conviction therefor, shall be punished by a fine of not more than \$500.00 or by imprisonment in jail for a period of not to exceed six months, or by both such fine and

imprisonment.

(Ord. No. 1008, § 5, 3-26-2020)

1-706 Adopting The County Emergency Operations Plan

The city hereby adopts the county emergency operations plan, as may be amended by the county, from time to time, as the emergency operation plan of the city.

(Ord. No. 1008, § 6, 3-26-2020)

1-707 Adopting The National Incident Management System

The city hereby additionally adopts the National Incident Management System, as the same may be amended from time to time by the U.S. Department of Homeland Security, to the extent it is not inconsistent with the county emergency operations plan.

(Ord. No. 1008, § 7, 3-26-2020)

CHAPTER 2 ANIMAL CONTROL AND REGULATION

ARTICLE 1 ANIMALS AND FOWL GENERALLY

ARTICLE 2 DOGS AND CATS

ARTICLE 3 (RESERVED)

ARTICLE 4 BEES

ARTICLE 5 ANIMAL NUISANCES

ARTICLE 6 OTHER ANIMALS

ARTICLE 1 ANIMALS AND FOWL GENERALLY

2-101 Definitions

2-102 Cruelty To Animals

2-103 Cruelty To Animals; Exceptions

2-104 Keeping Animals

2-105 Animal Traps

2-106 Animal Confines; Shelters

2-107 (Reserved)

2-108 Vicious Animals

2-109 (Reserved)

2-110 Impoundment; Fee; Notice; Record

2-111 Redemption Of Impounded Animals

2-112 Impoundment Of Rabies Suspects

2-113 Animals Bitten By Rabid Animals

2-114 Animal Control Officer; Authority To Impound; Citation Alternative

2-115 Animal Control Officer; Capture/Destruction

2-116 Animal Control Officer; Right Of Entry; Unlawful Interference

2-117 Vehicular Accidents Involving Animals

2-118 Emergency; Proclamation

2-119 Death Of Animals

2-120 Municipal Pound Established

2-121 Breaking Pound

2-101 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandon includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.

Animal shelter means the facility operated by the city or its authorized agents or an authorized service provider for the purpose of impounding, adopting or caring for any seized, stray, homeless, relinquished or abandoned animals under the authority of this chapter or state law.

Animals means all vertebrate and invertebrate animals, such as, but not limited to, bovine cattle, horses and other equines, hogs, goats, dogs, cats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, bees or birds that have been tamed, domesticated or captivated.

At large means to be outside of a fence or other enclosure which restrains the animals to a particular premises or not under the control, by leash or lead, of the owner or other authorized person capable of restraining the animal. Animals tethered to a stationary object within range of public thoroughfares are deemed to be at large.

Bite means any actual or suspected abrasion, scratch, puncture, tear, bruise, or piercing of the skin, caused by the teeth of any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

Cat means any member of the species felis catus, regardless of sex.

Dog means any member of the species canis familiaris, regardless of sex.

Fowl means all animals that are included in the zoological class aves, which shall include, but not be limited to, chickens, ducks, geese, turkeys, guineas and pigeons. Generally excepting parrots, parakeets and similar birds commonly kept as pets.

Harbor means the act of allowing any animals to habitually remain or lodge or to be fed within one's home, store, yard, enclosure or place of business or any other premises where one resides or controls.

Harborer means any person who shall engage in or allow the act of harboring within any premises where he or she resides or that is within his or her control.

Impoundment means taking an animal into the confinement, care, or custody of the city or its designated animal control entity, including, but not limited to, the municipal pound as designated herein.

Kennel means any establishment, commercial or otherwise, maintained for breeding, rearing, grooming, boarding, or otherwise harboring in an enclosure in one location only, more than five dogs or five cats.

Livestock includes, but is not limited to, cattle, horses, goats, sheep or other animals commonly regarded or used as farm or ranch animals.

Neutered means any male or female cat or dog that has been permanently rendered sterile.

Own means and includes own, keep, harbor, shelter, manage, possess, or have a part interest in any animal. If a minor owns any such animal subject to the provisions of this

chapter, the head of the household of which such minor is a member shall be deemed to own such animal for the purposes of this chapter.

Owner means the one who owns, or his or her employee, agent, or other competent person into whose charge an animal has been placed by the actual owner as described in the definition for the term "own."

Vaccination means an injection of a vaccine, approved by the state department of health and environment and administered by a licensed veterinarian for the purpose of immunizing an animal against rabies.

Veterinarian means a doctor of veterinary medicine currently and validly licensed by the state.

(Code 2008, § 2-101; Ord. No. 999, § 1(2-101), 12-13-2018)

2-102 Cruelty To Animals

It shall be unlawful for any person to:

- (a) Willfully or maliciously kill, maim, disfigure, torture; beat with a stick, chain, club or other object; mutilate, poison, burn or scald with any substance; or otherwise cruelly set upon any animals, except that reasonable force may be employed to drive off vicious animals;
- (b) Drive or work any animal cruelly or cruelly work any maimed, mutilated, infirm, sick or disabled animal, or cause, allow or permit the same to be done;
- (c) Have, keep or harbor any animal which is infected with any dangerous or incurable and/or painfully crippling condition except as provided in WCC 2-103;
- (d) Promote, stage, hold, manage, or in any way conduct any game, exhibition, contest or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves or any other animal;
- (e) Neglect or refuse to supply such animal with necessary and adequate care necessary for health and well-being of such kind of animal. For purposes of this section, necessary and adequate care shall be defined to include the normal and prudent attention to the needs of an animal, including that care which is normally necessary to maintain good health in a specific species of animal, which includes, but is not limited to:
 - (1) Provision of adequate food, including wholesome foodstuffs suitable for the species provided at suitable intervals in a sanitary manner in quantities sufficient to maintain good health in an animal considering its age and condition;
 - (2) Provision of adequate health care, including the provision to each

healthy animal of all immunizations and preventive care required to maintain good health; space adequate to allow the animal rest and exercise sufficient to maintain good health; and the provision to each sick, diseased or injured animal of necessary veterinary care or humane death;

- (3) Provision of adequate shelter, including a structurally sound, properly ventilated, sanitary and weatherproof shelter suitable for the species, conditions and age of the animal which provides access to shade from direct sunlight and regress from exposure to inclement weather condition; and
- (4) Provision of adequate water, including continual access to or access at suitable intervals to a supply of clean, fresh, potable water provided in a sanitary manner suitable for the species, condition and age of the animal in sufficient amounts to maintain good health in the animal;
- (f) Abandon or leave any animal in any place without making provisions for its proper care;
- (g) These provisions shall not apply to the exceptions sanctioned under WCC 2-103;
- (h) By any means to make accessible to any animal, with the intent to cause harm or death, any substance which has in any manner been treated or prepared with harmful or poisonous substances;
- (i) To leave any unattended animal confined in a vehicle for more than five minutes without heat or air conditioning in extreme weather conditions, defined as less than 30 degrees Fahrenheit or more than 80 degrees Fahrenheit.

In addition to the penalties provided in WCC 1-116, the municipal court judge may order a person convicted of violation under this section to turn the animal involved over to a designated humane society. All such animals taken by the designated agency may be placed with another or more suitable person or destroyed humanely as soon thereafter as is conveniently possible.

(Code 2008, § 2-102; Ord. No. 999, § 1(2-102), 12-13-2018)

2-103 Cruelty To Animals; Exceptions

The provisions of WCC 2-102 shall not apply to:

- (a) Normal or accepted veterinary or veterinary hospital practices or treatment of animals under active veterinary care;
- (b) Bona fide experiments carried on by commonly recognized research facilities;

- (c) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas Statutes Annotated;
- (d) The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or by an authorized agent such as a licensed veterinarian, at the request of the owner;
- (e) The humane killing of an animal by the animal control officer or a law enforcement officer in the performance of his or her official duty;
- (f) The humane killing of an unclaimed animal after three full business days following the receipt of such animal at a municipal pound or an incorporated humane society shelter by the owner, operator or authorized agents of such establishments;
- (g) Normal or accepted practices of pest control, as defined in K.S.A. 2-2438a(x), and amendments thereto.

(Code 2008, § 2-103; Ord. No. 999, § 1(2-103), 12-13-2018)

2-104 Keeping Animals

It shall be unlawful for the owner, lessee, occupant or person in charge of any premises in the city to possess and maintain any animal or fowl within the city or permit to be maintained thereon any stable, shed, pen or other place where horses, mules, cattle, sheep, goats or swine, or undomesticated animals are kept. This section shall not apply to:

- (a) The maintaining of dogs which are regulated by article 2 of this chapter;
- (b) The maintaining of non-poisonous and non-vicious animals and fowl which are commonly kept as household pets, such as cats, hamsters, rabbits, parakeets, fish, and comparable animals, when kept as household pets and in a safe and sanitary manner in accordance with WCC 2-113;
- (c) The transporting of animals through the city by ordinary and customary means.

(Code 2008, § 2-104; Ord. No. 999, § 1(2-104), 12-13-2018)

2-105 Animal Traps

It shall be unlawful for any person to use, place, set out, or deploy any animal trap above ground, which makes use of a spring gun, spring jaws, clamping devices, cutting or stabbing mechanism or any other devices that will damage or severely injure any animal when caught or trapped by the device or trap. Nothing herein contained shall prohibit the use of animal traps that are so designed to trap and hold animals without

injuring the animals. This section shall not apply to the use of any trap specifically designed to kill rats, mice, gophers, moles, or vermin of significance to the public health.

(Code 2008, § 2-105; Ord. No. 999, § 1(2-105), 12-13-2018)

2-106 Animal Confines; Shelters

- (a) It shall be unlawful for any person to keep or maintain any animal in any yard, structure or area that is not clean, dry and sanitary, free from debris and odors likely to offend a person of reasonable sensitivities, and devoid of rodents and vermin.
- (b) Excrement shall be removed at least daily from any animal shelter, pen or yard area where animals are kept, or more often if necessary to prevent or control odors, fly breeding, or rodent infestation. If excrement is stored on the premises by any animal owner, it shall be stored in adequate containers with flytight lids, and all such stored or accumulated wastes shall be disposed of at least once each week.
- (c) All animal shelters, pens and yards shall be so located that adequate drainage is obtained, normal drying occurs, and standing water is not present.
- (d) All animal shelters and board fences confining animals shall be maintained in good repair, and all animal shelters and board fences confining animals subject to residential and commercial classification shall be protected from deterioration by painting or comparable treatment.
- (e) Barbed wire fences and electrically charged fences, except invisible pet fences, shall not be permitted for animal confines.
- (f) All premises on which animals are kept shall be subject to inspection by the animal control officer, duly authorized law enforcement officer, or public health official. If the officer or official determines from such inspection that the premises are not being maintained in a clean and sanitary manner, he or she shall notify the owner of the animals in writing to correct the sanitation deficiencies within 24 hours after notice is served on the owner. Any animal kept under any condition which could endanger the public or animal health or create a health nuisance may be impounded. Animals shall be released after fees are paid and cause for impoundment has been corrected.

(Code 2008, § 2-106; Ord. No. 999, § 1(2-106), 12-13-2018)

2-107 (Reserved)

2-108 Vicious Animals

(a) *Prohibited.* It shall be unlawful for any person to keep, possess or harbor a vicious animal within the city. Impoundment of animals whose owners have been cited for violation of this section shall be at the discretion of the animal control officer, if he or she reasonably believes said animal to be dangerous to the public health, welfare, or safety.

(b) *Defined.* For purposes of this chapter, the term "vicious animal" shall include:

- (1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
- (2) Any animal which attacks a human being or domestic animal without provocation;
- (3) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting;
- (4) Any animal which is urged by its owner or harborer to attack, or whose owner or harborer threatens to provoke such animal to attack, any law enforcement officer while such officer is engaged in the performance of official duty.

(c) *Complaint.* Whenever a sworn complaint is filed in the municipal court against the owner of an animal alleging that such animal is vicious and in violation of this section, the municipal judge shall hold a hearing to determine whether or not the animal is vicious within the meaning of this section and thereby in violation of this section. The owner of the animal shall be notified in writing of the time and place of the hearing at least one week prior to the hearing. In making a determination, the municipal judge shall consider the following:

- (1) The seriousness of the attack or bite;
- (2) Past history of attacks or bites;
- (3) Likelihood of attacks or bites in the future;
- (4) The condition and circumstances under which the animal is kept or confined;
- (5) Other factors which may reasonably relate to the determination of whether or not the animal is vicious.

The municipal judge may order the impoundment of the animal, and/or the removal of the animal from the city. If such impoundment, or removal from the city is not possible or if prior court orders to restrain such animal have gone unheeded, the municipal judge may order the animal immediately destroyed.

(d) *Vicious dogs to be muzzled.* It shall be the duty of every owner, keeper or harborer of any dog in the city, which dog is vicious or has been known to bite,

chase, or run after any person or animal in the streets, alleys, or any public place in the city, to keep the same muzzled with a good and sufficient wire or leather muzzle, securely fastened so as to wholly prevent such dog from biting any animal or person until such time as a determination has been made by the court as to whether the dog is vicious or not. Any person owning, keeping or harboring any dog within the city limits contrary to this section shall be guilty of a violation of this Code.

- (e) *Immediate destruction.* Nothing in this chapter shall be construed to prevent the animal control officer or any law enforcement officer from taking whatever action is reasonably necessary to protect himself or herself or members of the public from injury or danger, including immediate destruction of any vicious animal without notice to the owner.
- (f) *Release of.* If a complaint has been filed in the municipal court against the owner of an impounded animal for a charge under this section, the animal shall not be released except on the order of the municipal judge, who may also direct the owner to pay all impounding fees in addition to any penalties for violation of this chapter. The municipal judge may, upon making a finding that an animal is vicious or that it represents a clear and present danger to the citizens or to other animals in the community, order the animal to be destroyed in a humane manner by the animal shelter. Surrender of an animal by the owner thereof to the animal control officer does not relieve or render the owner immune from the decision of the court, nor to the fees and fines which may result from a violation of this section.
- (g) *Confinement; destruction; removal by judge.* The municipal court judge shall have the authority to order any animal deemed to be dangerous or vicious to be confined, destroyed or permanently removed from the corporate city limits.

(Code 2008, § 2-108; Ord. No. 999, § 1(2-108), 12-13-2018; Ord. No. 1027, § 1, 5-12-2022)

2-109 (Reserved)

2-110 Impoundment; Fee; Notice; Record

- (a) The animal control officer shall impound any animal found at-large in the city or constituting a nuisance or otherwise in violation of this chapter in a suitable pound or enclosure provided or contracted for by the city. The impounding officer shall make diligent inquiry as to the owner of the animal and shall notify the owner thereof of such impoundment as soon as reasonably possible.
- (b) In case the identity of the owner of the impounded animal cannot be ascertained, the animal control officer or law enforcement officer shall, upon taking any such animal into custody and impounding the same, make a record thereof, with a description of the animal and the date and place taken into

custody and the place of impounding.

- (c) The city and/or the municipal pound shall be entitled to charge a fee for impoundment, together with any other fees or charges for feeding and maintaining any impounded animal.

(Code 2008, § 2-110; Ord. No. 999, § 1(2-110), 12-13-2018)

2-111 Redemption Of Impounded Animals

At any time before the sale or destruction of any animal impounded under the provisions of this article, except for animals impounded under WCC 2-108 and 2-112, the owner thereof may redeem the animal by paying the animal control officer or any person in charge, the impounding fee and all costs incurred as a result of such impoundment.

(Code 2008, § 2-111; Ord. No. 999, § 1(2-111), 12-13-2018)

2-112 Impoundment Of Rabies Suspects

- (a) Any animal control officer may take up, upon private or public property, any animal which has bitten or scratched a person or other animal and impound the animal in the city pound, securely penned and separated from other animals, or in a veterinary hospital or animal care facility for a period of not more than 30 days during which time the veterinarian or animal care facility officer shall determine whether or not such animal is suffering from rabies and, if not, the veterinarian or animal care facility officer shall authorize the release of the animal upon payment by the owner of the boarding fee therefor. The veterinarian or animal care facility officer may authorize the keeping of any such animal on the owner's premises if the owner produces a rabies vaccination certificate showing that the animal has valid rabies vaccination protection. Impoundment costs shall be borne by the owner. If in the opinion of the local veterinarian or animal care facility officer symptoms develop justifying a microscopic examination, then the animal shall be humanely euthanized and examination made by the state department of health and environment.
- (b) In lieu of the provisions of subsection (a) of this section, the owner of any such animal may, at his or her own expense, take such animal to any duly qualified and licensed veterinarian in the city for observation. Such veterinarian shall report his or her findings in writing to the local animal control officer. If in the opinion of such veterinarian a microscopic examination is justified, then the animal shall be turned over to the animal control officer to be humanely euthanized and examination made by the state department of health and environment.
- (c) Any animal desired for observation by the veterinarian or animal care facility officer under this section shall be delivered to the animal control officer upon

demand and shall not be withheld, hidden or harbored. Any person violating this provision shall be guilty of a violation of this Code. Upon refusal of any person to so deliver such animal, the municipal judge shall cause a warrant to be issued for the arrest of such person, which warrant shall also provide for the surrender of the animal and shall be lawful authority for the apprehending and forcible taking of such animal.

(Code 2008, § 2-112; Ord. No. 999, § 1(2-112), 12-13-2018)

2-113 Animals Bitten By Rabid Animals

Whenever a dog, cat or other animal is bitten by a rabid animal or an animal later proved to have been rabid, it shall be the duty of the owner of the animal that is bitten, to report that fact to the animal control officer and/or the police department. It shall also be the duty of the owner of the bitten animal to either destroy or have his or her bitten animal destroyed unless:

- (a) The animal which was bitten had been vaccinated against rabies at least three weeks before being bitten and has a current vaccination; and
- (b) If the bitten animal has a current vaccination, it shall be confined for 90 days; and
- (c) The bitten animal shall be released from confinement only upon written order from the local veterinarian or animal care facility officer, who declares the animal to be free of rabies; and
- (d) If the animal is found to have contracted rabies during confinement, it shall be properly disposed of.

(Code 2008, § 2-113; Ord. No. 999, § 1(2-113), 12-13-2018)

2-114 Animal Control Officer; Authority To Impound; Citation Alternative

- (a) There is hereby created the position of animal control officer for the city and such officer shall be charged with the enforcement of this chapter. The city may provide for the designation of the position of animal control officer through an appropriate interlocal agreement providing for the delegation of some or all of the duties of the animal control officer. Any person designated by the city as an animal control officer shall have such powers and authority as allowed by law in the enforcement of this chapter. Such animal control officers shall not have authority to issue municipal court citations for violation of this chapter which authority is reserved to law enforcement officers employed by the city.
- (b) Animal control officers in enforcing this chapter may:
 - (1) Take up and impound all animals found in the city in violation of the

provisions of this chapter;

- (2) Enter without a warrant upon private property to regulate or prohibit the running at large of any animal or the creation of an animal nuisance where such animal is found in plain sight, other than in a residence structure, and to seize such animal from said private property;
 - (3) Enter without a warrant upon private property to apprehend a dangerous animal, a wild creature, or an animal suspected of being infected with rabies where such animal is found in plain sight, other than in a residential structure, and to seize such animal from said property;
 - (4) Enter upon private property to investigate cruelty to animals; and
 - (5) Destroy, without notice, any animal that is dangerous, fierce or vicious; suspected of being infected with rabies, distemper or other zoonotic disease that presents an immediate danger to the public health and safety; or that is injured severely with no apparent chance of survival or in such pain as to warrant humane destruction.
- (c) Law enforcement officers of the city may issue a citation to the owner, harborer or keeper of an animal in violation of this chapter, and the person receiving the citation shall appear in the municipal court of the city to answer the charged violation of this chapter. In exercising such citation authority, law enforcement officers may exercise such powers of animal control officers identified in subsection (b) of this section incident to and necessary to the exercise of such citation authority.

(Code 2008, § 2-114; Ord. No. 999, § 1(2-114), 12-13-2018)

2-115 Animal Control Officer: Capture/Destruction

When deemed necessary by the animal control officer for the health, safety and welfare of the residents of the city, such officers and/or their agents may:

- (a) Place a humane trap on public or a requesting resident's property for the purpose of capturing any animal defined in this chapter as creating a nuisance in the city;
- (b) Use any tranquilizer guns, humane traps, or other suitable devices to subdue and capture any animal that is deemed by the animal control officer, in his or her discretion, to be of a danger to itself or to the public health and safety;
- (c) Use firearms or other suitable weapons to destroy any rabid animal as defined in WCC 2-112, any vicious animal as defined in WCC 2-108, or any animal creating a nuisance as defined in WCC 2-502, where such animal is impossible or impractical to catch, capture or tranquilize, or whenever any animal poses a danger to persons, other animals, or property.

(Code 2008, § 2-115; Ord. No. 999, § 1(2-115), 12-13-2018)

2-116 Animal Control Officer; Right Of Entry; Unlawful Interference

- (a) The animal control officer or any law enforcement officer shall have the right of entry upon any private unenclosed lots or lands for the purpose of collecting any animal whose presence thereupon is a violation of this chapter.
- (b) It shall be unlawful for any person to interfere with the animal control officer in the exercise of his or her duties.
- (c) Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the animal control officer or any law enforcement officer has reasonable cause to believe that there exists in any building or upon any premises any condition or violation which creates an unsafe, dangerous or hazardous condition, the animal control officer or law enforcement officer may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the animal control officer or law enforcement officer by this chapter, provided that if such building or premises be occupied, such officer shall first present proper credentials and request entry; and if such building or premises be unoccupied, such officer shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the animal control officer or law enforcement officer shall seek and obtain a search warrant prior to making entry. When the animal control officer or law enforcement officer shall have first obtained a proper search warrant to secure entry, no owner or occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the animal control officer or law enforcement officer for the purpose of inspection and examination pursuant to this chapter.

(Code 2008, § 2-116; Ord. No. 999, § 1(2-116), 12-13-2018)

2-117 Vehicular Accidents Involving Animals

Any person who as the operator of a motor vehicle strikes any animal shall stop at once and shall immediately report such injury or death to the owner of such animal, or in the event that the owner cannot be ascertained, and located, the operator shall at once report the accident to the animal control officer or any law enforcement officer.

(Code 2008, § 2-117; Ord. No. 999, § 1(2-117), 12-13-2018)

2-118 Emergency; Proclamation

The chief of police is hereby authorized whenever in his or her opinion the danger to the public safety from rabid animals is made imminent to issue a proclamation ordering all persons owning any animal in the city to confine the animal in a good and sufficient

enclosure from which the animal cannot escape, or fasten such animal by means of a chain on the premises where the owner may reside, for such time as may be specified in such proclamation. Any animal not confined during such time may be disposed of wherever found by any police officer, or the animal control officer of the city. The owner of such animal may be prosecuted for such violation thereof.

(Code 1993, § 2-122; Code 2008, § 2-118; Ord. No. 599, § 12; Ord. No. 999, § 1(2-118), 12-13-2018)

2-119 Death Of Animals

All dead animals shall be disposed of by the owner or keepers within 24 hours of the animal's death, by burial, by incineration in a facility approved by the animal control officer, by rendering or by other lawful means approved by the animal control officer. No dead animal shall be dumped on any public or private property.

(Code 2008, § 2-119; Ord. No. 999, § 1(2-119), 12-13-2018)

2-120 Municipal Pound Established

A facility will be designated for use by the city's contractor or subcontractor for animal control services. Such a facility or pound may be operated under the authority of a contract with the city by a contractor or sub-contractor and all services required herein may be provided by a contractor or sub-contractor. When so contracted, the pound shall have the following services and facilities as a minimum:

- (a) Adequate pickup and impounding of all stray and ownerless dogs and cats and animals otherwise in violation of the provisions of this chapter.
- (b) Group holding facilities for stray, ownerless and unvaccinated animals impounded for violation of the provisions of this chapter.
- (c) Individual isolation facilities for sick, biting, rabid and suspected rabid animals.
- (d) Facilities for the humane destruction of animals.

(Code 2008, § 2-120; Ord. No. 999, § 1(2-120), 12-13-2018)

2-121 Breaking Pound

- (a) It shall be unlawful for any unauthorized person to open, unlock, break open or attempt to break open the pound, or to take or let out any animal placed therein, or take or attempt to take from an authorized officer of this city any animal taken up by him or her under the provisions of this chapter, or in any manner interfere with or hinder any authorized officer or employee of this city in catching, taking up, or impounding any animal.
- (b) It shall be unlawful for any person, other than those duly authorized, to care for,

feed, attempt to feed, or interfere in any way with the care of impounded animals.

(Code 2008, § 2-121; Ord. No. 999, § 1(2-121), 12-13-2018)

ARTICLE 2 DOGS AND CATS

2-201 Vaccination Required

2-202 (Reserved)

2-203 (Reserved)

2-204 Evidence Of Vaccination

2-205 Visiting Dogs And Cats

2-206 Running At Large; Fine

2-207 Impoundment; Record; Notice; Redemption; Minimum Fee

2-208 Disposition Of Unclaimed Dogs And Cats

2-209 Confinement Of Dogs And Cats In Heat

2-210 Limit On Dogs And Cats

2-211 Muzzling

2-201 Vaccination Required

Every owner of any dog or cat over six months of age shall retain a current, completed certificate of immunization against rabies. It shall be unlawful for the owner of any dog or cat over six months of age to fail to maintain effective rabies immunization of such dog or cat.

(Code 2008, § 2-201; Ord. No. 999, § 1(2-201), 12-13-2018)

2-202 (Reserved)

2-203 (Reserved)

2-204 Evidence Of Vaccination

It shall be unlawful for the owner of any dog or cat kept within the city to fail to display a current certificate of immunization against rabies issued by an accredited veterinarian evidencing the vaccination of such dog or cat within two years, when requested by the animal control officer or any law enforcement officer.

(Code 2008, § 2-204; Ord. No. 999, § 1(2-204), 12-13-2018)

2-205 Visiting Dogs And Cats

Any dog or cat owned by any person visiting or temporarily remaining within the city shall be kept under restraint by the owner thereof at all times. Dogs and cats visiting for longer than seven days are required to have an updated rabies vaccination.

(Code 2008, § 2-205; Ord. No. 999, § 1(2-205), 12-13-2018)

2-206 Running At Large; Fine

- (a) It shall be unlawful for the owner or harbinger of any dog or cat to permit such animal to run at large within the city at any time.
- (b) Any dog or cat running at large within the city shall be impounded as set out in WCC 2-207.
- (c) The owner of any dog or cat impounded for running at large without the tag required by WCC 2-201 shall, for the first or second offense shall pay the fine listed in the city's master fee schedule.
- (d) For the first offense of an animal running at large with a tag as required by WCC 2-201, the owner or harbinger claiming any animal, shall, in addition to presenting a registration receipt, pay the cost of the board bill. For a second, third, and all subsequent offenses within a one-year period, the owner or harbinger shall pay the fine listed in the city's master fee schedule, plus the cost of the board bill.

(Code 2008, § 2-206; Ord. No. 999, § 1(2-206), 12-13-2018)

2-207 Impoundment; Record; Notice; Redemption; Minimum Fee

- (a) Any dog or cat found in violation of the provisions of this article shall be subject to impoundment by the city.
- (b) A record of all dogs and cats impounded shall be kept by the municipal pound containing the following information: color, sex, weight, height, identifying marks, registration number (if any) and the date of impoundment.
- (c) No dog or cat impounded under this section shall be disposed of until after expiration of a minimum of three full business days of custody during which the public has clear access to inspect and recover the dog or cat through time periods ordinarily accepted as usual business hours. During such time of custody, the city, the animal control officer or the municipal pound shall attempt to notify the owner or custodian of any dog impounded by such facility if the owner or custodian is known or reasonably ascertainable. Such dog or cat may at any time be released to the legal owner, moved to a veterinary hospital for treatment or observation, released in any manner, if such dog or cat was a gift to the animal shelter, or euthanized by a licensed veterinarian if it appears to the veterinarian that the dog or cat is diseased or disabled beyond recovery. If within three full business days the owner does not appear to claim the dog or cat, then the animal may be sold, euthanized or otherwise disposed of.
- (d) If at any time before the sale or destruction of any dog or cat impounded under the provisions of this article, the owner of an impounded dog or cat does appear

and redeem the animal, it shall be turned over to the person claiming it upon payment of any impoundment fees or penalties plus the actual costs of impoundment, and shall not apply to any dog alleged as being vicious under WCC 2-108 or suspected of rabies under WCC 2-112.

- (e) The minimum impoundment fee shall be the same as in WCC 2-110.
- (f) Any dog or cat impounded may not be released without a current rabies vaccination.
- (g) Impoundment hereunder shall not preclude any court from imposing and executing any fine which might otherwise be levied under this article for violation of any of the provisions thereof; nor shall impoundment be a defense in any prosecution commenced hereunder.
- (h) The redemption of any dog or cat impounded for a violation of any provision of this chapter shall be prima facie evidence of the violation of such provision by the person redeeming the dog or cat.

(Code 2008, § 2-207; Ord. No. 999, § 1(2-207), 12-13-2018)

2-208 Disposition Of Unclaimed Dogs And Cats

If any dog or cat is not redeemed by its owner or harborer within the time allowed for redemption as specified in WCC 2-206, the animal control officer, any authorized law enforcement officer, any authorized veterinarian or any duly authorized pound personnel may destroy such dog or cat or sell the same for the costs of impoundment and keeping, plus any registration fee due for the current year.

(Code 2008, § 2-208; Ord. No. 999, § 1(2-208), 12-13-2018)

2-209 Confinement Of Dogs And Cats In Heat

Any unspayed female dog or cat in the stage of estrus (heat) shall be confined during such period of time in a house, building or secure enclosure, and the area of enclosure shall be so constructed that no other dogs or cats may gain voluntary access to the confined animal except for purposes of planned breeding. Any animal that is in the state of estrus (heat) and that is not properly confined, or any such animal that is creating a neighborhood nuisance, shall be removed to a boarding kennel, to a veterinary hospital or to the animal shelter. All expenses incurred as a result of the confinement shall be paid by the owner. The owner of animals removed to the animal shelter shall be charged at the rate established from time to time by the animal shelter for routine confinement.

(Code 2008, § 2-209; Ord. No. 999, § 1(2-209), 12-13-2018)

2-210 Limit On Dogs And Cats

It shall be unlawful to have more than three dogs or three cats over the age of three months, or more than three of any combination of numbers of dogs and cats, living or residing in or on any residence or lot within the city.

(Code 2008, § 2-210; Ord. No. 559, § 14; Ord. No. 999, § 1(2-210), 12-13-2018; Ord. No. 1027, § 2, 5-12-2022)

2-211 Muzzling

Whenever the mayor shall deem it necessary for the protection and welfare of the inhabitants of the city, he or she shall issue an order requiring all dogs kept within the city to be effectively muzzled for such length of time as may be specified in the order, to prevent them from biting or injuring persons or animals. Such order shall be published in the official newspaper of the city for such period of time as the mayor may deem necessary.

(Code 2008, § 2-211; Ord. No. 999, § 1(2-211), 12-13-2018)

ARTICLE 3 (RESERVED)

ARTICLE 4 BEES

2-401 Keeping Of Bees

2-402 License Required

2-403 Definitions

2-404 Certain Conduct Declared Unlawful

2-405 Hives

2-406 Water

2-407 General Maintenance

2-408 Queens

2-409 Colony Densities

2-410 Marking Hives; Presumption Of Beekeeping

2-411 Inspection

2-412 Public Nuisance

2-401 Keeping Of Bees

It shall be unlawful for any person to place, establish or maintain any colony of bees in or upon any premises within the corporate limits of the city unless the bees are kept in accordance with the provisions of this article.

(Code 1993; Code 2008, § 2-401; Ord. No. 999, § 1(2-401), 12-13-2018)

2-402 License Required

It shall be unlawful for any person to place or keep an apiary upon any property within the city limits without a license issued by the city clerk. The fee shall be set by

resolution of the governing body of the city, and the fees shall defray, in part, the cost of inspection and enforcement of this article. The license shall be valid for a period of three years from the date of issuance.

(Code 1993; Code 2008, § 2-402; Ord. No. 999, § 1(2-402), 12-13-2018)

2-403 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Apiary means a place where bee colonies are kept.

Bee means any stage of the common domestic honeybee, *Apis mellifera* species.

Colony means a hive and its equipment and appurtenances including bees, comb, honey, pollen, and brood.

Hive means a structure intended for the housing of a bee colony.

Tract means a contiguous parcel of land under common ownership.

(Code 1993; Code 2008, § 2-403; Ord. No. 999, § 1(2-403), 12-13-2018)

2-404 Certain Conduct Declared Unlawful

- (a) The purpose of this article is to establish certain requirements of sound beekeeping practices, which are intended to avoid problems that may otherwise be associated with the keeping of bees in populated areas.
- (b) Notwithstanding compliance with the various requirements of this article it shall be unlawful for any beekeeper to keep any colony in such a manner or of such disposition as to cause any unhealthy condition, interfere with the normal use and enjoyment of human or animal life of others, or interfere with the normal use and enjoyment of any public property or property of others.

(Code 1993; Code 2008, § 2-404; Ord. No. 999, § 1(2-404), 12-13-2018)

2-405 Hives

All bee colonies shall be kept in Langstroth type hives with removable frames, which shall be kept in sound and usable condition.

(Code 1993; Code 2008, § 2-405; Ord. No. 999, § 1(2-405), 12-13-2018)

2-406 Water

Each beekeeper shall ensure that a convenient source of fresh, clean water is available at all times on his/her property to the bees so that the bees will not congregate at swimming pools, bibcocks, pet watering bowls, bird baths, or other water sources where they may cause human, bird, or domestic pet contact.

(Code 1993, § 2-408; Code 2008, § 2-406; Ord. No. 999, § 1(2-406), 12-13-2018)

2-407 General Maintenance

Each beekeeper shall ensure that no bee comb or other materials that might encourage robbing are left upon the grounds of the apiary site. Upon their removal from the hive all such materials shall promptly be disposed of in a sealed container or placed within a building or other bee proof enclosure.

(Code 1993, § 2-409; Code 2008, § 2-407; Ord. No. 999, § 1(2-407), 12-13-2018)

2-408 Queens

In any instance in which a colony exhibits unusually aggressive characteristics by stinging or attempting to sting without due provocation or exhibits an unusual disposition towards swarming, it shall be the duty of the beekeeper to promptly requeen the colony. Queens shall be selected from stock breed for gentleness and non-swarming characteristics.

(Code 1993, § 2-410; Code 2008, § 2-408; Ord. No. 999, § 1(2-408), 12-13-2018)

2-409 Colony Densities

(a) It shall be unlawful to keep more than the following number of colonies on any tract within the city, based upon the size or configuration of the tract on which the apiary is situated:

(1) One-quarter acre or less tract size, two colonies;

(2) More than one-quarter acre but less than one-half acre tract size, four colonies.

(b) For each two colonies authorized under colony densities (subsection (a) of this section) there may be maintained upon the same tract one nucleus colony in a hive structure not exceeding one standard 9 5/8-inch depth ID frame hive body with no supers attached as required from time to time for management of swarms. Each such nucleus colony shall be disposed of or combined with an authorized colony within 30 days after the date is acquired.

(Code 1993, § 2-411; Code 2008, § 2-409; Ord. No. 999, § 1(2-409), 12-13-2018)

2-410 Marking Hives; Presumption Of Beekeeping

- (a) In apiaries the name and telephone number shall be branded, painted, or otherwise clearly marked upon the structure of at least two hives and place at opposite ends of the apiary. Instead of marking the hives, the beekeeper may conspicuously post a sign setting forth the name, address and telephone number of the beekeeper.
- (b) Unless marked in accordance with subsection (a) of this section it shall be presumed for purposes of this article that the beekeeper is the person who own or otherwise have the present right of possession and control of the tract upon which a hive or hives are situated. The presumption may be rebutted by a written agreement authorizing another person to maintain the colony or colonies upon the tract setting forth the name, address, and telephone number of the other person who is acting as the beekeeper.

(Code 1993, § 2-412; Code 2008, § 2-410; Ord. No. 999, § 1(2-410), 12-13-2018)

2-411 Inspection

The city inspector or his or her designated agent shall have the right to inspect any hive between the hours of 8:00 a.m. and 5:00 p.m. Where practicable, prior notice shall be given to the beekeeper if he or she resides at the apiary or if his or her name is marked on the hives. The provisions of this section shall not be construed to require the inspection for the destruction of:

- (1) Any bee colony not residing in a hive structure intended for beekeeping; or
- (2) Any swarm of bees; or
- (3) Any colony residing in a beekeeping hive, which by virtue of its condition, has obviously been abandoned by the beekeeper.

(Code 1993, § 2-413; Code 2008, § 2-411; Ord. No. 999, § 1(2-411), 12-13-2018)

2-412 Public Nuisance

Colonies kept contrary to this article are hereby declared a public nuisance and may be abated according to law.

(Code 1993, § 2-414; Code 2008, § 2-412; Ord. No. 999, § 1(2-412), 12-13-2018)

ARTICLE 5 ANIMAL NUISANCES

[2-501 Nuisance Prohibited](#)

[2-502 Nuisance; Animal Activities Prohibited](#)

[2-503 Noisy Animals](#)

[2-504 Excrement](#)

[2-505 Female In Heat](#)

[2-506 Diseased Animals](#)

[2-507 Damage To Property](#)
[2-508 Penalty](#)

2-501 Nuisance Prohibited

It shall be unlawful for the owner or harbinger of any animal to cause or permit such animal to perform, create or engage in an animal nuisance. Any animal found acting in any way forbidden by this article, in the determination of the animal control officer and/or law enforcement officer, shall hereby be declared a nuisance and its owner or harbinger shall be subject to citation.

(Code 1993; Code 2008, § 2-501; Ord. No. 999, § 1(2-501), 12-13-2018)

2-502 Nuisance; Animal Activities Prohibited

It shall be unlawful for the owner of any animal to keep or maintain such animal in the city so as to constitute a nuisance. For the purpose of this section, the term "nuisance" includes, but is not limited to, any animal which:

- (a) Runs at large or upon the private property of any other person or firm than the owner;
- (b) Molests or disturbs persons or vehicles by chasing, barking, or biting, or otherwise interferes with their use of public property including the public right-of-way;
- (c) Attacks or injures persons, or other domestic animals;
- (d) Damages public or private property other than that of its owner or harbinger by its activities or with its excrement;
- (e) Scatters refuse that is bagged or otherwise contained;
- (f) Creates noxious or offensive odors;
- (g) Causes any condition which threatens or endangers the health or well-being of persons or other animals.

Any animal found acting in any way forbidden by this section, in the determination of a law enforcement officer, shall hereby be declared a nuisance, and its owner shall be subject to citation. Knowledge, intent or scienter is not required for this offense. If a summons is issued charging violation of this provision, a subpoena shall also be issued to the complainant to testify to the nuisance under oath.

(Code 2008, § 2-502; Ord. No. 999, § 1(2-502), 12-13-2018)

2-503 Noisy Animals

- (a) No person shall own or keep any animal that, by making excessive noise, disturbs an individual residing in, working in or owning a structure that is within 600 feet of the property on which the animal is kept.
- (b) For purposes of this section, excessive noise means and includes any noise produced by an animal that is so loud and continuous or untimely as to disturb the sleep or peace of a neighbor of reasonable sensibilities.
- (c) It shall be the duty of any person harboring or keeping such loud or noisy animal or animals to abate the condition, and if he or she fails to do so, the city may abate it by taking up, impounding and/or disposing of the animal at the expense of the owner.

(Code 2008, § 2-503; Ord. No. 999, § 1(2-503), 12-13-2018)

2-504 Excrement

- (a) It shall be unlawful for any person to appear with an animal upon the public ways, within public places or upon the property of another, absent that person's consent, without some means for the removal of excrement.
- (b) It shall be unlawful for any person to fail to immediately remove any excrement deposited by his or her animal upon any public or private property, other than the property of the owner of the animal. This section shall not apply to a blind or disabled person while walking his or her work dog.

(Code 1993, § 2-502; Code 2008, § 2-504; Ord. No. 999, § 1(2-504), 12-13-2018)

2-505 Female In Heat

All female animals in heat shall be confined in an enclosure or building in such a manner that the animal cannot come into contact with a male animal except for planned breeding.

(Code 1993, § 2-503; Code 2008, § 2-505; Ord. No. 999, § 1(2-505), 12-13-2018)

2-506 Diseased Animals

It shall be unlawful for the owner of any domestic animal to knowingly cause or allow the same to run at large or be exposed in any public place anywhere in the city, or to ship or remove such animal from the owner's premises when same is afflicted with a contagious or infectious disease except under the supervision of the animal control officer. It shall be the duty of the animal control officer to order the disposition of such diseased animal and treatment of the affected premises to prevent the communication and spread of contagion or infection except in cases where the state veterinarian is empowered to act and does act.

(Code 1993, § 2-504; Code 2008, § 2-506; Ord. No. 999, § 1(2-506), 12-13-2018)

2-507 Damage To Property

It shall be unlawful for any person owning or possessing a dog, cat, or other animal to permit such dog, cat or animal to go upon any sidewalk, or private lands or premises without the permission of the owner of such premises and break, tear up, crush, urinate, defecate, or otherwise destroy, damage, or disturb any lawn, flower bed, plant, shrub, tree, garden, trash collection, house, structure, or any personal property in any manner whatsoever.

(Code 1993, § 2-505; Code 2008, § 2-507; Ord. No. 999, § 1(2-507), 12-13-2018)

2-508 Penalty

Any person violating any of the provisions of this article shall, upon conviction thereof, be fined in a sum not exceeding \$500.00 or be imprisoned not to exceed 180 days, or be both so fined and imprisoned.

(Code 1993, § 2-506; Code 2008, § 2-508; Ord. No. 999, § 1(2-508), 12-13-2018)

ARTICLE 6 OTHER ANIMALS

2-601 Exotic Animals

2-601 Exotic Animals

- (a) It shall be unlawful for any person, firm or corporation to keep, maintain or have in his or her possession or under his or her control within the city any poisonous reptile or any other dangerous wild animal or reptile, any vicious or dangerous animal or any other animal or reptile of wild, vicious or dangerous propensities.
- (b) It shall be unlawful for any person to keep, maintain or have in his or her possession or under his or her control within the city any exotic animal or wild animal.
 - (1) For purposes of this section, the term "exotic animal" means any animal or fowl whose species is predominately free-roaming as opposed to domesticated.
 - (2) For purposes of this section, the term "wild animal" means any native animal or fowl whose species is predominately free-roaming as opposed to domesticated.
- (c) The prohibitions of this section shall not apply to bona fide pet shops, zoos, circuses, carnivals, educational institutions, or medical institutions, if:
 - (1) Their location conforms to the provisions of the zoning ordinance of the city;

(2) All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors; and

(3) Animals are maintained in quarters so constructed as to prevent their escape.

(d) The municipal judge shall have the authority to order any animal deemed vicious confined, destroyed or removed from the city.

(Code 2008, § 2-601; Ord. No. 999, § 1(2-601), 12-13-2018)

CHAPTER 3 BEVERAGES

ARTICLE 1 BEVERAGES IN GENERAL

ARTICLE 2 CEREAL MALT BEVERAGES

ARTICLE 3 ALCOHOLIC LIQUOR

ARTICLE 4 PRIVATE CLUBS

ARTICLE 5 DRINKING ESTABLISHMENTS

ARTICLE 6 CATERERS

ARTICLE 7 TEMPORARY PERMITS

ARTICLE 1 BEVERAGES IN GENERAL

3-101 Definitions

3-102 Restriction On Location

3-103 Minors On Premises

3-104 Consumption On Public Property

3-105 Public Sale; Consumption

3-106 Identification Card

3-101 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

Alcoholic liquor means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

Caterer means an individual, partnership or corporation which sells alcoholic liquor or cereal malt beverage by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit selling alcoholic liquor or cereal malt beverage in accordance with the terms of such permit.

Club means a Class A or Class B club.

- (a) *Class A club* means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the state, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their

families and guests accompanying them.

- (b) *Class B club* means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

Drinking establishment means premises which may be open to the general public, where alcoholic liquor or cereal malt beverage by the individual drink is sold.

Enhanced cereal malt beverage means cereal malt beverage as that term is defined in K.S.A. 41-2701, and amendments thereto, and such term shall include beer containing not more than six percent alcohol by volume when such beer is sold by a retailer licensed under the Kansas Cereal Malt Beverage Act.

General retailer means a person who has a license to sell cereal malt beverages at retail for consumption on the licensed premises. One who operates a cereal malt beverage establishment as provided in article 2 of this chapter.

Limited retailer means a person who has a license to sell cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

Place of business means any place at which cereal malt beverages or alcoholic beverages or both are sold.

Retailer means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.

Temporary permit means a permit, issued in accordance with the laws of the state, which allows the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, open to the public.

Wholesaler or distributor means any individuals, firms, copartnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, copartnerships, corporations and associations authorized by this chapter to sell cereal malt beverages at retail.

(Code 2008, § 3-101; Ord. No. 1021, § 1(3-101), 8-12-2021)

3-102 Restriction On Location

- (a) No alcoholic liquor shall be sold or served by a person holding a license or permit from the city whose place of business or other premises are located within 200 feet of any church or school, said distance to be measured from the nearest property line of such church or school, to the nearest portion of the building occupied by the premises.

- (b) The distance location of subsection (a) of this section shall not apply to a club, drinking establishment, caterer or temporary permit holder when the license or permit applicant petitions for and receives a waiver of the distance limitation from the governing body. The governing body shall grant such a waiver only following public notice and hearing and a finding by the governing body that the proximity of the establishment is not adverse to the public welfare or safety.
- (c) No license or permit shall be issued for the sale of alcoholic liquor if the building or use does not meet the zoning ordinance requirements of the city or conflicts with other city laws, including building and health codes.

(Code 1993, § 3-115; Code 2008, § 3-102)

3-103 Minors On Premises

- (a) It shall be unlawful for any person under the age of 21 years to remain on any premises where the sale of alcoholic liquor is licensed for on-premises consumption, or where a caterer or temporary permit holder is serving alcoholic liquor.
- (b) It shall be unlawful for the operator, person in charge or licensee of any premises licensed for on-premises consumption of alcoholic liquor or a caterer or temporary permit holder who is serving alcoholic liquor to permit any person under the age of 21 years to remain on the premises.
- (c) This section shall not apply if the person under the age of 21 years is accompanied by his or her parent or guardian, or if the licensed or permitted premises derives not more than 30 percent of its gross receipts in each calendar year from the sale of alcoholic liquor for on-premises consumption.
- (d) This section shall not apply shall not if the person is 18 years of age and older and employed in a licensed establishment as permitted by state law.

(Code 1970, § 3-207; Code 1993, § 3-111; Code 2008, § 3-103)

3-104 Consumption On Public Property

The governing body may authorize the consumption of cereal malt beverages or alcoholic beverages on public property pursuant to a valid application being submitted to the governing body and when the governing body determines that such activity would not be detrimental to the health, safety and morals of the community.

(Code 1993, § 3-113; Code 2008, § 3-104; Ord. No. 598)

3-105 Public Sale; Consumption

- (a) It shall be unlawful for any person to sell, serve or dispense any cereal malt

beverage or alcoholic beverage in any public place not licensed to sell, serve or dispense such beverage at such public place within or under the jurisdiction of the city.

- (b) It shall be unlawful for any person to drink or consume any cereal malt beverage or alcoholic beverage in any public place not licensed to sell and serve such beverage for public consumption at such public place within or under the jurisdiction of the city, except as provided in WCC 3-104.
- (c) For purposes of this section, the term "public place" shall include upon any street, public thoroughfare, public parking lot or any privately owned parking area made available to the public generally, within any parked or driven motor vehicle situated in any of the aforesaid places or upon any property owned by the state or any governmental subdivision thereof unless such property is leased to others under K.S.A. 12-1740 et seq., if the property is being used for hotel or motel purposes or purposes incidental thereto or is owned or operated by an airport authority created pursuant to chapter 27 of the Kansas Statutes Annotated. This section shall not apply to city-sanctioned block parties.

(Code 2008, § 3-105; Ord. No. 598)

State law reference—K.S.A. 41-719.

3-106 Identification Card

- (a) It shall be unlawful for any person to:
 - (1) Display, cause or permit to be displayed, or have in possession, any fictitious, fraudulently altered, or fraudulently obtained identification card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
 - (2) Display or represent any identification card not issued to such person as being his or her card for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
 - (3) Permit any unlawful use of an identification card issued to a person for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
 - (4) Photograph, photostat, duplicate or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card or display or have in possession any such photograph, photostat, duplicate, reproduction or facsimile for purposes relating to the sale, purchase or consumption of either cereal malt beverage or alcoholic liquor.
- (b) It shall be unlawful for any person to:

- (1) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the sale, purchase or consumption of any alcoholic liquor.
- (2) Lend any identification card to or knowingly permit the use of any identification card by any person under 21 years of age for use in the sale, purchase or consumption of any cereal malt beverage.

(Code 2008, § 3-106)

ARTICLE 2 CEREAL MALT BEVERAGES

3-201 License Required Of General And Limited Retailers

3-202 Application

3-202A License Application Procedures

3-203 License Granted; Denied

3-204 License To Be Posted

3-205 License, Disqualification

3-206 Restriction Upon Location

3-207 License Fee

3-208 Suspension Of License

3-209 License Suspension/Revocation By Governing Body

3-210 License Suspension/Revocation; Appeal

3-211 Change Of Location

3-212 Wholesalers And/Or Distributors

3-213 Business Regulations

3-214 Prohibited Conduct On Premises

3-215 Sanitary Conditions Required

3-216 Minors On Premises

3-201 License Required Of General And Limited Retailers

- (a) It shall be unlawful for any person to sell any cereal malt beverage at retail without a license for each place of business where cereal malt beverages are to be sold at retail.
- (b) It shall be unlawful for any person having a license to sell cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises to sell any cereal malt beverage in any other manner.

(Code 1970, § 3-201; Code 1993, § 3-102; Code 2008, § 3-201; Ord. No. 1021, § 1(3-201), 8-12-2021)

State law reference—K.S.A. 41-2702.

3-202 Application

An application for renewal of a CMB license shall be submitted to the city clerk no less than 45 days preceding the expiration of the applicant's current license. The application shall be verified, and upon a form prepared by the attorney general of the state, and shall contain:

- (a) The name and residence of the applicant and how long he or she has resided within the state;
- (b) The particular place for which a license is desired;
- (c) The name of the owner of the premises upon which the place of business is located;
- (d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired;
- (e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States;
- (f) Each application for a general retailer's license shall be accompanied by a certificate from the city health officer certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of WCC chapter 8;
- (g) Each application for a general retailer's license must be accompanied by a certificate from the city fire chief certifying that he or she has inspected the premises to be licensed and that the same comply with the provisions of WCC chapter 7.

The application shall be accompanied by a statement, signed by the applicant, authorizing any governmental agency to provide the city with any information pertinent to the application. One copy of such application shall immediately be transmitted to the chief of police of the city for investigation of the applicant. It shall be the duty of the chief of police to investigate such applicant to determine whether he or she is qualified as a licensee under the provisions of this chapter. The chief shall report to the city clerk not later than five working days subsequent to the receipt of such application. The application shall be scheduled for consideration by the governing body at the earliest meeting consistent with current notification requirements.

(Code 2008, § 3-202; Ord. No. 1021, § 1(3-202), 8-12-2021)

3-202A License Application Procedures

- (a) All applications for a new enhanced cereal malt beverage license shall be

submitted to the city clerk ten days in advance of the governing body meeting at which they will be considered.

- (b) The clerk's office shall endeavor to provide copies of all applications for new CMB licenses to the police department, to the fire department, and to the county health department, when they are received. The police department will run a records check on all applicants and the fire department and health department will inspect the premises in accordance with WCC 3-202(f) and (g). The departments will then make every effort to recommend approval, or disapproval, of applications within five working days of the department's receipt of the application
- (c) For renewal of a CMB license, the city clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.
- (d) Renewal licenses may be issued by the city clerk upon payment of the necessary fee if the licensee's license has not been suspended or revoked pursuant to WCC 3-209 during the license term and the licensee continues to meet the qualifications for issuance of the license.
- (e) The governing body may decline to consider any application for a new license that has not been submitted ten days in advance and been reviewed by the above departments.
- (f) An applicant who has not had an enhanced cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.

(Code 2008, § 3-202A; Ord. No. 1021, § 1(3-202A), 8-12-2021)

3-203 License Granted; Denied

- (a) The minutes of the governing body shall show the action taken on the application.
- (b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.
- (c) No license shall be transferred to another licensee.
- (d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

(Code 1983, § 3-105; Code 2008, § 3-203; Ord. No. 1021, § 1(3-203), 8-12-2021)

3-204 License To Be Posted

Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

(Code 1983, § 3-106; Code 2008, § 3-204; Ord. No. 1021, § 1(3-204), 8-12-2021)

3-205 License, Disqualification

No general or limited retail license shall be issued to:

- (a) A person who has not been a resident in good faith of the state for at least one year immediately preceding application and a resident of the county for at least six months prior to filing of such application.
- (b) A person who is not a citizen of the United States.
- (c) A person who is not of good character and reputation in the community in which he or she resides.
- (d) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.
- (e) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.
- (f) A corporation if any manager, officer or director thereof or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than nonresidence within the city or county.
- (g) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25 percent of the stock, of a corporation which:
 - (1) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or
 - (2) Has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of the state.
- (h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.
- (i) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, retailer residency requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license.

(Code 2008, § 3-205; Ord. No. 1021, § 1(3-205), 8-12-2021)

3-206 Restriction Upon Location

- (a) No general or limited retail license shall be issued for the sale at retail of any enhanced cereal malt beverage on premises which are located in areas not zoned for such purpose.
- (b) It shall be unlawful to sell or dispense at retail any enhanced cereal malt beverage at any place within the city limits that is within a 200-foot radius of any church, school or library.
- (c) Provisions of this section shall not apply to any establishment holding a private club license issued by the state.
- (d) The distance limitation of subsection (b) of this section shall not apply to any establishment holding a cereal malt beverage license issued by the city when the licensee has petitioned for and received a waiver of the distance limitation. The governing body shall grant such a waiver only following public notice and hearing.

(Code 1993, § 3-115; Code 2008, § 3-206; Ord. No. 1021, § 1(3-206), 8-12-2021)

State Law reference—K.S.A. 41-2704.

3-207 License Fee

The rules and regulations regarding license fees shall be established administratively, the license fee to be prorated. The licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued.

(Code 2008, § 3-207; Ord. No. 1021, § 1(3-207), 8-12-2021)

3-208 Suspension Of License

The chief of police, upon five days' written notice, shall have the authority to suspend such license for a period not to exceed 30 days for any violation of the provisions of this chapter or other laws pertaining to enhanced cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven days from the date of such order.

(Code 2008, § 3-208; Ord. No. 1021, § 1(3-208), 8-12-2021)

3-209 License Suspension/Revocation By Governing Body

The governing body of the city shall give 30 days' written notice to a person holding a license to sell enhanced cereal malt beverages of its intent to suspend said license and providing the license holder the opportunity to request a hearing before the governing

body. Such license may be suspended for a period not more than 30 days, or permanently revoked for any of the following reasons:

- (a) If a licensee has fraudulently obtained the license by giving false information in the application therefor;
- (b) If the licensee has violated any of the provisions of this article or has become ineligible to obtain a license under this article;
- (c) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which the license is issued, or for a licensee, his or her manager or employee permitting any intoxicated person to remain in such place selling enhanced cereal malt beverages;
- (d) The sale of enhanced cereal malt beverages to any person under 21 years of age;
- (e) For permitting any gambling in or upon any premises licensed under this article;
- (f) For permitting any person to mix drinks with materials purchased in any premises licensed under this article or brought into the premises for this purpose;
- (g) For the employment of any person under the age established by the state for employment involving dispensing enhanced cereal malt beverages;
- (h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;
- (i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premises licensed under this article;
- (j) The nonpayment of any license fees;
- (k) If the licensee has become ineligible to obtain a license under this chapter;
- (l) The provisions of subsections (f) and (i) of this section shall not apply if such place of business is also currently licensed as a private club.

(Code 2008, § 3-209; Ord. No. 1021, § 1(3-209), 8-12-2021)

State law reference—K.S.A. 41-2708.

3-210 License Suspension/Revocation; Appeal

The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of the county and the district court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken under this section shall not suspend the order of revocation or suspension during

the pendency of such appeal. In case of the revocation of the license of any licensee, no new license shall be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

(Code 2008, § 3-210; Ord. No. 1021, § 1(3-210), 8-12-2021)

State law reference—K.S.A. 41-2708.

3-211 Change Of Location

If a licensee desires to change the location of his or her place of business, he or she shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. If the application is in proper form and the location is not in a prohibited zone and all other requirements relating to such place of business are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee.

(Code 2008, § 3-211; Ord. No. 1021, § 1(3-211), 8-12-2021)

3-212 Wholesalers And/Or Distributors

It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver enhanced cereal malt beverages within the city, to persons authorized under this article to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the director of revenue, state commission of revenue and taxation of the state authorizing such sales.

(Code 2008, § 3-212; Ord. No. 1021, § 1(3-212), 8-12-2021)

State law reference—K.S.A. 41-307.

3-213 Business Regulations

It shall be the duty of every licensee to observe the following regulations:

- (a) The place of business licensed and operating under this article shall at all times have a front and rear exit unlocked when open for business.
- (b) The premises and all equipment used in connection with such business shall be kept clean and in a sanitary condition and shall at all times be open to the inspection of the police and health officers of the city, county and state.
- (c) Except as provided by subsections (d) and (l) of this section, no enhanced cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., or consumed between the hours of 12:30 a.m. and 6:00 a.m.; closing hours for clubs shall conform to K.S.A. 41-2614 and any amendments thereto.

- (d) Enhanced cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2701 et seq., and licensed as a club by the state director of alcoholic beverage control.
- (e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the state director of alcoholic beverage control shall be open to members and the police and not to the public.
- (f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.
- (g) No licensee or agent or employee of the licensee shall permit any intoxicated person to remain in the place of business for which such license has been issued.
- (h) No licensee or agent or employee of the licensee shall sell or permit the sale of enhanced cereal malt beverage to any person under 21 years of age.
- (i) No licensee or agent or employee of the licensee shall permit any gambling in the place of business for which such license has been issued.
- (j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in said place of business or brought in for such purpose.
- (k) No licensee or agent or employee of the licensee shall employ any person under the legal age for consumption of enhanced cereal malt beverage in dispensing enhanced cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.
- (l) The sale at retail of cereal malt beverages in the original package is allowed within the city on any Sunday, except Easter, between the hours of 9:00 a.m. and 8:00 p.m.

(Code 2008, § 3-213; Ord. No. 860, § 1; Ord. No. 1020, § 1, 7-8-2021; Ord. No. 1021, § 1(3-213), 8-12-2021)

3-214 Prohibited Conduct On Premises

The following conduct by an enhanced cereal malt beverage licensee, manager or employee of any licensed enhanced cereal malt beverage establishment on the premises thereof is deemed contrary to public welfare and is prohibited:

- (a) Remaining or permitting any person to remain in or upon the premises who exposes to view any portion of the female breasts below the top of the areola or any portion of males'/females' pubic hair, anus, buttocks or genitals.

- (b) Permitting any employee to touch, caress or fondle the breasts, buttocks, anus, vulva or genitals of any other employee or any patron.
- (c) Encouraging or permitting any patron to touch, caress or fondle the breasts, buttocks, anus, vulva, or genitals of any employee.
- (d) Performing or permitting any person to perform acts of or acts which simulate:
 - (1) Sexual intercourse, masturbation, sodomy, or any other sexual act which is prohibited by law; or
 - (2) Touching, caressing or fondling such persons' breasts, buttocks, anus or genitals.
- (e) Using or permitting any person to use any artificial devices or inanimate objects to depict any of the acts prohibited by subsection (d) of this section.
- (f) Showing or permitting any person to show any motion picture, film, photograph, electronic reproduction, or other visual reproduction depicting:
 - (1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, or any sexual act which is prohibited by law;
 - (2) The touching, caressing or fondling of the buttocks, anus, genitals or the female breasts;
 - (3) Scenes in which a person displays the buttocks, anus, genitals or the female breasts.
- (g) As used in this section, the term "premises" means the premises licensed by the city as a cereal malt beverage establishment and such other areas, under the control of the licensee or his or her employee or employees, that are in such close proximity to the licensed premises that activities and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.

(Code 2008, § 3-214; Ord. No. 1021, § 1(3-214), 8-12-2021)

3-215 Sanitary Conditions Required

All parts of the licensed premises, including furnishings and equipment, shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self-closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste

material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee.

(Code 2008, § 3-215; Ord. No. 1021, § 1(3-215), 8-12-2021)

3-216 Minors On Premises

- (a) It shall be unlawful for any person under 21 years of age to remain on any premises where the sale of enhanced cereal malt beverages is licensed for on-premises consumption.
- (b) This section shall not apply if the person under 21 years of age is an employee of the licensed establishment, or is accompanied by his or her parent or guardian, or if the licensed establishment derives not more than 30 percent of its gross receipts in each calendar year from the sale of enhanced cereal malt beverages for on-premises consumption.

(Code 2008, § 3-216; Ord. No. 1021, § 1(3-216), 8-12-2021)

ARTICLE 3 ALCOHOLIC LIQUOR

3-301 State License Required

3-302 Occupational Tax

3-303 Posting Of Receipt

3-304 Hours Of Sale

3-305 Business Regulations

3-301 State License Required

- (a) It shall be unlawful for any person to keep for sale, offer for sale, or expose for sale or sell any alcoholic liquor as defined by the Kansas Liquor Control Act without first having obtained a state license to do so.
- (b) The holder of a license for the retail sale in the city of alcoholic liquors by the package issued by the state director of alcoholic beverage control shall present such license to the city clerk when applying to pay the occupational tax levied in WCC 3-302 and the tax shall be received and a receipt shall be issued for the period covered by the state license.

(Code 2008, § 3-301)

3-302 Occupational Tax

There is hereby levied an annual occupation tax, which shall be determined administratively on any person holding a license issued by the state director of alcoholic beverage control for the retail sale within the city of alcoholic liquors for

consumption off the premises. Such tax shall be paid by the retailer to the city clerk before business is begun under an original state license and shall be paid within five days after any renewal of a state license.

(Code 2008, § 3-302)

3-303 Posting Of Receipt

Every licensee under this article shall cause the city alcoholic liquor retailer's occupation tax receipt to be placed in plain view, next to or below the state license in a conspicuous place on the licensed premises.

(Code 2008, § 3-303)

3-304 Hours Of Sale

- (a) No person shall sell at retail any alcoholic liquor before 9:00 a.m. or after 11:00 p.m. on any day when the sale thereof is permitted, except as provided in subsection (b) of this section.
- (b) Sale at retail of alcoholic liquor in the original package is allowed within the city on any Sunday, except Easter, between the hours of 9:00 a.m. and 8:00 p.m.

(Code 2008, § 3-304; Ord. No. 860, § 2; Ord. No. 1020, § 2, 7-8-2021)

State law reference—K.S.A. 41-712.

3-305 Business Regulations

It shall be unlawful for a retailer of alcoholic liquor to:

- (a) Permit any person to mix drinks in or on the licensed premises;
- (b) Employ any person under the age of 21 years in connection with the operation of the retail establishment;
- (c) Employ any person in connection with the operation of the retail establishment who has been adjudged guilty of a felony;
- (d) Furnish any entertainment in his or her premises or permit any pinball machine or game of skill or chance to be located in or on the premises; or
- (e) Have in his or her possession for sale at retail any bottles, cask, or other containers containing alcoholic liquor, except in the original package;
- (f) Sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person under 21 years of age.

(Code 2008, § 3-305)

ARTICLE 4 PRIVATE CLUBS

3-401 License Required

3-402 License Fee

3-403 Business Regulations

3-401 License Required

It shall be unlawful for any person granted a private club license by the state to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a local license from the city clerk.

(Code 2008, § 3-401)

3-402 License Fee

- (a) There is hereby levied an annual license fee on each private club located in the city which has a private club license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license. The city license fee shall be determined administratively.
- (b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.
- (c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.
- (d) Every licensee shall cause the city club license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

(Code 2008, § 3-402)

3-403 Business Regulations

- (a) No club licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 6:00 a.m. on any day.
- (b) Cereal malt beverages may be sold on premises licensed for the retail sale of cereal malt beverages for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.
- (c) No club membership shall be sold to any person under 21 years of age, nor

shall alcoholic beverages or cereal malt beverages be given, sold or traded to any person under 21 years of age.

(Code 2008, § 3-403; Ord. No. 860, § 2)

State law reference—K.S.A. 41-2614.

ARTICLE 5 DRINKING ESTABLISHMENTS

3-501 License Required

3-502 License Fee

3-503 Business Regulations

3-501 License Required

It shall be unlawful for any person granted a drinking establishment license by the state to sell or serve any alcoholic liquor authorized by such license within the city without first obtaining a city license from the city clerk.

(Code 2008, § 3-501)

3-502 License Fee

- (a) There is hereby levied an annual license fee, which shall be determined administratively, on each drinking establishment located in the city which has a drinking establishment license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license.
- (b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.
- (c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.
- (d) Every licensee shall cause the city drinking establishment license to be placed in plain view next to or below the state license in a conspicuous place on the licensed premises.

(Code 2008, § 3-502)

3-503 Business Regulations

- (a) No drinking establishment licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m.

and 6:00 a.m. on any day.

- (b) Cereal malt beverages may be sold on premises licensed for the retail sale of cereal malt beverage for on-premises consumption at any time when alcoholic liquor is allowed by law to be served on the premises.
- (c) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under 21 years of age.

(Code 2008, § 3-503)

State law reference—K.S.A. 41-2614.

ARTICLE 6 CATERERS

3-601 License Required

3-602 License Fee

3-603 Business Regulations

3-604 Notice To Chief Of Police

3-601 License Required

It shall be unlawful for any person licensed by the state as a caterer to sell alcoholic liquor by the drink, to sell or serve any liquor by the drink within the city without obtaining a local caterer's license from the city clerk.

(Code 2008, § 3-601)

3-602 License Fee

- (a) There is hereby levied an annual license fee, which shall be determined by the city from time to time and listed on the city's master fee schedule, on each caterer doing business in the city who has a caterer's license issued by the state director of alcoholic beverage control, which fee shall be paid before business is begun under an original state license and within five days after any renewal of a state license.
- (b) All applications for new or renewal city licenses shall be submitted to the city clerk. Upon presentation of a state license, payment of the city license fee and the license application, the city clerk shall issue a city license for the period covered by the state license, if there are no conflicts with any zoning or alcoholic beverage ordinances of the city.
- (c) The license period shall extend for the period covered by the state license. No license fee shall be refunded for any reason.
- (d) Every licensee shall cause the caterer license to be placed in plain view on any premises within the city where the caterer is serving or mixing alcoholic liquor for consumption on the premises.

(Code 2008, § 3-602)

3-603 Business Regulations

- (a) No caterer licensed hereunder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day.
- (b) No alcoholic beverages or cereal malt beverages shall be given, sold or traded to any person under 21 years of age.

(Code 2008, § 3-603)

State law reference—K.S.A. 41-2614.

3-604 Notice To Chief Of Police

Prior to any event at which a caterer will sell or serve alcoholic liquor by the individual drink, the caterer shall provide written notice to the chief of police at least five working days prior to the event if the event will take place within the city. The notice shall contain the location, name of the group sponsoring the event, and the exact date and times the caterer will be serving.

(Code 2008, § 3-604)

ARTICLE 7 TEMPORARY PERMITS

3-701 Permit Required

3-702 Permit Fee

3-703 City Temporary Permit

3-704 Permit Regulations

3-701 Permit Required

It shall be unlawful for any person granted a temporary permit by the state to sell or serve any alcoholic liquor within the city without first obtaining a local temporary permit from the city clerk.

(Code 2008, § 3-701)

3-702 Permit Fee

- (a) There is hereby levied a temporary permit fee, which shall be determined by the city from time to time and listed on the city's master fee schedule, on each group or individual holding a temporary permit issued by the state director of alcoholic beverage control authorizing sales within the city, which fee shall be paid before the event is begun under the state permit.

- (b) Every temporary permit holder shall cause the temporary permit receipt to be placed in plain view on any premises within the city where the holder of the temporary permit is serving or mixing alcoholic liquor for consumption on the premises.

(Code 2008, § 3-702)

3-703 City Temporary Permit

- (a) It shall be unlawful for any person to conduct an event under a state issued temporary permit without first applying for a local temporary permit at least 14 days before the event. Written application for the local temporary permit shall be made to the city clerk and shall clearly state:
 - (1) The name of the applicant;
 - (2) The group for which the event is planned;
 - (3) The location of the event;
 - (4) The date and time of the event;
 - (5) Any anticipated need for police, fire or other municipal services.
- (b) Upon presentation of a state temporary permit, payment of the city's temporary permit fee and a written application as provided for in subsection (a) of this section, the city clerk shall issue a local temporary permit to the applicant if there are no conflicts with any zoning or other ordinances of the city.
- (c) The city clerk shall notify the chief of police whenever a temporary permit has been issued and forward a copy of the permit and application to the chief of police.

(Code 2008, § 3-703)

3-704 Permit Regulations

- (a) No temporary permit holder shall allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. at any event for which a temporary permit has been issued.
- (b) No alcoholic beverages shall be given, sold or traded to any person under 21 years of age.

(Code 2008, § 3-704)

CHAPTER 4 BUILDINGS AND CONSTRUCTION

ARTICLE 1 INTERNATIONAL AND NATIONAL CODES

ARTICLE 2 BUILDING CODE

ARTICLE 3 RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS

ARTICLE 4 EXISTING BUILDING CODE

ARTICLE 5 FIRE CODE

ARTICLE 6 PLUMBING CODE

ARTICLE 7 FUEL GAS CODE

ARTICLE 8 MECHANICAL CODE

ARTICLE 9 ELECTRICAL CODE

ARTICLE 10 ENERGY CONSERVATION CODE

ARTICLE 11 MOVING BUILDINGS

ARTICLE 1 INTERNATIONAL AND NATIONAL CODES

4-101 Definitions

4-102 Conflict Clause

4-103 Clarification; Modification

4-104 (Reserved)

4-105 Liability

4-101 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Builder or building contractor.

- (1) The term "builder" or "building contractor," when used in the building code, means any person, firm, co-partnership, corporation, association, or any combination thereof, whether a resident or not of the city:
 - (a) Who or which undertakes with or for another, for a fixed sum, price, fee or any compensation other than wages, to build, construct, alter, repair, add to, wreck or move any building or structure (or any portion thereof), or any sidewalk, driveway entrance or structure in any street, or any advertising sign, panel poster or billboard, or any other structure, in the city, for which a building or construction permit may now or hereafter be required by the laws of the city; or
 - (b) Who or which advertises or represents himself, herself, or itself to the public to have the capacity or ability to undertake, or submit a bid or offer to build, construct, alter, repair, add to or wreck, remove, restore, or replace any building, structure or construction work or any portion thereof; or

- (c) Who or which builds, constructs, alters, adds to or wrecks any buildings or structures either on his or her own or other property for purposes of sale or speculation.

(2) The term "builder" or "building contractor" shall not mean or include:

- (a) Any subcontractor working under the supervision of a general contractor; or
- (b) Any plumbers, gas fitters, electricians, or other specialized occupation for which special licenses or bonds are required by other laws; or
- (c) Any owner or his or her authorized agents or employees making ordinary repairs to his, her or its own building or structure not involving the structural parts of the building for which a permit is not required or on which a contractor, as defined, is not required, employed or engaged to perform; or
- (d) Any property owner personally performing any improvements, alterations or building construction within or upon his or her own residence and intended for his or her own personal use and permanent occupancy, provided the owner shall satisfy the building official as to his or her ability to perform such work, secure a permit, pay required fees, do work in accordance with this article, and apply for an inspection and receive approval. Personal building construction by an owner under this section shall be by himself, herself, for himself or herself on his or her own residence, without compensation and no person shall be employed to assist him or her in any way on such work except a builder or building contractor.

Building official and *code official*, when used in the building code, mean the building official or his or her authorized designee.

Corporation counsel, when used in the building code, means the city attorney.

Municipality, when used in the building code, means the city.

(Code 2008, § 4-101; Ord. No. 1009, § 1(4-101), 3-11-2021)

4-102 Conflict Clause

In the event there is a conflict between a provision in any code adopted by reference in articles 2 through 9 of this chapter, with an ordinance passed by the governing body, the city ordinance shall prevail.

(Code 2008, § 4-102; Ord. No. 1009, § 1(4-102), 3-11-2021)

4-103 Clarification; Modification

The building official shall have power to modify any of the provisions of the building code upon application in writing by the owner or lessee or his or her authorized agent when there are practical difficulties in the way of carrying out the strict letter of the code. In approving modifications, the building official shall see that the spirit of the code is observed, public safety secured, and substantial justice done. The particulars of a modification when granted or allowed and the decision of the inspector thereon shall be entered upon the records of the building official and a signed copy shall be furnished to the applicant.

(Ord. No. 1009, § 1(4-103), 3-11-2021)

4-104 (Reserved)

4-105 Liability

This article shall not be construed to relieve from any liability or lessen the liability of any person performing any activity connected herewith, nor shall the city be held as assuming any liability by reason of any inspection authorized herein, by reason of any certificate of inspection issued by it or by reason of any permit or license granted herein.

(Ord. No. 1009, § 1(4-105), 3-11-2021)

ARTICLE 2 BUILDING CODE

[4-201 Incorporating The 2018 Edition Of The International Building Code](#)

[4-202 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Building Code](#)

4-201 Incorporating The 2018 Edition Of The International Building Code

There is hereby incorporated by reference for the purpose of regulating building and construction practices and to provide for the public safety and welfare within the corporate limits of the city, that certain document known as the International Building Code, 2018 edition, excluding all appendices, as published by the International Code Council, Inc., save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than two copies of the International Building Code shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 1010," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or changes and to which shall be attached a copy of this article and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be in electronic form, provided that any changes or amendments are attached to or recorded in such electronic format so as to be readily understood.

(Code 2008, § 4-201; Ord. No. 1010, § 1(4-201), 3-11-2021)

4-202 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Building Code

The following sections of the International Building Code shall be revised, amended, or deleted:

- (a) Section 101.1, entitled "Title," shall be amended to read "These regulations shall be known as the Building Code of the City of Westwood, Kansas, hereinafter referred to as 'this code.'"
- (b) Section 101.2, entitled "Scope," shall be amended to read as follows: "Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the International Residential Code, as amended."
- (c) Section 101.4.4, entitled "Property Maintenance," shall be amended such that: "International Property Maintenance Code" shall be replaced with "City Code of Westwood" as shall any other references in this code.
- (d) Section 101.4.8 shall be added to read: "101.4.8 Electrical. The provisions of the 2017 National Electrical Code, as amended, shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto."
- (e) Reserved.
- (f) Section 105.1.3 is hereby added to read as follows: "105.1.3 County License Required. All persons undertaking work which requires a permit as provided in section 105, or seeking to obtain that permit from the city, are required to have a currently valid contractor's license from the Johnson County contractor's licensing program. That county license shall have been issued by the county in accordance with the provisions of the Johnson County contractors licensing program and the contractor licensing regulations adopted by the board of county commissioners by Resolution No. 058-01 on August 9, 2001, and any regulations subsequently adopted by the contractor licensing review board as authorized by said county licensing regulations, as said resolution and regulations may be amended from time to time by said boards."

Exception: The owner of a single-family dwelling shall be allowed to secure a permit to construct, alter or repair said dwelling provided the following conditions are met:

- (1) The homeowner currently occupies the dwelling or will occupy the dwelling once the construction has been completed; and
- (2) The homeowner undertakes the work himself/herself, without compensation and no person shall be employed to assist the

homeowner in any way on such work except a builder or building contractor licensed by the county. The building official may waive the provisions of this section where it can be established that no license exists for the installation, alteration, or repair of a certain type of work requiring a permit, or due to other unique circumstances."

(g) Section 105.2, entitled "Work Exempt From Permit," shall be revised to and amended to delete the following exemptions from the permit requirement under "Building":

- (1) One-story detached accessory structures used as tool and storage sheds, playhouses, and similar uses, provided the floor area does not exceed 120 square feet (11.15 square meters).
- (2) Fences not over six feet (1,829 mm) high.
- (3) Oil derricks.
- (4) Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18,927 L) and the ratio of height to diameter or width does not exceed two to one.
- (5) Sidewalks and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below and which are not part of an accessible route.

(h) Section 105.2, entitled "Work Exempt From Permit," shall also be revised and amended for exemption 9 under "Building," to read "Prefabricated swimming pools which are less than 12 inches deep."

(i) Section 105.3.2, "Time limit of application," shall be amended to read as follows: "An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued, except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each. The extension or extensions shall be requested in writing and justifiable cause demonstrated."

(j) Section 109.3, entitled "Building Permit Valuations," shall be amended to add the following sentence at the end of said provision: "Alternatively, building permit fees may be set and established administratively by the City according to the schedule as established by the city and as amended."

(k) Section 109.4, entitled "Work Commencing Before Permit Issuance" shall be amended to read: "Any person who commences work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits, shall be subject to a fee equal to one half of the permit fee, in addition to required fees."

- (l) Reserved.
- (m) Section 114.4, entitled "Violation Penalties," shall be amended to add the following at the end of said provision: "In addition to any administrative remedies or other legal or equitable remedies, provided any persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500.00, or be imprisoned not to exceed six months or be both so fined and imprisoned. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by any such person."
- (n) Section 115.2, entitled "Issuance" (Stop Work Order) shall be amended by adding to the first sentence, "or by posting the notice on the property in a conspicuous place."
- (o) Section 1612.3, entitled "Establishment of Flood Hazard Area," shall be deleted, and in lieu thereof, shall be inserted the following: "To establish flood hazard areas, the city may adopt a flood hazard map and supporting data. If and when the city undertakes such a task, such shall comply with the requirements of Section 1612.3 and shall be incorporated into the city's code requirements."
- (p) Section 2701.1, entitled "Scope," is hereby changed to read; "This chapter governs the electrical components, equipment and systems used in buildings and structures covered by this Code. Electrical components, equipment and systems shall be designed and constructed in accordance with the 2017 National Electrical Code."
- (q) Chapter 32, entitled "Encroachments into the Public Right-of-Way," shall be deleted in its entirety.

(Code 2008, § 4-202; Ord. No. 1010, § 1(4-202), 3-11-2021)

ARTICLE 3 RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS

4-301 Incorporating The 2018 Edition Of The International Residential Code For One- And Two-Family Dwellings

4-302 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Residential Code For One- And Two-Family Dwellings

4-301 Incorporating The 2018 Edition Of The International Residential Code For One- And Two-Family Dwellings

There is hereby incorporated by reference for the purpose of regulating building and construction practices and to provide for the public safety and welfare within the corporate limits of the city, that certain document known as the "International Residential Code for One- and Two-Family Dwellings," 2018 edition, including appendix chapters F, H, J, K and N as published by the International Code Council, save and except such articles, sections, parts or portions as are hereafter omitted,

deleted, modified or changed. However, with respect to appendix F, Radon Control Methods, this appendix shall apply only to the construction of new residential structures and shall not apply to additions to or the remodeling of existing residential structures. No fewer than two copies of the International Residential Code for One- and Two-Family Dwellings shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 1011" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this article and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be in electronic form, provided that any changes or amendments are attached to or recorded in such electronic format so as to be readily understood. The police department, municipal judge and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost of the city, such number of official copies of such International Residential Code for One- and Two-Family Dwellings similarly marked, as may be deemed expedient.

(Code 2008, § 4-301; Ord. No. 1011, § 1(4-301), 3-11-2021)

4-302 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Residential Code For One- And Two-Family Dwellings

The following sections of the International Residential Code for One-and Two-Family Dwellings 2018 edition shall be revised, amended, or deleted:

- (a) Section R101.1, entitled "Title," shall be amended to read: "These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the City of Westwood, Kansas, and shall be cited as such and will be referred to herein as 'this code.'"
- (b) Section R105.2, entitled "Work Exempt From Permit," shall be revised and amended to delete exemptions 1, 2, 3, 4, 5, 7, 9 and 10 from the permit requirement under the heading "Building."
- (c) Section R108.3, entitled "Building Permit Valuations," shall be amended to add the following sentence at the end of said provision: "Alternatively, building permit fees may be set and established administratively by the City according to the schedule as established by the city and as amended."
- (d) Section R108.6, entitled "Work Commencing Before Permit Issuance," shall be amended to read "Any person who commences work requiring a permit on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a fee equal to one-half of the permit fee, in addition to required fees."
- (e) Reserved.
- (f) Section R113.4, entitled "Violation Penalties," shall be amended to add the following at the end of said provision: In addition to any administrative remedies

or other legal or equitable remedies provided, any persons violating the provisions of this code shall, upon conviction thereof be fined in a sum not to exceed \$500.00, or be imprisoned not to exceed six months or be both so fined and imprisoned. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by any such person.

- (g) Section R114, entitled "Notice to Owner (Stop Work Order)," shall be amended so that the second sentence shall read; "The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work, or posted on the property in a conspicuous place; and shall state the conditions under which work will be permitted to resume."
- (h) Section R201.3, entitled "Terms Defined in Other Codes," shall be amended to read as follows: "Where terms are not defined in this code and are defined in the 2017 National Electrical Code, International Building Code, International Fire Code, the International Fuel Gas Code, or the International Mechanical Code, such terms shall have meanings ascribed to them as in those codes."
- (i) Section R301.2, entitled "Climatic and Geographic Design Criteria," shall be amended as follows: "The criteria herein shall be administratively established by the building official and inserted herein." Section R301.2, Table R301.2(1), is hereby amended to insert the criteria as follows:

Roof Snow Load: 20 pounds per square foot

Wind Speed: 90 miles per hour

Topographic effects: No

Seismic Design Category: A

Weathering: Severe

Frost Line Depth: 36 inches

Termite: Moderate to Heavy

Decay: Slight to Moderate

Winter Design Temperature: Six degrees Fahrenheit

Ice Barrier Underlayment Required: Yes

Flood Hazards: Latest adopted FIRM and FBFM documents

Air Freezing Index: 1000

Mean Annual Temperature: 54.7 degrees Fahrenheit

- (j) Section R305.1, entitled "Minimum Height," shall be amended to amend only the first sentence thereof to read as follows: "Habitable rooms, hallways, corridors, bathrooms, toilet rooms, laundry rooms and basements shall have a ceiling height of not less than six feet, eight inches." Also, the subparagraph of section R305.1, entitled "Exceptions 3," shall be amended to read as follows: "Not more than 50 percent of the required floor area of a room or space is permitted to have a sloped ceiling less than five feet, eight inches in height with no portion of the required floor area less than five feet in height."

- (k) Section R309.5, entitled "Fire Sprinklers," is hereby deleted in its entirety.
- (l) Section R313, entitled "Automatic Fire Sprinkler Systems," is hereby deleted in its entirety.
- (m) Section R401.1, entitled "Application," shall be amended by adding the following paragraph: "Foundation designs for one- and two-family dwellings may use the approved standards and designs provided in the Johnson County Residential Foundation Guidelines in lieu of the prescriptive requirements of chapter 4 of this Code as approved by the building official."
- (n) Section R403.1.1, entitled "Minimum Size," is hereby added to read as follows: "The minimum size for all residential concrete footings shall be eight inches in depth and 16 inches in width. Steel shall be minimum one-half inch in size with two bars running parallel in the footing. Single story trench footings are to be a minimum of 12 inches in width. Footing projections shall be at least two inches and shall not exceed the thickness of the footing. The minimum load-bearing value of soil shall be 2,000 psf. Soils investigation reports are required when it appears the soil bearing value is below 2,000 psf, or when conditions exist as described in R401.4. Footings for structures with more than two stories shall be designed by a licensed Kansas engineer."
- (o) Section R501.3, entitled "Fire Protection of Floors," is hereby amended to read as follows: "Floor assemblies not required elsewhere in this code to be fire resistance rated shall be provided with a 1/2-inch gypsum wallboard membrane, 5/8-inch wood structural membrane or equivalent on the underside of the floor framing member for open web-type floor truss systems and I joist systems."

Exceptions:

- (1) Floor systems located directly over a space protected by an automatic sprinkler system in accordance with section P2904, NFPA 13D, or other approved systems.
 - (2) Floor systems located directly over a crawl space not intended for storage or fuel fired appliances.
 - (3) The aggregate area of the unprotected portions shall not exceed 80 square feet."
- (p) Section R507.1, entitled "Decks," shall be amended by adding the following paragraph: "In lieu of the requirements of section R507 Decks, the construction of decks and balconies may use the approved standards and designs provided in the latest edition of the county building officials deck design publication."
 - (q) Section R907.3, entitled "Recovering Versus Replacement," is hereby amended to read as follows: "New roof coverings shall not be installed without first removing all existing layers of roof coverings down to the roof decking. Exception: Where the existing roof assembly includes an ice barrier membrane

that is adhered to the roof deck, the existing ice barrier membrane shall be permitted to remain in place and covered with an additional layer of ice barrier membrane in accordance with section R905."

- (r) Section N1101.1, entitled "Scope," is hereby amended to add the following paragraphs following the first paragraph:

"As an alternative to the provisions of chapter 11 of this Code, structures validated by an accepted certified energy auditor to meet a HERS rating score of 85 or less shall be deemed to meet this Code. The energy auditor shall present their national certification credentials for review and approval by the building official prior to issuance of the permit."

"Failure to meet with the compliance rating of 85 or less shall result in a "notice" to the owner that the structure has failed to comply with this Code. Such "notice" shall be signed by the contractor and the owner."

- (s) Table N1102.1.2 of the Residential Code is hereby amended as follows:

Table N1102.1.1. Insulation and Fenestration Requirements by Component^a

<i>Climat e Zone</i>	<i>Fene strati on U- Fact or</i>	<i>Skyli ght U- Fact or^b</i>	<i>Glaze d Fene strati on SHGC^b</i>	<i>Ceilin g R- Value^f</i>	<i>Wood Frame Wall R- Value</i>	<i>Mass Wall R- Value</i>	<i>Floor R- Valu e</i>	<i>Base ment Wall R- Value^c</i>	<i>Slab R- Value & Depth^d</i>	<i>Crawl Space Wall R- Value^c</i>
4	0.35	0.55	0.4	49	13	8/13	19	10/13	NR	10/13

a. R-values are minimums. U-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the installed R-value of the insulation shall not be less than the R-value specified in the table.

b. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

c. "10/13" means R-10 continuous insulation on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement walls.

d. R-5 shall be added to the required slab edge R-values for heated slabs.

e. No change.

f. No change.

g. No change.

h. Refers to wall cavity insulation minimum standards only.

i. The second R-value applies when more than half the insulation is on the

interior of the mass wall.

j. Loose-fill insulation shall be installed at the rate recommended by the manufacturer's statement "so many bags per 1,000 square feet." Where the pitch of the roof restricts the minimum thickness at the exterior wall line, the insulation shall be blown into the cavity so as to achieve a greater compacted density to a point where the "minimum thickness" can be achieved. An alternative is to install high density batts around the perimeter edge per R1102.2.

- (t) Section N1102.4.1.2, entitled "Testing," is hereby amended to read as follows: "The building or dwelling unit shall be tested and verified as having an air leakage rate not exceeding five air changes per hour. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.c. (50 Pascals). Where required by the code official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

During testing:

- (1) Exterior windows and doors, fireplaces and stove doors shall be closed but not sealed beyond the intended weather stripping or other infiltration control measures.
 - (2) Dampers, including exhaust, intake, makeup air, backdraft and flue dampers shall be closed but not sealed beyond intended infiltration control measures.
 - (3) Interior doors, if installed at the time of the test, shall be open.
 - (4) Exterior doors for continuous ventilation systems and heat recovery ventilators shall be closed and sealed.
 - (5) Heating and cooling systems, if installed at the time of the test, shall be turned off.
 - (6) Supply and return registers, if installed at the time of the test, shall be fully open."
- (u) Section N1103.3.5, entitled "Building Cavities (Mandatory)," shall be deleted in its entirety.
- (v) Section N1103.5.3, entitled "Hot Water Pipe Insulation (prescriptive)," shall be deleted in its entirety.
- (w) Section P2503.4, entitled "Building Sewer Testing," is hereby amended to read as follows: "The building sewer shall be tested by insertion of a test plug at the point of connection with the public sewer and filling the building sewer with water, testing with not less than a ten-foot head of water and be able to maintain such pressure for 15 minutes or by air, maintaining five PSI for 15 minutes. This

testing will be required when ordered by the building official."

- (x) Section P2503.5, entitled "Drain, Waste and Vent Systems Testing," is hereby amended to read as follows: "Rough and finished plumbing installations shall be tested in accordance with sections P2503.5.1 and P2503.5.2. This testing will be required when ordered by the building official."
- (y) Section P2903.4, entitled "Thermal Expansion Control," is hereby amended to read: "A means for controlling increased pressure caused by thermal expansion shall be installed in each dwelling unit. A thermal expansion tank shall be the means in which to control thermal expansion. At the time a water heater is new or replaced, a thermal expansion tank shall be installed."

Exception: In cases where a thermal expansion tank is not feasible, the code official shall determine an approved method of thermal expansion control."

- (z) Section P2904, entitled "Dwelling Unit Fire Sprinkler Systems," is hereby to be used as a reference for standards and requirements only if a sprinkler system is installed. Automatic Fire Sprinkler Systems (section R313) is deleted from the requirements of this code adoption.
- (aa) Section P3114.1, entitled "Air Admittance Valves, General," is hereby amended to read as follows: "Vent systems using air admittance valves shall comply with this section. Individual and branch type air admittance valves shall conform to ASSE 1051. Stack-type air admittance valves shall conform to ASSE 1050. The use of air admittance valves shall only be done so by the approval of the building official."
- (ab) Section E3902.2, entitled "Garage and Accessory Building Receptacles," is hereby amended to read as follows: "All 125-volt single phase 15 or 20 ampere receptacles installed in garages and grade level portions of accessory buildings used for storage or work areas shall have ground fault circuit interrupter protection for personnel."

Exceptions:

- (1) Receptacles that are not readily accessible such as a ceiling-mounted receptacle for a garage door opener.
 - (2) A single receptacle supplying a dedicated branch circuit that is located and identified for a specific use by a cord and plug connected appliance such as a refrigerator, freezer, or a central vacuum system."
- (ac) Section E3902.5, entitled "Unfinished Basement Receptacles," is hereby amended to read as follows:

"All 125-volt single phase 15 and 20 ampere receptacles installed in unfinished basements shall have ground-fault circuit interrupter protection for personnel."

For purposes of this section, unfinished basements are defined as portions or areas of the basement not intended as habitable rooms and limited to storage areas, work areas and the like.

Exceptions:

- (1) A dedicated receptacle supplying only a permanently installed fire alarm or burglar alarm system.
 - (2) Single dedicated receptacles supplying a sump pump.
 - (3) A single receptacle supplying a dedicated branch circuit that is located and identified for a specific use by a cord and plug connected appliance such as a refrigerator, freezer, or a central vacuum system."
- (ad) Section E3902.16, entitled "Arc-Fault Circuit Interrupter Protection," is hereby amended to read as follows: "All branch circuits that supply 120-volt single phase 15 and 20 ampere outlets installed in libraries, dens, bedrooms, closets and similar rooms or areas shall be protected by a combination type arc-fault circuit interrupter installed to provide protection of the branch circuit. Other rooms, such as family rooms, dining rooms, living rooms, parlors, sunrooms, recreation rooms, hallways and similar rooms or areas are exempt from this requirement. For these purposes, a smoke alarm shall not be considered an outlet and is not required to be on an arc-fault circuit. Isolated circuits serving smoke detectors and/or carbon monoxide detectors shall be exempt from arc-fault protection.

Exceptions:

- (1) Where an outlet branch circuit type AFCI is installed at the first outlet to provide protection for the remaining portion of the branch circuit, the portion of the branch circuit between the branch circuit overcurrent device and the first outlet shall be installed with metal outlet and junction boxes and RMC, IMC, EMT, type MC, or steel armored type AC cables meeting the requirements of section E3908.8.
- (2) Where an outlet branch circuit type AFCI is installed at the first outlet to provide protection for the remaining portion of the branch circuit the portion of the branch circuit between the branch circuit overcurrent device and the first outlet shall be installed with metal or nonmetallic conduit or tubing that is encased in not less than two inches of concrete.
- (3) AFCI protection is not required for an individual branch circuit supplying only a fire alarm system where the branch circuit is wired with metal outlet and junction boxes and RMC, IMC, EMT, or steel-sheathed armored cable, Type AC or Type MC, meeting the requirements of section E3908.8."

(Code 2008, § 4-302; Ord. No. 1011, § 1(4-302), 3-11-2021)

ARTICLE 4 EXISTING BUILDING CODE

4-401 Incorporating The 2018 Edition Of The International Existing Building Code

4-402 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Existing Building Code

4-401 Incorporating The 2018 Edition Of The International Existing Building Code

There is hereby incorporated by reference for the purpose of regulating building and construction practices and to provide for the public safety and welfare within the corporate limits of the city, that certain document known as the International Existing Building Code, 2018 edition, including appendix B as published by the International Code Council, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than two copies of the International Existing Building Code shall be marked or stamped "Official Copy as incorporated by Ordinance No. 1012," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this article and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be in electronic form, provided that any changes or amendments are attached to or recorded in such electronic format as to be readily understood. The police department, municipal judge and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost of the city, such number of official copies of such International Existing Building Code similarly marked, as may be deemed expedient.

(Code 2008, § 4-901; Ord. No. 1012, § 1(4-401), 3-11-2021)

4-402 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Existing Building Code

The following sections of the International Existing Building Code, 2018 edition, shall be revised, amended, or deleted:

- (a) Section 101.1, entitled "Title," shall be amended to read: "These regulations shall be known as the International Existing Building Code of the City of Westwood, Kansas, hereinafter referred to as 'this code.'"
- (b) Section 105.2, entitled "Work Exempt from Permit," shall be amended to delete the following exemptions from the permit requirements:
 - (1) Sidewalks and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below.
 - (2) Window awnings supported by an exterior wall.

(c) Reserved.

(d) Section 113.4, entitled "Violation Penalties," shall be amended to add the following:

"In addition to any administrative remedies or other legal or equitable remedies provided, any persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500.00, or be imprisoned not to exceed six months or be both so fined and imprisoned. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by any such person."

(e) Section 114.2, entitled "Issuance (Stop Work Order)," shall be amended to add to the first sentence, "or posted on the property in a conspicuous place."

(f) Section 201.3, entitled "Terms defined in other codes," shall be amended to add after the term "other International Codes," the term "and the National Electrical Code."

(Code 2008, § 4-902; Ord. No. 1012, § 1(4-402), 3-11-2021)

ARTICLE 5 FIRE CODE

[4-501 Incorporating The 2018 Edition Of The International Fire Code](#)

[4-502 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Fire Code](#)

4-501 Incorporating The 2018 Edition Of The International Fire Code

There is hereby incorporated by reference for the purpose of regulating building and construction practices and to provide for the public safety and welfare within the corporate limits of the city, that certain document known as the International Fire Code, 2018 edition, including appendices B, C, D, E, F, H and I, and excluding all other appendices, as published by the International Code Council, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than two copies of the International Fire Code shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 1013," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy this article and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be in electronic form, provided that any changes or amendments are attached to or recorded in such electronic format so as to be readily understood. The police department, municipal judge and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost of the city, such number of official copies of such International Fire Code similarly marked, as may be deemed expedient.

(Code 2008, § 4-501; Ord. No. 1013, § 1(4-501), 3-11-2021)

4-502 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Fire Code

The following sections of the International Fire Code, 2018 edition, shall be revised, amended, or deleted:

- (a) Section 101.1, entitled "Title," shall be amended to read as follows: "These regulations shall be known as the International Fire Code of the City of Westwood, Kansas, hereinafter referred to as 'this code.'"
- (b) Section 103.2, entitled "Appointment," is hereby amended to read as follows: "The Fire Code Official shall also be known as Consolidated Fire District #2 of Johnson County, Kansas, and/or the building official."
- (c) Section 105.1.1, entitled "Permits required," shall be amended to add a final sentence as follows: "The fees for this code and the permits therefor shall be set and established administratively by the city according to the schedule as established by the city and as amended."
- (d) Section 105.7, entitled "Required Construction Permits," shall be amended to read as follows: "The building official is authorized to issue construction permits for work as set forth in sections 105.7.1 to 105.7.25. Consolidated Fire District #2 requires and is authorized to issue separate permits for new construction, tenant finishes, installation of new or modification of existing fire sprinkler systems, fire alarm systems and/or commercial cooking suppression systems."
- (e) Reserved.
- (f) Section 110.4, entitled "Violation Penalties," shall be amended to read as follows: "In addition to any administrative remedies or other legal or equitable remedies provided, any persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500.00, or be imprisoned not to exceed six months or be both so fined and imprisoned. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by any such person."
- (g) Section 112.2, entitled "Issuance (Stop Work Order)," shall be amended to add to the first sentence, "or posted on the property in a conspicuous place."
- (h) Section 112.4, entitled "Failure to Comply," shall be amended to read as follows: "Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a violation of this code, and punished in accordance herewith."
- (i) Section 201.3, entitled "Terms Defined in Other Codes," shall be amended to

read as follows: "Where terms are not defined in this code and are defined in the 2017 National Electrical Code, and 2018 International Building Code, the International Fuel Gas Code, International Mechanical Code, or International Plumbing Code, such terms shall have meanings ascribed to them as in those codes."

- (j) Section 501.3, entitled "Construction Documents," shall be amended to read as follows: "Construction documents for proposed fire apparatus roads, locations of fire lanes, or security gates across fire apparatus access; and construction documents and hydraulic calculations for fire hydrant systems shall be submitted to the Building Code Official and Fire District #2 of Johnson County, Kansas, for review and approval prior to construction."
- (k) Section 5706.2.4.4., entitled "Locations where above-ground tanks are prohibited," shall be amended to read: "The storage of Class I and II liquids in above-ground tanks is prohibited anywhere in the city, except that a permit for such tanks may be granted by the governing body upon good cause shown and assurances by all competent sources that such tank poses no unreasonable threat or danger to persons or property."

(Code 2008, § 4-502; Ord. No. 1013, § 1(4-502), 3-11-2021)

ARTICLE 6 PLUMBING CODE

[4-601 Incorporating The 2018 Edition Of The International Plumbing Code](#)

[4-602 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Plumbing Code](#)

4-601 Incorporating The 2018 Edition Of The International Plumbing Code

There is hereby incorporated by reference for the purpose of regulating building and construction practices and to provide for the public safety and welfare within the corporate limits of the city, that certain document known as the International Plumbing Code, 2018 edition, including appendix F, and excluding all other appendix chapters, B, C, D, and E, as published by the International Code Council, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than two copies of the International Plumbing Code shall be marked or stamped "Official Copy as incorporated by Ordinance No. 1014," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this article and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be in electronic form, provided that any changes or amendments are attached to or recorded in such electronic format to be readily understood. The police department, municipal judge and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost of the city, such number of official copies of such International Plumbing Code similarly marked, as may be deemed expedient.

(Code 2008, § 4-601; Ord. No. 1014, § 1(4-601), 3-11-2021)

4-602 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Plumbing Code

The following sections of the International Plumbing Code, 2018 edition, shall be revised, amended, or deleted:

- (a) Section 101.1, entitled "Title," shall be amended to read: "These regulations shall be known as the International Plumbing Code of the City of Westwood, Kansas, hereinafter referred to as 'this code.'"
- (b) Section 106.6.2, entitled "Fee schedule," shall be amended to read as follows: "The fees for all plumbing work and the permits therefor shall be set and established administratively by the city according to the schedule as established by the city and as amended."
- (c) Section 106.6.3, entitled "Fee Refunds," shall be amended to read as follows: "The building official is authorized to establish a refund policy."
- (d) Section 108.4, entitled "Violation Penalties," shall be amended to read as follows: "Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, or repair plumbing work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code shall be guilty of a violation of this code. In addition to any administrative remedies or other legal or equitable remedies provided, any persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500.00, or be imprisoned not to exceed six months or be both so fined and imprisoned. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by any such person."
- (e) Section 108.5, entitled "Stop Work Orders," shall be amended so that the second sentence shall have added the following, "or posted on the property in a conspicuous place," and the final sentence thereof shall read: "any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a violation of this code and punished in accordance herewith."
- (f) Reserved.
- (g) Section 201.3, entitled "Terms defined in other codes," shall be amended to read as follows: "Where terms are not defined in this code and are defined in the 2017 National Electrical Code, International Building Code, International Fire Code, the International Fuel Gas Code, or the International Mechanical Code,

such terms shall have meanings ascribed to them as in those codes."

- (h) Section 305.6.1, entitled "Sewer Depth," shall be amended to read as follows: "Building sewers shall be constructed in accordance with the requirements of Johnson County wastewater."
- (i) Section 701.3, entitled "Separate Sewer Connection," shall be amended to read as follows: "All residential duplex units and or condominium/townhouse units shall have installed separate sanitary sewer service lines to each living unit from the main line to the living unit."
- (j) Section 702.3, Table 702.3, entitled "Building Sewer Pipe," is hereby amended by removing the following pipes from the approved material list: "Vitrified clay pipe."
- (k) Section 702.4, Table 702.4, entitled "Pipe Fittings," is hereby amended by removing the following pipes from the approved material list: "Vitrified clay pipe."
- (l) Section 903.1, entitled "Roof Extension," is hereby amended by inserting "12 inch (305 mm)" in place of [NUMBER].

(Code 2008, § 4-602; Ord. No. 1014, § 1(4-602), 3-11-2021)

ARTICLE 7 FUEL GAS CODE

4-701 Incorporating The 2018 Edition Of The International Fuel Gas Code

4-702 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Fuel Gas Code

4-701 Incorporating The 2018 Edition Of The International Fuel Gas Code

There is hereby incorporated by reference for the purpose of regulating building and construction practices and to provide for the public safety and welfare within the corporate limits of the city, that certain document known as the International Fuel Gas Code, 2018 edition, including appendices A, B, C and D, as published by the International Code Council, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than two copies of the International Mechanical Code shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 1015," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this article and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be in electronic form, provided that any changes or amendments are attached to or recorded in such electronic format so as to be readily understood. The police department, municipal judge and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost of the city, such number of official copies of such International Mechanical Code similarly marked, as may be

deemed expedient.

(Code 2008, § 4-701; Ord. No. 1015, § 1(4-701), 3-11-2021)

4-702 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Fuel Gas Code

The following sections of the International Fuel Gas, 2018 edition, shall be revised, amended, or deleted:

- (a) Section 101.1, entitled "Title," shall be amended to read: "These regulations shall be known as the International Fuel Gas Code of the City of Westwood, Kansas, hereinafter referred to as 'this code.'"
- (b) Section 106.6.2, entitled "Fee Schedule," shall be amended to read as follows: "The fees for all fuel gas work and the permits therefor shall be set and established administratively by the city according to the schedule as established by the city and as amended."
- (c) Section 108.4, entitled "Violation Penalties," shall be amended to read as follows: "Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, or repair plumbing work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code shall be guilty of a violation of this code. In addition to any administrative remedies or other legal or equitable remedies provided, any persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500.00, or be imprisoned not to exceed six months or be both so fined and imprisoned. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by any such person."

(Code 2008, § 4-702; Ord. No. 1015, § 1(4-702), 3-11-2021)

ARTICLE 8 MECHANICAL CODE

4-801 Incorporating The 2018 Edition Of The International Mechanical Code

4-802 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Mechanical Code

4-801 Incorporating The 2018 Edition Of The International Mechanical Code

There is hereby incorporated by reference for the purpose of regulating building and construction practices and to provide for the public safety and welfare within the corporate limits of the city, that certain document known as the International Mechanical Code, 2018 edition, including appendix A, but excluding appendix B, as published by

the International Code Council, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than two copies of the International Mechanical Code shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 1016," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this article and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be in electronic form, provided that any changes or amendments are attached to or recorded in such electronic format to be readily understood. The police department, municipal judge and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost of the city, such number of official copies of such International Mechanical Code similarly marked, as may be deemed expedient.

(Code 2008, § 4-401; Ord. No. 1016, § 1(4-801), 3-11-2021)

4-802 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Mechanical Code

The following sections of the International Mechanical Code, 2018 edition, shall be revised, amended, or deleted:

- (a) Section 101.1, entitled "Title," shall be amended to read: "These regulations shall be known as the Mechanical Code of the City of Westwood, Kansas, hereinafter referred to as 'this code.'"
- (b) Section 106.5.2, entitled "Fee Schedule," shall be amended to read as follows: "The fees for mechanical work and the permits therefor shall be set and established administratively by the city according to the schedule as established by the city and as amended."
- (c) Section 106.5.3, entitled "Fee Refunds," shall be amended to read as follows: "The building official is authorized to establish a refund policy."
- (d) Section 108.4, entitled "Violation Penalties," shall be amended to read as follows: "Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, or repair mechanical work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code shall be guilty of a violation of this code. In addition to any administrative remedies or other legal or equitable remedies provided, any persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500.00, or be imprisoned not to exceed six months or be both so fined and imprisoned. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by any such person."

- (e) Section 108.5, entitled "Stop Work Orders," shall be amended so that the following shall be added to the second sentence, "or shall be posted on the property in a conspicuous place," and the final sentence thereof shall read: "Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a violation of this code, and punished in accordance herewith."

(Code 2008, § 4-402; Ord. No. 1016, § 1(4-80), 3-11-2021)

ARTICLE 9 ELECTRICAL CODE

4-901 Incorporating The 2017 Edition Of The National Electrical Code

4-902 Amended Section 90.4 Of The 2017 Edition Of The National Electrical Code

4-903 Revised, Amended, Or Deleted Sections Of The 2017 Edition Of The National Electrical Code

4-901 Incorporating The 2017 Edition Of The National Electrical Code

There is hereby incorporated by reference for the purpose of regulating building and construction practices and to provide for the public safety and welfare within the corporate limits of the city, that certain document known as the National Electrical Code, 2017 edition, hereafter also known as "this code," as published by the National Fire Protection Association, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than two copies of the National Electrical Code shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 1017," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this article and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be in electronic form, provided that any changes or amendments are attached to or recorded in such electronic format to be readily understood. The police department, municipal judge and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost of the city, such number of official copies of such National Electrical Code similarly marked, as may be deemed expedient.

(Code 2008, § 4-801; Ord. No. 1017, § 1(4-901), 3-11-2021)

4-902 Amended Section 90.4 Of The 2017 Edition Of The National Electrical Code

Section 90.4, entitled "Enforcement," is hereby amended to be replaced with the following paragraphs:

- (a) The National Electrical Code is intended to be suitable for mandatory application by governmental bodies that exercise legal jurisdiction over electrical installations, include signaling and communication systems, and for

use by insurance inspectors. The authority having jurisdiction for enforcement of the Code has the responsibility for making interpretations of the rules, for deciding on the approval of equipment and materials and for granting the special permission contemplated in a number of the rules.

- (b) By special permission, the authority having jurisdiction may waive special requirements in this code or permit alternative methods where it is ensured that equivalent objectives can be achieved by establishing and maintaining effective safety.
- (c) This code may require new products, constructions, or materials that may not yet be available at the time the code is adopted. In such event, the authority having jurisdiction may permit the use of the products, constructions, or materials that comply with the most recent previous edition of this code adopted by the jurisdiction.
- (d) Existing equipment electrical conductors and equipment lawfully installed prior to the effective date of this code may have their existing use, maintenance or repair continued if the use, maintenance, or repair is in accordance with the original design and location and is not a hazard to life, health or property. The owner or his/her designated agent shall be responsible for adequate maintenance of electrical conductors and equipment.
- (e) *Right of entry.* Upon presentation of proper credentials, the building official or his/her duly authorized representatives may enter any building structure or premises in the city at reasonable hours to perform any duty imposed upon him/her by this code.
- (f) *Stop orders.* Whenever any work is being done contrary to the provisions of this code, the building official shall notify in writing the persons engaged in the doing or causing such work to be done of violations found specifying a period of time allowed to bring the work into code conformance.
- (g) *Authority to condemn equipment.*
 - (1) Whenever the building official learns or ascertains that any electrical conductor or equipment as defined in this code has become hazardous to life, health or property, he/she shall order in writing that such equipment be restored to a condition of safety or be dismantled or removed from its present location. The written notice shall fix a time limit for compliance with such order.
 - (2) The building official is authorized to have electrical current and/or fuel supply to equipment as defined in this code sealed off by the proper utility supplier where such installation is done without permit or does not meet the provisions of this code. Where electric current or fuel supply has been sealed off, it shall be unlawful for any unauthorized person to break such seal. Upon corrections being made to meet requirements set forth in this code, the building official shall contact the proper utility

supplier to approve the removal of such seal.

(h) *Authority to abate.*

- (1) Any portion of an electrical system found by the building official to be unsafe as defined herein is hereby declared to be a nuisance.
- (2) Where a nuisance exists or an electrical system is maintained in violation of this code, or any notice issued pursuant to this section, the building official shall require the nuisance or violation to be abated and where necessary shall seek such abatement in the manner provided by law.

(i) *Administrative authority.* The building official or authorized representatives shall be the authority duly appointed to enforce this code.

- (1) *Violations.* It shall be unlawful for any person, firm, or corporation to violate any of the provisions of this code. The issuance or granting of a permit or approval of plans shall not prevent the building official from thereafter requiring the correction of errors in said plans and specifications or from preventing construction operations being carried on hereunder when in violation of this code, or of any other ordinance, or from revoking any certificate of approval when issued in error. Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the work authorized by such permit is not commenced within 180 days from date of issuance of such permit or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one-half the amount required for a new permit for such work provided no changes have been made or will be made in the original plans and specifications for such work and, provided further, that such suspension or abandonment has not exceeded one year.
- (2) *Penalties.* Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, or repair mechanical work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code shall be guilty of a violation of this code. In addition to any administrative remedies or other legal or equitable remedies provided, any persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500.00, or be imprisoned not to exceed six months, or be both so fined and imprisoned. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by

any such person.

- (3) *Liability.* The building official or any employee charged with the enforcement of this code acting in good faith without malice for the jurisdiction in the discharge of his/her duties shall not thereby render himself liable personally and he/she hereby is relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or by reasons of any act or omission in the discharge of his/her duties. Any suit brought against the building official or his/her employees because of such act or omission performed by him/her in the enforcement of any provisions of this code shall be defended by legal representation of the city until final termination of the proceeding.

(j) *Permit required.*

- (1) No installation, alteration or removal shall be made to the wiring of any building or structure for light, heat or power or to increase the load of energy carried by such wires or equipment, nor shall any building or structure be wired for electric lights, appliances, motors, apparatus or heating devices, nor shall alterations be made thereto without a permit being first issued by the city and applicable business and contractor licenses.
- (2) The building official may in writing suspend or revoke a permit issued under provisions of this code whenever the permit is issued in error or on the basis of incorrect information supplied or in violation of any ordinance or regulation of any provisions of this code.

(k) *Permit fees.* Permit fees shall be established administratively.

(l) The building official is authorized to establish a refund policy.

- (m) *Inspections.* All work shall be subject to inspection by the building official or his/her appointed designee. Any portion of equipment which will be concealed prior to completion shall be subject to inspection prior to such work being concealed.

(Ord. No. 1017, § 1(4-902), 3-11-2021)

4-903 Revised, Amended, Or Deleted Sections Of The 2017 Edition Of The National Electrical Code

The following sections of the National Electrical Code, 2017 edition, shall be revised, amended, or deleted:

- (a) Section 210.12(A), entitled "Dwelling Units," shall be amended to read as

follows: "All 120-volt, single phase, 15- and 20-ampere branch circuits supplying outlets installed in dwelling unit bedrooms, dens, libraries, closets and similar rooms or areas shall be protected by a listed arc-fault circuit interrupter, combination-type, installed to provide protection of the branch circuit. Arc-fault circuit interrupters, combination types, will not be required for the family rooms, dining rooms, living rooms, parlors, sunrooms, recreation rooms, hallways or similar rooms or areas. Isolated circuits serving smoke detectors and/or carbon monoxide detectors shall be exempt from arc-fault protection."

- (b) Section 310.1, entitled "Scope," shall be amended to read as follows: "This article covers general requirements for conductors and their type designations, insulations, markings, mechanical strengths, ampacity ratings and uses. These requirements do not apply to conductors that form an integral part of equipment such as motors, motor controllers and similar equipment or to conductors specifically provided for elsewhere in this code."

Informational note: For flexible cords and cables, see article 400. For fixture wires, see article 402.

The use of nonmetallic sheathed cable with aluminum or copper clad aluminum conductors, size 8 or smaller, will not be permitted for branch circuit wiring in construction, alteration, or repair. This shall apply to branch circuits from distribution point."

(Code 2008, § 4-802; Ord. No. 1017, § 1(4-903), 3-11-2021)

ARTICLE 10 ENERGY CONSERVATION CODE

4-1001 Incorporating The 2018 Edition Of The International Energy Conservation Code
4-1002 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Energy Conservation Code

4-1001 Incorporating The 2018 Edition Of The International Energy Conservation Code

There is hereby incorporated by reference for the purpose of regulating building and construction practices and to provide for the public safety and welfare within the corporate limits of the city, that certain document known as the International Energy Conservation Code, 2018 edition, including appendix RA, as published by the International Code Council, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than two copies of the International Mechanical Code shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 1018," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy this article and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be in electronic form, provided that any changes or amendments are attached to or

recorded in such electronic format so as to be readily understood. The police department, municipal judge and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost of the city, such number of official copies of such International Energy Conservation Code similarly marked, as may be deemed expedient.

(Ord. No. 1018, § 1(4-1001), 3-11-2021)

4-1002 Revised, Amended, Or Deleted Sections Of The 2018 Edition Of The International Energy Conservation Code

The following sections of the International Energy Conservation Code, 2018 edition, shall be revised, amended, or deleted:

- (a) Section R101.1, entitled "Title," shall be amended to read: "These provisions shall be known as the International Energy Conservation Code of the City of Westwood, Kansas, and shall be cited as such and will be referred to herein as 'this code.'"
- (b) Reserved.
- (c) Table R402.1.2 is hereby amended to read as follows:

Table R402.1.2. Insulation and Fenestration Requirements by Component^a

<i>Climat e Zone</i>	<i>Fene strati on U- Fact or</i>	<i>Sky ligh t U- Fac tor^b</i>	<i>Glaze d Fenest ration SHGC^b</i>	<i>Ceilin g R- Value^f</i>	<i>Wood Frame Wall R- Value</i>	<i>Mass Wall R- Value</i>	<i>Flo or R- Val ue</i>	<i>Base ment Wall R- Value^c</i>	<i>Slab R- Value & Depth^d</i>	<i>Crawl Space Wall R- Value^c</i>
4	0.35	0.5 5	0.4	49	13	8/13	19	10/13	NR	10/13

- a. R-values are minimums. U-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the installed R-value of the insulation shall not be less than the R-value specified in the table.
- b. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.
- c. 10/13 means R-10 continuous insulation on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement walls.
- d. R-5 shall be added to the required slab edge R-values for heated slabs.
- e. No change.
- f. No change.

- g. No change.
- h. Refers to wall cavity insulation minimum standards only.
- i. The second R-value applies when more than half the insulation is on the interior of the mass wall.
- j. Loose-fill insulation shall be installed at the rate recommended by the manufacturer's statement "so many bags per 1,000 square feet." Where the pitch of the roof restricts the minimum thickness at the exterior wall line, the insulation shall be blown into the cavity so as to achieve a greater compacted density to a point where the "minimum thickness" can be achieved. An alternative is to install high density batts around the perimeter edge per R1102.2.

(Ord. No. 1018, § 1(4-1002), 3-11-2021)

ARTICLE 11 MOVING BUILDINGS

[4-1101 Public Works Director; Authority](#)

[4-1102 Permit Required](#)

[4-1103 Permit Required--Application](#)

[4-1104 Permit Required--Bond, Insurance Required](#)

[4-1105 Permit Required--Fee](#)

[4-1106 Contractor; License Required; Fee](#)

[4-1107 Route; Duties Of Public Works Director](#)

[4-1108 Notice To Owners](#)

[4-1109 Duty Of Owners](#)

[4-1110 Trees](#)

[4-1110A Interfering With Poles; Wires](#)

[4-1111 Display Of Warning Lights](#)

4-1101 Public Works Director; Authority

The public works director or his or her authorized designee shall be responsible for the administration and enforcement of this article and appointment of an inspector in accordance with WCC 4-204 through 4-209, which apply in a like manner to this article.

(Code 2008, § 4-1101; Ord. No. 1028, § 1(4-1101), 5-12-2022)

4-1102 Permit Required

No person, firm or corporation shall move, haul, or transport any house, building, derrick, or other structure of the height when loaded for movement of 16 feet or more from the surface of the highway, road, street or alley, or a width of eight feet or more or which cannot be moved at a speed of four miles per hour or faster, upon, across or over any street, alley or sidewalk in this city without first obtaining a permit therefor.

(Code 2008, § 4-1102; Ord. No. 1028, § 1(4-1102), 5-12-2022)

State law reference—K.S.A. 17-1914.

4-1103 Permit Required--Application

All applications for permits required under the provisions of this article shall be made in writing to the city clerk specifying the day and time said moving is to commence and the route through the city's streets over which the house, building, derrick or other structure shall be moved. If the house, building, derrick or other structure is being moved outside the city, notice shall also be sent by the applicant to the county clerk and the county clerk for any other county in the state through which the house, building, derrick or other structure will be moved. Notice shall state whether it will be necessary to cut and move, raise, or in any way interfere with any wires, cables or other aerial equipment of any public or municipally owned utility, and if so, the application shall also state the name of the public or municipally owned utility, and the time and location that the applicant's moving operations shall necessitate the cutting, moving, raising or otherwise interfering with such aerial facilities. Documentation of approved disconnection from each utility provider providing service to the house, building, derrick, or other structure shall be submitted by the applicant to the city clerk.

(Code 2008, § 4-1103; Ord. No. 1028, § 1(4-1103), 5-12-2022)

State law reference—K.S.A. 17-1915.

4-1104 Permit Required--Bond, Insurance Required

It shall be the duty of any person at the time of making application for a permit as provided in this article to provide public liability insurance policy issued by an insurance company authorized to do business in the state, in the amount of not less than \$1,000,000.00.

(Code 2008, § 4-1104; Ord. No. 1028, § 1(4-1104), 5-12-2022)

4-1105 Permit Required--Fee

Before any permit to move any house or structure is given under the provisions of this article, the applicant shall pay a fee established administratively to the city clerk; plus any additional costs for the time for any city personnel involved in such moving, including, but not limited to, any public works or law enforcement personnel needed to accomplish the move safely. All said fees shall be paid to the city clerk.

(Code 2008, § 4-1105; Ord. No. 1028, § 1(4-1105), 5-12-2022)

4-1106 Contractor; License Required; Fee

- (a) The applicants shall provide to the city the name of the contractor who will move the house, building, derrick, or other structure, along with evidence of that contractor's liability insurance with an insurance company licensed to do business in the state. The amount of liability insurance will be not less than

\$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. The insurance will protect the city from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent or wrongful acts or omissions of the applicant or the contractor. The contractor shall also have coverage for automobile liability in an amount of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. The city shall be an additional insured on all policies of permittee, to the extent permitted by law, unless waived in writing by the city. If the contractor is self-insured, it shall provide the city proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts, and shall agree to indemnify and hold the city harmless for any losses associated with permittee's activities in the right-of-way. All contractors actually performing work for any permittee hereunder shall be subject to the same insurance requirements set forth herein.

- (b) The contractor shall at all times during the term of the permit, and for two years thereafter, maintain a performance and maintenance bond in a form approved by the city attorney. The amount of the bond will be \$50,000.00 or the value of the restoration, whichever is greater, for a term consistent with the term of the permit, plus two additional years, conditioned upon the contractor's faithful performance of the provisions, terms and conditions conferred by this article. In the event the city shall exercise its right to revoke the permit as granted herein, then the city shall be entitled to recover under the terms of the bond the full amount of any loss occasioned.
- (c) A copy of the liability insurance certificate and performance and maintenance bond must be on file with the city clerk.

(Code 2008, § 4-1106; Ord. No. 1028, § 1(4-1106), 5-12-2022)

4-1107 Route; Duties Of Public Works Director

- (a) The city clerk shall, upon filing of the above application, refer the same to the public works director or his or her authorized designee to check the proposed route and determine if it is practical to move such house or other structure over the route proposed. If it shall appear that such route is not practical and another route may be used equally well with less danger to street and travel, then the public works director may designate such other route as the one to be used and shall notify the applicant of the same. The public works director may also require the planking of any street, bridge or culvert or any part thereof to prevent damage thereto, the cost of which shall be borne by the applicant.
- (b) It shall also be the duty of the chief building official or his or her authorized designee to inspect the progress of moving any house or other structure to see that the same is being moved in accordance with the provisions of this article.

The chief building official is also responsible for ensuring that removal of the house, building, derrick or other structure is performed in a safe manner.

- (c) The public works director or the designee thereof has the authority to stop or halt the moving of any house or other structure if it is being moved in violation of the plan established therefor or in the interest of public health and safety.

(Code 2008, § 4-1107; Ord. No. 1028, § 1(4-1107), 5-12-2022)

4-1108 Notice To Owners

- (a) Upon issuance of a moving permit the applicant shall give not less than 15 days' written notice to any person owning or operating any wires, cables or other aerial equipment along the proposed route of the intent to move the structure, giving the time and location that the applicants moving operation shall necessitate the cutting, moving, raising or interfering of any wires, cables or other aerial equipment.
- (b) The notice provision of subsection (a) of this section shall not apply where the person owning or operating any wires, cables or other aerial equipment has waived their right to advance notice.
- (c) Should the moving operation be delayed, the applicant shall give the owner or his or her agent not less than 24 hours' advance notice of the actual operation.

(Code 1993, § 4-205; Code 2008, § 4-1108; Ord. No. 1028, § 1(4-1108), 5-12-2022)

State law reference—K.S.A. 17-1916.

4-1109 Duty Of Owners

- (a) It shall be the duty of any public or municipally owned utility owning or operating such wires, cables, or other aerial equipment after service of notice as provided in this article, to furnish competent lineman or workmen to remove such poles, or raise or cut such wires as will be necessary to facilitate the moving of such house or structure. The necessary expense which is incurred thereby shall be paid by the applicant to each public or municipally owned utility. The public or municipally owned utility may require the applicant to furnish it with appropriate bond or other surety agreement insuring the payment of all expenses incurred as a result of the applicant's moving operations.
- (b) The owner of any wires, cables or other aerial equipment shall be liable to the permit holder for damages in an amount not to exceed \$100.00 per day for each day the owner shall fail or refuse to accommodate the permit holder's moving operations.

(Code 2008, § 4-1109; Ord. No. 1028, § 1(4-1109), 5-12-2022)

State law reference—K.S.A. 17-1917.

4-1110 Trees

If any trees or foliage must be trimmed, cut, or otherwise moved to facilitate the moving operations, the applicant must arrange for an ISA Certified Arborist, or some other licensed arborist service to perform such trimming at the applicant's expense. The applicant must provide notice to the property owner on which any such trees will be trimmed prior to any trimming activities. The public works director shall also be notified of any tree trimming and can require an alternative route if the trimming exceeds what the public works director finds to be reasonable.

(Ord. No. 1028, § 1(4-1110)(1), 5-12-2022)

4-1110A Interfering With Poles; Wires

It shall be unlawful for any person engaged in moving any house or other structure to raise, cut or in any way interfere with any wires or poles bearing wires or any other aerial equipment.

(Code 2008, § 4-1110; Ord. No. 1028, § 1(4-1110)(2), 5-12-2022)

State law reference—K.S.A. 17-1918.

4-1111 Display Of Warning Lights

It shall be the duty of any person moving any of the structures mentioned in this article upon or across any street, alley or sidewalk or other public place, in this city, to display warning lights thereon in such a manner as to show the extreme height and width thereof from sunset to sunrise.

(Code 2008, § 4-1111; Ord. No. 1028, § 1(4-1111), 5-12-2022)

CHAPTER 5 BUSINESS REGULATIONS

ARTICLE 1 GENERAL REGULATIONS AND LICENSES

ARTICLE 2 SOLICITORS, CANVASSERS, PEDDLERS, TRANSIENT MERCHANTS

ARTICLE 3 DRIVE-IN BUSINESSES AND BUSINESSES WITH CURBSIDE SERVICE

ARTICLE 4 BATH HOUSES; MASSAGE ESTABLISHMENTS

ARTICLE 5 (RESERVED)

ARTICLE 6 WRECKER AND TOW SERVICES

ARTICLE 7 (RESERVED)

ARTICLE 8 ADULT ENTERTAINMENT REGULATIONS

ARTICLE 9 FRANCHISES

ARTICLE 10 PROHIBITED DISCRIMINATION IN EMPLOYMENT, HOUSING, OR PUBLIC ACCOMMODATIONS AS TO SEXUAL ORIENTATION OR GENDER IDENTITY

ARTICLE 11 RENTAL PROPERTIES

ARTICLE 1 GENERAL REGULATIONS AND LICENSES

5-101 Definitions

5-102 License Required

5-103 Purpose

5-104 Exemptions

5-105 Occupation Fees Levied

5-106 Two Or More Businesses, Same Location

5-107 Leased Departments

5-108 License Application; Procedure

5-109 License Application; Receipt And License

5-110 Expiration Of License

5-111 Transfers

5-112 Late Payment, Penalty

5-113 Disposition Of Revenue

5-114 License To Be Displayed

5-115 Business Transactions Not Invalid

5-116 Payment Of Fine Does Not Pay Fee; Civil Action

5-117 Penalty

5-118 Sales On Public Property

5-119 New Goods Public Auction; License Fee

5-120 Right To Inspect Business Property And Rental Property

5-101 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business means and includes businesses, trades, occupations, and professions, and also the rendering or furnishing of a service, provided that the name of a business, trade, occupation or profession may be used, and when so used, shall refer to the particular business, trade, occupation or profession. The term "business" shall also mean and include the renting or leasing (or the offering for rent or lease) of property for residential or business use, whether for long-term or for short-term, as further set forth in article 11 of this chapter.

Business property means any property subject to licensure herein or upon which any commercial, business or professional activity is conducted, except as may be exempt by state law or other authority.

Dwelling means any building or portion thereof, which is designed or used for residential dwelling purposes.

Fee means an occupation or license fee for city revenue without regulations upon and for the privilege of engaging in business as herein defined.

Home business means any business or activity operated out of the home, a material purpose for which is the conduct of commerce or some other business of commercial enterprise for profit or gain. Any declaration of income on any government tax form generated from a home-based enterprise is prima facie evidence of the establishment and operation of a business on the premises.

License means the documents issued by the city acknowledging payment of the required amount of license fee, and stating the name of the licensee, the kind of business and where located, the period which the license fee covers, such other matter as may be required and signed by the proper officer or officers.

Person means any individual, partnership, corporation, firm, or gas station, association, joint stock company or syndicate who or which is engaged in any business, trade, occupation or profession, or rendering or furnishing any service for profit or livelihood and subject to the provisions of this article, provided that any individual in the direct employ of any person licensed under the provisions of this article is not a person unless such individual operates as a subcontractor; but if such individual performs any service or practices his or her skill for compensation for any person other than his or her licensed employer, he or she is a person and must pay the fee and obtain a license if such be required by the terms of this chapter.

(Code 2008, § 5-101; Ord. No. 339, § 2; Ord. No. 734, § 2; Ord. No. 1029, § 1(5-101), 5-12-2022)

5-102 License Required

It shall be unlawful for any person, firm, or corporation to conduct or pursue any occupation, business or profession, for which a license is required under this chapter,

without having a valid license in possession or on the licensed premises.

(Code 1983; Code 1993, § 5-103; Code 2008, § 5-102)

5-103 Purpose

Except as otherwise provided in article 11 of this chapter, the licenses provided for herein are solely for the purpose of providing revenue to defray a part of the expenses of the city, and not for the purpose of regulation.

(Code 1993, § 5-301; Code 2008, § 5-103; Ord. No. 339, § 1; Ord. No. 1029, § 1(5-103), 5-12-2022)

5-104 Exemptions

Nothing herein shall be construed as applying to or taxing:

- (a) The interstate portion of any business;
- (b) Any business the taxing of which by a city is prohibited by the statutes of the state;
- (c) Instrumentalities of the government of the United States, unless authorized by laws of the United States;
- (d) Organizations of any kind or the employees thereof wholly for charitable, religious, benevolent, fraternal, civic, educational, military, municipal or similar purposes, and from which profit is not derived, either directly or indirectly by any individual.

The city clerk may require any business, instrumentality, or organization claiming to be exempt under this section to file with the city clerk a verified statement stating the facts upon which exemption is claimed.

(Code 1993, § 5-302; Code 2008, § 5-104; Ord. No. 339, § 3)

5-105 Occupation Fees Levied

There are hereby levied occupation fees in the amounts adopted from time to time by resolution of the governing body and listed in the city's master fee schedule.

If any person fails or refuses to pay any fee or penalties as provided by this section, the city may collect the amount due in the same manner as a personal debt of the property owner to the city by bringing an action in the district court of the county. Such actions may be maintained, prosecuted, and all proceedings taken, including any award of post-judgment interest to the same effect and extent as for the enforcement of any action for debt. All provisional remedies available in such actions shall be and are hereby made available to the city in the enforcement of the payment of such obligations.

In such actions, the city also shall be entitled to recover interest at the rate provided in K.S.A. 79-2968, and amendments thereto from and after the date a delinquency occurs in the payment of the fee. The amount owing may be assessed against the property and the city clerk may at the time of certifying other taxes to the county clerk, certify the aforesaid fees and penalties owing by the proper owner; and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner of a civil action as described herein, but only until the full cost and any applicable interest has been paid in full.

(Code 2008, § 5-105; Ord. No. 770, § 1; Ord. No. 777, § 1; Ord. No. 1029, § 1(5-105), 5-12-2022)

5-106 Two Or More Businesses, Same Location

A person engaged in two or more businesses at the same location shall not be required to obtain separate licenses for each business but shall be issued one license at the highest fee applicable.

(Code 1993, § 5-304; Code 2008, § 5-106; Ord. No. 339, § 5)

5-107 Leased Departments

Any person operating what is commonly known as a leased department in a business establishment shall pay the fee applicable to the business conducted by the department.

(Code 1993, § 5-305; Code 2008, § 5-107; Ord. No. 339, § 6)

5-108 License Application; Procedure

Any person shall, before engaging in any business or before continuing such business after a license has expired, make application for a license and pay the proper fee. Application shall be made to the city clerk giving the name of the person, the kind of business, location and such other information as may be necessary, or directed by the city clerk, to determine the amount to be paid. All such information furnished the city clerk shall be true, to the knowledge of the person making such application and any such false information as to the kind of business, location, use of the property and such other information as is required by the city clerk, shall subject such license to be declared void and subject such person to the penalty as set out in WCC 5-117. The city clerk may, in his or her discretion, cause an investigation to be made to determine the accuracy of such statements furnished the city clerk.

(Code 1993, § 5-306; Code 2008, § 5-108; Ord. No. 548, § 1; Ord. No. 1029, § 1(5-108), 5-12-2022)

5-109 License Application; Receipt And License

- (a) The city clerk shall, when satisfied of the accuracy of the information and the proper amount having been paid, issue a receipt stating the name of the person, kind of business, his, her or its location, the date of issuance, the amount paid, the duration and expiration.
- (b) In addition to the receipt, the city clerk shall issue a license stating the name of the licensee, the nature of the business, the exact location, if possible, the amount paid and date, and date of expiration. The license shall be signed by the city clerk.

(Code 1993, § 5-307; Code 2008, § 5-109; Ord. No. 339, § 8)

5-110 Expiration Of License

All annual licenses shall expire on January 15 of each year, provided that when a business begins operation on or after July 1 of any year, the amount charged shall be one-half of the annual amount.

(Code 1993, § 5-308; Code 2008, § 5-110; Ord. No. 727, § 1; Ord. No. 1029, § 1(5-110), 5-12-2022)

5-111 Transfers

- (a) There shall be no transfer of license from one person to another, except that where a business, including stock, if any, is sold and the new owner continues the business at the same location and under the same name, the license shall continue to expiration. If the holder of a license moves a stock of goods from the location stated on the license to another location and begins business at the new location, he or she may return the license to the city clerk and secure a substitute license upon payment of a fee set by the governing body and any additional prorated amount for the unexpired term, should a greater amount be required at the new location.
- (b) The annual fee is nonrefundable. No reduction in the fee will be refunded if a business should become subject to a smaller fee during a given year.

(Code 2008, § 5-111; Ord. No. 339, § 10)

5-112 Late Payment, Penalty

Any person who, under the provisions of this article, is required to pay a fee and who does not pay the fee within 30 days after it becomes due, shall pay, in addition to the fee, a penalty of ten percent of the amount of the fee; and ten percent of the fee shall be added as a penalty for each additional 30 days' delinquency.

(Code 1993, § 5-310; Code 2008, § 5-112; Ord. No. 339, § 11; Ord. No. 1029, § 1(5-112), 5-12-2022)

5-113 Disposition Of Revenue

The revenue received under the provisions of this article shall be credited to the city general fund.

(Code 1993, § 5-311; Code 2008, § 5-113; Ord. No. 339, § 12)

5-114 License To Be Displayed

All persons having a permanent business location must display said license at the permanent location in a place where it will be visible to patrons. All persons not having permanent location are required to carry their license with them. A licensee shall present his or her license for inspection when requested to do so by any officer of the city.

(Code 1993, § 5-312; Code 2008, § 5-114; Ord. No. 339, § 13)

5-115 Business Transactions Not Invalid

The pursuing, conducting or carrying on of any business without the payment of the fee required and without having secured a license as provided by this article shall not affect the validity of any business transaction which would otherwise be lawful.

(Code 1993, § 5-313; Code 2008, § 5-115; Ord. No. 339, § 14)

5-116 Payment Of Fine Does Not Pay Fee; Civil Action

The payment of a fine or the serving of a jail sentence for failure to pay the fee and secure a license shall not constitute payment of the fee and does not excuse the person from making payment, and the city may proceed by civil action to collect the fee.

(Code 1983; Code 1993, § 5-314; Code 2008, § 5-116)

5-117 Penalty

Any person, as defined in WCC 5-101, who shall conduct, pursue, carry on or operate within the corporate limits of the city any business, as defined in WCC 5-101, and any individual who shall assist directly or indirectly, in so doing in any manner or to any extent, either as owner, proprietor, manager, superintendent, partner, agent, servant, or employee of any person after a fee should have been paid and a license obtained to conduct, pursue, carry on or operate such business and the fee has not been paid and a license obtained, shall be deemed to do so unlawfully and upon conviction thereof in the municipal court shall be punished by a fine of not more than \$500.00, or by imprisonment in the city jail for a period not exceeding 180 days, or by both such fine

and imprisonment. A separate offense shall be deemed committed on each day during or at which a violation occurs or continues.

(Code 1970, § 5-316; Code 1993, § 5-315; Code 2008, § 5-117; Ord. No. 1029, § 1(5-117), 5-12-2022)

5-118 Sales On Public Property

No merchandise, goods, wares or edible products of any nature whatsoever may be displayed for sale or sold within and upon the city streets or public property, except upon proper application for a license for the use of public grounds as set forth in WCC 12-104.

(Code 1993, § 5-102; Code 2008, § 5-118)

5-119 New Goods Public Auction; License Fee

The license fee for the conduct of a new goods public auction shall be the amount provided in K.S.A. 58-1019, as amended.

(Code 1983; Code 1993, § 5-105; Code 2008, § 5-119; Ord. No. 1029, § 1(5-119), 5-12-2022)

5-120 Right To Inspect Business Property And Rental Property

(a) To the extent permitted by law, including, but not limited to, K.S.A., 12-16,138, as amended, the city shall have the right to enter upon any business property or rental property or dwelling to determine:

- (1) The use of the property is in compliance with the applicable zoning laws.
- (2) The property meets the requirements of the city's building and safety codes.
- (3) No condition exists in the structure or on the property upon which it is located constituting a violation of any other code or ordinance of the city.

Inspections shall be undertaken with the consent of the lawful occupant or other person exercising control of the business property or dwelling, or by issuance of an administrative search warrant. Any lawful occupant residing in a rental dwelling located within the corporate limits of the city may request an interior inspection of the property at any time by the city.

(b) Whenever the city building official or designated representative determines that any business property or dwelling fails to meet the requirements set forth in this article or set forth in such laws, codes, or ordinances, he or she shall suspend the license previously issued and shall issue a notice that such failure must be corrected. This notice shall:

- (1) Be in writing;
 - (2) Set forth the alleged violations;
 - (3) Describe the business property or dwelling where the violations are alleged to exist or have been committed;
 - (4) Provide a reasonable time, not to exceed 60 days, for the correction of any alleged violations;
 - (5) Be served on the owner of the business or dwelling personally, or by certified mail, addressed to the last known place of residence of the business owner or property owner, or the address of the owner provided on the application for license. If upon a diligent effort to locate the owner, the owner cannot be found, notice may be posted on or near the business located on the property described in the notice.
- (c) A license suspended pursuant to the provisions hereof shall be reinstated upon correction of the violation set forth in the notice within the time provided in the notice.
- (d) Whenever an owner of a business or dwelling neglects or refuses to make repairs or take other corrective action called for by order or notice of violation issued by the city building official within the time allowed by the notice, the city building official shall revoke the license previously issued and shall post a notice on the business, dwelling, or other property stating the nature of the violation and that the license to operate the business is revoked.
- (e) Notwithstanding the foregoing, nothing in this article shall be deemed to prohibit or limit the ability of the city abate or remedy any nuisance, any unsafe, dangerous, or abandoned structure, or any immediate hazards under this Code or other applicable law, including, but not limited to, K.S.A. 12-1751 et seq., K.S.A. 12-1671e, and/or K.S.A. 12-1617g, as amended.

(Code 2008, § 5-120; Ord. No. 1029, § 1(5-120), 5-12-2022)

ARTICLE 2 SOLICITORS, CANVASSERS, PEDDLERS, TRANSIENT MERCHANTS

5-201 (Reserved)

5-202 Definitions

5-203 Solicitation Permits Required

5-204 Information Required On Application For Solicitation Permit

5-205 Standards For Issuance

5-206 Application And Permit Available For Public Inspection

5-207 Fees

5-208 Contents Of Permit

5-209 Term Of Permit

5-210 Permits Nontransferable

5-211 Suspension Or Revocation Of Permits

[5-212 Uniformity Of Administration Of Article](#)

[5-213 Prohibited Acts](#)

[5-214 Penalties](#)

5-201 (Reserved)

5-202 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Charitable means any activity represented as carried on for unselfish, civic, or humanitarian motives, or for the benefit of others, and not for private gain.

Commercial handbill means any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper booklet, or any other printed or otherwise reproduced original or copies of any matter of literature:

- (1) Which advertises for sale any merchandise, product, commodity or thing;
- (2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales;
- (3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit.
- (4) *Exemption for mail and newspapers.* For purposes of this article, the term "commercial handbill" shall not be construed to include mail delivered by the United States Postal Service or newspapers duly entered with the United States Postal Service and newspapers filed and recorded with any recording officer as provided by general law or any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.

Peddler means any person, whether a resident of the city or not, traveling by foot, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from an automotive vehicle, or other vehicle or conveyance, and further provided, that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a peddler.

Residence means and includes every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

Soliciting means and includes any one or more of the following activities:

- (1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; or
- (2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character; or
- (3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.

Solicitor means any individual, whether resident of the city or not, whose business is mainly or principally carried on by traveling either by foot, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not. The term "solicitor" shall include any person, who, for himself, herself or for another person, hires, leases, uses, or occupies any building, structure, tent, boat, hotel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery. The term "solicitor" includes charitable solicitors.

Street salesman means any person engaged in any manner in selling merchandise of any kind from a vehicle or stand temporarily located on the public streets or sidewalks of the city.

Transient merchant, itinerant merchant or itinerant vendor means any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, or boat, public room in hotels, lodginghouses, apartments, shops or any street, alley or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. The term "transient merchant," "itinerant merchant" or "itinerant vendor" shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer,

trader, merchant or auctioneer.

(Code 2008, § 5-202)

5-203 Solicitation Permits Required

Every solicitor, peddler, transient merchant, itinerant merchant, itinerant vendor, or street salesman must obtain a permit from the city before soliciting within the city. In order to obtain a permit to solicit, the applicant must furnish the information required under this article to the city clerk.

(Code 1993; Code 2008, § 5-203)

5-204 Information Required On Application For Solicitation Permit

An applicant for a solicitation permit shall furnish to the city clerk an application containing the following information:

- (a) The name and address of the principal office of the person applying for the permit (including both local and non-local principal offices where such exist);
- (b) If the applicant is not an individual, the names and addresses of the applicants principal officers and executives;
- (c) The purpose for which the solicitation is to be made;
- (d) The name and address of the person who will be making the solicitations;
- (e) The time when the solicitations will be made, giving the expected dates for the commencement and termination of the solicitations, subject to the limitations on time for solicitations contained in this article;
- (f) A statement to the effect that if a permit is granted:
 - (1) It will not be used or represented in any way as an endorsement by the city by any department or officer thereof;
 - (2) That during the period specified in the permit, if there is any change in fact, policy or method that would alter the information given in the application, the applicant will notify the city clerk in writing thereof within 48 hours after such change;
 - (3) At no time during the period of solicitation will the applicant or his or her agents solicit at any residence within the city where there is clearly and visibly posted any sign requesting "no solicitation," or "no trespassing" or words of similar import;
 - (4) The applicant and all persons for whom application is made will carry on their person a copy of the solicitation permit issued by the city.

- (g) A sample of the identification badge or card that each person participating in the solicitation shall wear or carry, indicating that person's name and the name of the organization for which he or she is soliciting. Such badge or card shall be furnished by the organization and be approved by the city clerk.

(Code 1993; Code 2008, § 5-204)

5-205 Standards For Issuance

- (a) The city clerk shall, except as provided by this article, issue a solicitation permit provided for by this article upon receiving a completed application form from the applicant or their representative.
- (b) The city clerk, or a person designated by the city clerk to review applications for solicitation permits, may defer issuance of any solicitation permit for such period of time as is reasonably necessary to verify the accuracy of information required to be provided in the application for solicitation permit.
- (c) The city clerk shall not issue a solicitation permit to any person who within the five years preceding the date of filing of an application for solicitation permit has been convicted of a felony, or other violation of the laws of the United States or of any state or city of the United States where such conviction was for an offense involving force or threat of force, violence, theft, dishonesty, fraud, sexual misconduct or moral turpitude or where such conviction was for violation of this article or the solicitation ordinance of any other city.
- (d) Any person who is aggrieved by the refusal of the city clerk to issue a solicitation permit may appeal the refusal to the governing body. On refusal, the city clerk shall notify the applicant by registered mail of the refusal to issue a solicitation permit and that the applicant may appeal the refusal to the governing body by requesting a hearing before the governing body not later than 30 days following receipt of the notice of refusal. The notice of refusal shall contain a statement of the facts upon which the city clerk acted in refusing to issue a permit. On receipt of a request for hearing before the governing body, the city clerk shall schedule the matter to be heard before the next regularly scheduled meeting of the governing body unless the applicant shall request that the hearing be scheduled at a later date. In no event shall such hearing be held more than 30 days following receipt of the applicant's request for hearing. At the hearing the applicant may offer evidence to supply any contention that a permit should be issued.

(Code 1993; Code 2008, § 5-205)

5-206 Application And Permit Available For Public Inspection

All applications, permits and supporting documentation filed with the city clerk shall be

a matter of public record, and shall be available for examination and inspection by any member of the public during regular business hours.

(Code 1993; Code 2008, § 5-206)

5-207 Fees

Fees and charges paid to the city for a permit pursuant to this article shall be adopted by resolution of the governing body and listed in the city's master fee schedule.

(Code 1993; Code 2008, § 5-207)

5-208 Contents Of Permit

Permits issued under the provisions of this article should bear the name and address of the person to whom the permit is issued, the number of the permit, the dates within which the permit holder may solicit, the statement that the permit does not constitute an endorsement by the city or by any of its departments, officers or employees, of the purpose or the person conducting the solicitation, and the signature of the city clerk or his or her designee.

(Code 1993; Code 2008, § 5-208)

5-209 Term Of Permit

Permits issued pursuant to this article shall authorize the holder thereof to solicit for the number of days requested in the application, not to exceed 90 consecutive days. Applications for renewal of permits may be made and shall be granted if the requirements of this article are still being met and no violations of the permit or this article have been found to exist.

(Code 1993; Code 2008, § 5-209)

5-210 Permits Nontransferable

No permit issued under the provisions of this article shall be transferable or assignable.

(Code 1993; Code 2008, § 5-210)

5-211 Suspension Or Revocation Of Permits

Any determination by the city clerk that the holder of a city permit has violated any provisions of this article or if the permit issued pursuant thereof, or that the holder of the permit has made representations which are contrary to the facts stated in the application for the permit, shall cause the city clerk to give notice to the permit holder that the permit is immediately suspended. The notice of immediate suspension is to be mailed to the permit holder by registered or certified mail, and shall notify the holder that

a hearing will be had before the governing body at its next regular or special meeting for the purposes of determining whether or not the permit should be revoked. The notice shall contain a statement of the facts upon which the city clerk acted in suspending the permit and at that hearing the permit holder may offer evidence to support any contention its permit should not be revoked. No solicitation shall be made during the period of suspension or revocation of a permit.

(Code 1993; Code 2008, § 5-211)

5-212 Uniformity Of Administration Of Article

The city clerk is directed to administer this article uniformly, and is to require all applicants to submit the application and supporting data required by this article before issuing a permit. All applicants are to be treated alike.

(Code 1993; Code 2008, § 5-212)

5-213 Prohibited Acts

- (a) It shall be unlawful for any solicitor to ring the bell, or knock on the door or otherwise attempt to gain admittance for the purpose of soliciting at a residence, dwelling or apartment at which a sign bearing the words "no solicitors," "no trespassers," or words of similar import indicating that such persons are not wanted on the premises, is painted, affixed or otherwise exposed to public view, provided that this subsection shall not apply to any solicitor who gains admittance to such residence at the invitation or with the consent of the occupant thereof.
- (b) It shall be unlawful for any solicitor to solicit prior to 10:00 a.m. or after 9:00 p.m., local times, of any day.
- (c) It shall be unlawful for any solicitor to engage in soliciting upon any premises or in any dwelling house, apartment or other residence after having been asked by the owner or occupant thereof to leave the premises or residence.
- (d) It shall be unlawful for any solicitor to make more than one solicitation call at the same residential premises for identical goods, services, or contributions within any consecutive 60-day period, without receiving a prior invitation thereof from the occupants of the premises. This provision shall be construed to include solicitation upon the same premises by employees, agents, or other persons acting on behalf of the same person more than once during the aforesaid period without a prior invitation as herein provided.
- (e) It shall be unlawful for any solicitor to fail to provide, at the request of the purchaser, a written receipt for purchases exceeding \$5.00 in cash or tangible property which receipt shall be signed by the person making the sale and shall set forth a brief description of the goods or services sold, the total purchase price

thereof, amount of cash payment, if any, and the balance due and terms of payment; or for any charitable solicitor or organization accepting any contribution exceeding \$5.00 in cash or tangible property to fail to provide at the request of the donor a written receipt acknowledging such contribution and personally signed by the person accepting such contribution.

- (f) It shall be unlawful for any solicitor to fail at the outset to disclose to the prospective buyer, prospective donor, or canvasee his or her name and the name of the company, product or organization he or she represents.
- (g) It shall be unlawful for any solicitor to make any assertion, representation or statement which misrepresents the purpose of his or her call, or use any plan, scheme, or use which misrepresents such purpose.
- (h) It shall be unlawful for any solicitor to conduct his or her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police or sanitation vehicles.
- (i) It shall be unlawful for any person to solicit who has been convicted of a felony or the violation of any law involving force, violence, moral turpitude, deceit, fraud, or the violation of any law regulating the act of soliciting as defined in this article within the past five years in this state or any other state or subdivision thereof or of the United States.
- (j) It shall be unlawful for any person to solicit or attempt to solicit at a place of residence at any entrance other than the main entrance of the residence.
- (k) It shall be unlawful for any person to solicit or attempt to solicit without carrying upon their person a copy of the permit issued by the city authorizing solicitation and an identification badge or card as described in WCC 5-204(g).

(Code 1993; Code 2008, § 5-213)

5-214 Penalties

Any person who violates or causes to be violated any provision of this article, or who gives false and incorrect information to the city clerk in filing statements or reports required by this article, whether such report or statement is verified or not, shall be guilty of a municipal offense and upon conviction thereof, shall be subject for the first offense to a fine of not less than \$100.00 or more than \$500.00 and for the second or any subsequent offense to a fine of not less than \$500.00 or more than \$1,000.00. Jail time not to exceed six months may be added as additional punishment or in lieu of a fine, at the discretion of the judge.

(Code 1993; Code 2008, § 5-214)

ARTICLE 3 DRIVE-IN BUSINESSES AND BUSINESSES WITH CURBSIDE SERVICE

5-301 Definition

5-302 Rules And Regulations

5-303 Penalty

5-301 Definition

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Drive-in business or *business with curbside service* means any and all businesses which furnish curb or delivery service to patrons outside of the building occupied by the business. The term "drive-in business" or "business with curbside service" does not include pay phones, ATMs, vending machines and similar automated devices.

(Code 2008, § 5-301; Ord. No. 397, § 1)

5-302 Rules And Regulations

All persons, firms, associations or corporations, either as principal or agent of any drive-in business or business with curbside service, shall conform to the following rules and regulations:

- (a) There shall be placed on the building or premises, notifying patrons desiring curb or delivery service, signs visible to car occupants directing patrons where to park for car service.
- (b) No curb or delivery service shall be furnished patrons between the hours of 10:00 p.m. and 7:00 a.m.
- (c) It shall be unlawful to use any device known as a loud-speaker, record player, radio, sound amplifier, bells, buzzers or signal calls the purpose of attracting attention or for advertising purposes outside of the building occupied by the business.
- (d) No curb or drive-in service shall be rendered to patrons, except on property owned or leased by the proprietor of the drive-in business.
- (e) It shall be the duty of the owner, occupant or agent of the drive-in business to see that patrons shall not use the horn of their motor vehicle for a curb or drive-in service.
- (f) It shall be the duty of the owner, occupant or agent of the drive-in business building shall be kept free from all rubbish, wastepaper, napkins, paper cups, sweepings or other loose combustible material.

(Code 1993, § 5-402; Code 2008, § 5-302; Ord. No. 397, § 2)

5-303 Penalty

Any person, firm or corporation or any agent, manager or employee, officer or employer thereof, who shall violate or shall cause, permit or direct the violation of any of the provisions of this article shall upon conviction thereof, be fined in any sum not less than \$150.00, nor more than \$500.00 for each offense. Each occasion upon which violation shall occur shall be deemed a separate offense.

(Code 1993, § 5-403; Code 2008, § 5-303; Ord. No. 397, § 3)

ARTICLE 4 BATH HOUSES; MASSAGE ESTABLISHMENTS

[5-401 Definitions](#)

[5-402 Permit Required](#)

[5-403 Permit Fees](#)

[5-404 Application](#)

[5-405 Application; Stockholders](#)

[5-406 Education Requirements](#)

[5-407 \(Reserved\)](#)

[5-408 Issuance Of Permit](#)

[5-409 Permit Displayed](#)

[5-410 Revocation Or Suspension Of Permit](#)

[5-411 Facilities](#)

[5-412 Certification](#)

[5-413 Inspections](#)

[5-414 Operation Regulations](#)

[5-415 Operation Regulations; Equipment; Attire](#)

[5-416 Supervision](#)

[5-417 Employee Registers](#)

[5-418 Minors Prohibited](#)

[5-419 Advertising](#)

[5-420 Transfer Of Permits](#)

[5-421 Exceptions](#)

[5-422 City To Establish And Enforce Rules And Regulations](#)

[5-423 Restriction To Premises](#)

5-401 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bath house means the occupation of maintaining and operating for compensation any services of baths of all kinds, including all forms and methods of hydrotherapy.

Body painting studios means the occupation of maintaining, operating and offering any services for compensation of applying paint or other substance, whether transparent or nontransparent, to or on the human body when such body is wholly or partially nude, by any means of application, technique, or process.

Employee means any person, other than masseurs or masseuses, who renders any service to a permittee under this article, who receives compensation from the permittee or patron.

Establishment means any establishment having a place of business where any person, firm, partnership, association or corporation engages in or carries on or permits to be engaged in or carried on any of the activities mentioned herein for compensation.

Massage means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

Massage therapist means any person who, for any consideration whatsoever, engages in the practice of massage as herein defined. Any reference herein to "masseuse" or "masseur" shall mean and apply to a "massage therapist."

Modeling studio means the occupation of maintaining, operating and offering any services for compensation of modeling for the purpose of reproducing the human body, wholly or partially in the nude, by means of photograph, painting, sketching, drawing or otherwise. The term "modeling studio" includes the occupation or practices for compensation of offering one's body, wholly or partially in the nude, for the purpose of having designs of whatever nature applied thereto by whatever process or technique with any kind of substance whether it be transparent or nontransparent.

Patron means any person over 18 years of age who utilizes or receives the services of any establishment subject to the provisions of this chapter and under such circumstances that it is reasonably expected that he or she will pay money to give any other consideration therefor.

Recognized school means any school or institution of learning which has for its purpose the teaching of the theory, method, profession or work of massage, which school requires a resident course of study not less than 70 hours to be given in not more than three calendar months before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such.

(Code 2008, § 5-401; Ord. No. 598; Ord. No. 856, § 1)

5-402 Permit Required

No person, firm, partnership, association or corporation shall operate a bath house, massage establishment, body painting studio or modeling studio, as defined herein, without first having obtained a permit from the city clerk. A separate permit shall be required for each and every separate place of business conducted by any one permittee. Such permit shall be valid only from January 15 to January 14 of a calendar year. However, the fee may be prorated to the nearest month if an application is made after July 1 of any year.

(Code 2008, § 5-402; Ord. No. 856, § 2; Ord. No. 987, § 1, 12-14-2017)

5-403 Permit Fees

Every applicant for a permit to maintain or operate any such an establishment or to perform massage therapy services in any such establishment shall file an application with the city clerk on a form approved by the city clerk. Each establishment shall pay an annual fee in the amount adopted by resolution of the governing body and listed in the city's master fee schedule. Each individual massage therapist shall pay an annual fee in the amount adopted by resolution of the governing body and listed in the city's master fee schedule. Any individual who operates an establishment and who also personally provides massage therapy shall only pay the establishment's fee, and shall not have to pay an additional permit fee by virtue of also providing massage therapy services.

(Code 2008, § 5-403; Ord. No. 856, § 3)

5-404 Application

The application for a permit to operate any such establishment shall set forth the exact nature of the services to be provided, the proposed place of business and facilities therefor, and the name, address and telephone number of each applicant, including any stockholder holding more than ten percent of the stock of the corporation, any partner, when a partnership is involved, and any manager.

(Code 1993, § 5-504; Code 2008, § 5-404; Ord. No. 598)

5-405 Application; Stockholders

The applicant, employee, manager, partner and any stockholder holding more than ten percent of the stock of applicant corporation shall in addition furnish:

- (a) Name, address, telephone number and written proof applicant is at least 18 years of age.
- (b) Two portrait photographs, at least two inches by two inches, and fingerprints.
- (c) Business, occupation or employment of the applicant for the three years

immediately preceding the date of application.

- (d) History of person or applicant in such business, whether such person, in previously operating in this or another city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity of occupation subsequent to such action of suspension or revocation.
- (e) All criminal citations, arrests, or charges (except for minor traffic offenses), whether resulting in a dismissal, conviction, diversion, suspended imposition of sentence, or other resolution; the jurisdiction in which cited, arrested, or charged; and the offense for which a citation, arrest, or charge was made, as well as the circumstances surrounding any such incident.
- (f) Authorization for the city to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.
- (g) The position or function the applicant is to perform within such establishment.

(Code 2008, § 5-405; Ord. No. 598; Ord. No. 856, § 4)

5-406 Education Requirements

- (a) Any person, including an applicant for a massage establishment permit, who engages or intends to engage in the practice of massage shall, upon making application for a permit, supply the name and address of the recognized school attended, the date attended and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has successfully completed not less than 300 hours of instruction in the theory, method, or practice of massage.
- (b) Applicants for a masseur or masseuse permit may substitute one year's continuous experience as a masseur or masseuse in lieu of the requirement of a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method and work of massage is taught. Such masseur or masseuse must obtain an affidavit attesting to such experience from the owner of the establishment where the continuous year of experience occurred.

(Code 2008, § 5-406; Ord. No. 598; Ord. No. 856, § 5)

5-407 (Reserved)

5-408 Issuance Of Permit

After the filing of an application in the proper form, the city clerk shall issue a permit for a massage establishment, bath house, modeling studio or body painting studio or employee permit, unless:

- (a) The correct permit fee has not been tendered to the city, and, in the case of a check or bank draft, honored with payment upon presentation;
- (b) The operation fails to comply with state and local laws, including, but not limited to, the city's building, zoning and health regulations.
- (c) Any of the following have been convicted of any crime, including, but not limited to, any felony, misdemeanor, code violation, ordinance violation, or other violation of the laws of the United State or of any state or city of the United States where such conviction was for an offense involving force or threat of force, violence, theft, dishonesty, fraud, sexual misconduct or moral turpitude or where such conviction was for a violation of this article or a substantially similar ordinance or enactment of any other jurisdiction, unless such conviction occurred at least five years prior to the date of the application:
 - (1) The applicant, if an individual;
 - (2) Any of the stockholders holding more than ten percent of the stock of the corporation;
 - (3) Any of the officers and directors, if the applicant is a corporation;
 - (4) Any of the partners, including limited partners, if the applicant is a partnership; and
 - (5) The manager or other person principally in charge of the operation of the business.
- (d) The applicant has knowingly made any false, misleading or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith.
- (e) The applicant has had a massage establishment, bath house, body painting studio or modeling studio as defined herein, or other similar permit or license, denied, revoked or suspended for any of the above causes by the city or any other state or local agency within five years prior to the date of the application.
- (f) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, is not over the age of 18 years;
- (g) The manager or other person principally in charge of the operation of the business would be ineligible to receive a permit under the provisions of this article; and
- (h) In the case of a masseur or masseuse that the applicant has not successfully completed a resident course of study from a recognized school as required under the provisions of this article.

(Code 2008, § 5-408; Ord. No. 598; Ord. No. 856, § 5; Ord. No. 987, § 2, 12-14-2017)

5-409 Permit Displayed

Any permit issued under the provisions of this article shall at all times be displayed by the permittee in an open and conspicuous place on the premises where the permitted business is conducted.

(Code 1993, § 5-409; Code 2008, § 5-409; Ord. No. 598)

5-410 Revocation Or Suspension Of Permit

- (a) Any permit issued for an employee or for a massage establishment, bath house, modeling studio or body painting studio may be revoked or suspended by the city clerk where it is found that any of the provisions of this article are violated.
- (b) The city clerk, before revoking or suspending any permit, shall give the permittee at least ten days written notice of the charges against him or her and the opportunity for a public hearing before the governing body, at which time the permittee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

(Code 1993, § 5-510; Code 2008, § 5-410; Ord. No. 598; Ord. No. 987, § 4, 12-14-2017)

5-411 Facilities

No permit to conduct such establishment shall be issued unless an inspection by the city or its authorized representative reveals that the establishment complies with the following minimum requirements:

- (a) The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given, floors shall be free from any accumulation of dust, dirt or refuse. All equipment used in the business' operation shall be maintained in a clean and sanitary condition. Towels, linen and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets, provided that such paper is changed for every patron. No service or practice shall be carried on within any cubicle, room, booth or any area within any permitted establishment which is fitted with a door capable of being locked.
- (b) Toilet facilities shall be provided in convenient locations. When five or more employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. A single water closet per sex shall be provided for each 20 or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one water

closet has been provided. Toilets shall be designated as to the sex accommodated therein.

- (c) Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.
- (d) Massage therapy may also be offered as a home occupation provided that all facilities are clean and safe, and all other ordinances of the city are complied with, including, but not limited to, all city ordinances and requirements pertaining to home occupations.

(Code 2008, § 5-411; Ord. No. 598; Ord. No. 856, § 6)

5-412 Certification

The city or the city's authorized representative shall certify that the proposed business establishment complies with all of the requirements of this section and shall give or send such certification to the chief of police. Nothing contained herein shall be construed to eliminate other requirements of any statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof.

(Code 2008, § 5-412; Ord. No. 598; Ord. No. 856, § 7)

5-413 Inspections

The city or the city's authorized representative shall from time to time make an inspection of each permitted establishment in this city for the purposes of determining compliance with the provisions of this article. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any permittee to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner. Any failure on the part of any permittee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee permit.

(Code 2008, § 5-413; Ord. No. 598; Ord. No. 856, § 7)

5-414 Operation Regulations

The following regulations shall apply to any such establishment:

- (a) Such business shall be closed to the public and operations shall cease between the hours of 12:00 midnight and 6:00 a.m. each day.
- (b) No service shall be given which is clearly dangerous or harmful in the opinion of the city or the city's authorized health or safety representative, and after such notice in writing to the licensee from such director.

- (c) All operators permitted under the provisions of this article shall at all times be responsible for the conduct of business on their permitted premises and for any act or conduct of his or any of his employees which constitutes a violation of the provisions of this chapter. Any violation of the city, state or federal laws committed on the permitted premises by any such permittee or employee affecting the eligibility or suitability of such person to hold a license or permit may be grounds for suspension or revocation of the same.

(Code 2008, § 5-414; Ord. No. 856, § 8)

5-415 Operation Regulations; Equipment; Attire

- (a) Every portion of a permitted establishment, including appliances and personnel shall be kept clean and operated in a sanitary condition.
- (b) All employees, masseurs and masseuses must be modestly attired. Diaphanous, flimsy, transparent, form-fitting or tight clothing is prohibited. Clothing must cover the employees', masseurs' or masseuses' chests at all times. Hemlines of skirts, dresses or other such attire may be no higher than the top of the knee.
- (c) The private parts of patrons must be covered by towels, cloths or undergarments when in the presence of an employee, masseur or masseuse. Any contact with a patron's genital area is strictly prohibited.
- (d) All permitted establishments, when applicable, shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in approved, sanitary manner.
- (e) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

(Code 2008, § 5-415; Ord. No. 596; Ord. No. 856, § 9)

5-416 Supervision

A permittee shall have the premises supervised at all times when open for business. Any business rendering massage services shall have one person who qualifies as a masseur or masseuse on the premises at all times while the establishment is open. The permittee shall personally supervise the business and shall not violate or permit others to violate any applicable provision of this article. The violation of any such provision by any agent or employee of the permittee shall constitute a violation by the permittee.

(Code 1993, § 5-516; Code 2008, § 5-416; Ord. No. 598)

5-417 Employee Registers

All operators permitted under the provisions of this article shall keep and maintain on their premises a current register of all their employees showing such employee's name, address and permit number. Such register shall be open to inspection at all reasonable times by any health inspector or members of the city police department.

(Code 2008, § 5-417; Ord. No. 596)

5-418 Minors Prohibited

No person shall permit any person under 18 years of age to come or remain on the premises of any permitted business establishment, as masseur, employee or patron, unless such person is on the premises on lawful business.

(Code 1993, § 5-518; Code 2008, § 5-418; Ord. No. 598)

5-419 Advertising

No establishment granted a permit under provisions of this article shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services as described in WCC 5-401 or that employees, masseurs or masseuses are dressed in any manner other than described in WCC 5-415 nor shall any establishment indicate in the text of such advertising that any service is available other than those services described in WCC 5-401.

(Code 1993, § 5-519; Code 2008, § 5-419; Ord. No. 598)

5-420 Transfer Of Permits

- (a) No massage business, bath house, modeling studio, body painting studio or employee permits are transferable, and such authority as a permit confers shall be conferred only on the permittee named therein.
- (b) Any applications made, fees paid and permits obtained under the provisions of this article shall be in addition to and not in lieu of any other fees, permits or licenses required to be paid or obtained under any ordinances of this city, or under any state or federal laws.

(Code 1993, § 5-520; Code 2008, § 5-420; Ord. No. 598)

5-421 Exceptions

The provisions of this article shall not apply to hospitals; nursing homes, sanitariums or persons holding an unrevoked certificate to practice the healing arts under the laws of this state, or persons working under the direction of any such persons or in an such establishment. Nor shall this article apply to health care professionals, barbers,

aestheticians, manicurists, cosmetologists, or other licensed professionals carrying out their particular profession or business and holding a valid, un-revoked license or certificate of registration issued by the state.

(Code 2008, § 5-421; Ord. No. 598; Ord. No. 856, § 10)

5-422 City To Establish And Enforce Rules And Regulations

The city or the city's authorized representative may make and enforce reasonable rules and regulations not in conflict with but to carry out the intent of this article.

(Code 2008, § 5-422; Ord. No. 856, § 11)

5-423 Restriction To Premises

All business or activity provided for under this article shall be conducted and performed on the respective premises. However, bath house or massage shop permittees or employees at the direction of a duly licensed physician may perform their services in behalf of physically incapacitated patients in such patient's home, residence or other designated place, or such permittee or employee may render such treatment to persons who are bedfast or are so physically incapacitated that it is impractical to provide same to such persons at a permitted location. All such services so rendered shall have received the prior approval of the city or its authorized representative.

(Code 1993, § 5-523; Code 2008, § 5-423; Ord. No. 598)

ARTICLE 5 (RESERVED)

ARTICLE 6 WRECKER AND TOW SERVICES

[5-601 Approval Required](#)

[5-602 Criteria For Approval](#)

[5-603 Towing And Storage Charges](#)

[5-604 Personal Property In Vehicle](#)

[5-605 Enforcement](#)

[5-606 Suspension, Revocation Of Approval](#)

[5-607 Suspension, Revocation Of Approval; Appeal](#)

5-601 Approval Required

Any person, firm, partnership or corporation desiring to perform wrecker or towing service for the city police department shall meet the requirements of WCC 5-602 in order to be authorized to respond for wrecker or towing service requests by the city police department on a rotation basis. Any such wrecker or towing service which meets the requirements of WCC 5-602 and all other provisions of this article shall be eligible to be placed on such list and be called on such rotation basis.

(Code 1993, § 5-701; Code 2008, § 5-601; Ord. No. 613, § 1)

5-602 Criteria For Approval

The following requirements and criteria shall be met by any wrecker or towing service seeking approval to be authorized and listed as eligible to respond to requests for towing service seeking approval to be authorized and listed as eligible to respond to requests for towing service by the city police department:

- (a) Exclusive of legal holidays, each wrecker or towing service shall be open and have a representative actually on the premises of the location or area where towed vehicles are stored or kept ten hours per day, from 8:00 a.m. to 6:00 p.m. Monday through Friday, and from 8:00 a.m. to 12:00 noon on Saturdays.
- (b) Each wrecker or towing service shall conspicuously post a sign at the front of their business stating the business name and a telephone number where information can be obtained about any vehicle towed or stored by the business.
- (c) Towing and wrecker services and drivers must be available on a 24-hour, seven days a week basis.
- (d) Each towing and wrecker service must have properly zoned adequate storage facilities. The outside storage areas should be fenced, with at least a six-foot-high chain link fence.
- (e) Each towing and wrecker service must have available storage area which is totally enclosed within a building for the protection and security of recovered stolen property to be processed and valuable property left in vehicles.
- (f) Each wrecker or towing service must have available at least one 16-ton capacity wrecker (a Holmes 600 or its equivalent) or wrecker vehicle with greater capacity.
- (g) Each towing and wrecker service must handle and tow abandoned vehicles in proportion to the number of tow requests received from said police department for damaged or disabled vehicles.
- (h) Each towing and wrecker service must provide the city with proof of adequate insurance coverage under the following policies:
 - (1) *Garage keeper's policy.* A garage keeper's legal liability policy covering fire, theft, windstorm, vandalism and explosion in the amount of \$1,000,000.00 with each vehicle suffering damage being deemed a separate claim.
 - (2) *Garage liability policy.* A garage liability policy covering the operation of the owner's business, equipment or other vehicles for any bodily injury or property damage. This policy shall be in the minimum amount of \$1,000,000.00 for any one person injured or killed and a minimum of

\$1,000,000.00 for more than one person injured or killed in any accident and an additional \$25,000.00 for property damage.

- (3) Each policy required herein must contain an endorsement providing 30 days' notice to the city and the insured in the event of any material change in coverage or cancellation of the policy.
 - (4) Each policy required herein must be provided by an approved insurance company that is licensed to do business in the state.
- (i) The criteria and requirements set forth in subsections (a) through (g) of this section shall not apply when the person whose vehicle is to be towed shall indicate a preference as to which towing and wrecker service is to be utilized or when the person whose vehicle is to be towed shall request a specific towing or wrecker service.

(Code 2008, § 5-602; Ord. No. 613, § 2)

5-603 Towing And Storage Charges

All wrecker or towing services shall charge for towing services and storage fees such fees and charges as are adopted by the governing body of the city by resolution. Such fees and charges shall apply only as to vehicles towed and stored in response to a request by said police department. No wrecker or towing service shall charge the owner or person in charge of or possession of any towed and/or stored vehicle a second or subsequent additional towing charge to delivery vehicle from the wrecker or towing service's storage lot to a destination initially requested by the owner or operator or possessor or person in charge of such vehicle when the vehicle was originally towed.

(Code 1993, § 5-703; Code 2008, § 5-603; Ord. No. 613, § 3)

5-604 Personal Property In Vehicle

- (a) No wrecker or towing service, or owner, employee or agent thereof, shall prohibit or refuse to allow the owner, operator, person in charge or possession of the towed and stored vehicle who has proof of title or registration, to retrieve any personal property from such towed and stored vehicle during the normal operating hours at the storage facility; however, this provision shall not apply to the following property or articles:
- (1) Property or articles relating to the operation and repair of a vehicle or spare parts for a vehicle;
 - (2) Electric or personal electronic equipment, whether operating or not, including, but not limited to, built-in CD players, GPS devices, or the like; but not to include portable CD players, iPods, cell phones, laptops.

- (b) No wrecker or towing service shall require the payment of any fees or charges before permitting access to a person retrieving such personal property permitted to be retrieved under this section.

(Code 2008, § 5-604; Ord. No. 613, § 4)

5-605 Enforcement

The chief of police shall establish, distribute and cause the enforcement of reasonable rules and regulations for wrecker or towing services, subject to the provisions of this article, as from time to time he or she deems appropriate for the safety, well-being and protection of citizens and their property within the city.

(Code 1993; Code 2008, § 5-605; Ord. No. 613, § 5)

5-606 Suspension, Revocation Of Approval

- (a) If a wrecker or towing service operating under this article shall fail to comply with the provisions of this article, the chief of police may, after at least seven days' notice, order that the approval and authority of a wrecker or towing service to respond to requests of said police department be suspended or revoked and order such wrecker or tow service be struck from the rotational call list. Any such suspension shall be for a maximum of 60 days. If such approval and authority is revoked, such wrecker or towing service shall not be eligible for reinstatement for at least one year from the date of revocation.
- (b) Such suspension or revocation shall be preceded by written notice to the wrecker or towing service advising such service of its failure to comply with any of the requirements of this article or of the violation by such wrecker or towing service of any of the following provisions upon which a suspension or revocation may be based:
 - (1) Obtaining the approval and authority by fraudulent conduct or false statements;
 - (2) The wrecker or towing service violated the fee and charge schedule by overcharge;
 - (3) Such wrecker or towing service consistently refuses to respond to requests for such service by the police department or consistently fails to answer telephone calls from the police department at the telephone number supplied by the business for towing services;
 - (4) The wrecker or towing service responds to the scene of an accident, emergency, or impoundment situation, when not specifically called to do so, and solicits wrecker or towing business;
 - (5) The city is not satisfied with the general services of the owner and/or

employees or with the cooperation it has received from such wrecker or towing service or other justifiable cause.

- (c) As to the requirements or criteria for approval and authorization, only one such warning shall be required to be given and the wrecker or towing service shall be allowed a reasonable time to correct any deficiency found. Any wrecker or towing service which violates any of the provisions of WCC 5-604 or subsections (b)(1) through (5) of this section more than once in total shall be subject to a suspension or revocation of the approval and authority.

(Code 1993, § 5-706; Code 2008, § 5-606; Ord. No. 613, § 6)

5-607 Suspension, Revocation Of Approval; Appeal

- (a) Any wrecker or towing service's approval and authority to respond to police requests which are suspended or revoked by the chief of police may appeal such suspension or revocation to the governing body by filing a written notice of appeal, which shall stay the effect of such suspension or revocation until a hearing is held before the governing body at its next regular meeting.
- (b) The governing body shall have the power to reverse, alter, modify, uphold, or increase any suspension or revocation ordered by the chief of police.

(Code 1993, § 5-707; Code 2008, § 5-607; Ord. No. 613, § 7)

ARTICLE 7 (RESERVED)

ARTICLE 8 ADULT ENTERTAINMENT REGULATIONS

5-801 Definitions

5-802 License Required For Adult Business

5-803 License Required For Managers, Servers And Entertainers

5-804 License Limited To Requested Purposes

5-805 License Application

5-806 Examination Of Application, Issuance Of License, Disapproval

5-807 License; Ineligibility And Disqualification

5-808 Standards Of Conduct

5-809 License; Posting Or Display

5-810 Manager On Premises

5-811 Inspectors And Inspections

5-812 Suspension, Revocation, Or Non-Renewal Of License

5-801 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a

different meaning:

Adult business.

- (a) The term "adult business" means any business enterprise that has as its primary business purpose:
 - (1) The sale or rental of goods that are designed for use in connection with specified sexual activities, graphically depict specified anatomical areas or primarily emphasize matters depicting, describing or relating to specified sexual activities or specified anatomical areas; or
 - (2) The providing of entertainment where the primary emphasis is on performances, live or otherwise, that feature and emphasize material depicting, portraying, exhibiting or displaying specified anatomical areas or specified sexual activities; or
 - (3) The providing of services that primarily emphasize activities that provide sexual stimulation or gratification and that are distinguished by or characterized by an emphasis on the depiction, observation, and participation in pursuits relating to specified sexual activities or specified anatomical areas.
- (b) The term "adult business" also includes, but is not limited to, any and all of the following, as defined herein:
 - (1) The following businesses that offer goods for sale or rent:
 - (A) *Adult retail establishment* means an establishment which as its primary business purpose, offers for sale or rent, any one or more of the following: instruments, devices, gifts or paraphernalia which are designed for use in connection with specified sexual activities or clothing that graphically depicts specified anatomical areas or any of the materials sold or rented in an adult bookstore as defined herein.
 - (B) *Adult bookstore* means an establishment which as its primary business purpose, offers for sale or rent, books, magazines, periodicals or other printed matter, photographs, slides, films or videotapes, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
 - (C) *Adult media outlet* means an establishment that has as its primary business purpose the rental, sale or offering for viewing or other use any media that is sold or exhibited by adult bookstores, adult news racks, adult newsstands, adult entertainment businesses, adult theaters or adult motion picture

theaters.

- (D) *Adult news rack* means any coin or card operated device that offers for sale by dispensing printed material, which is distinguished or characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- (E) *Adult news stand* means a freestanding structure, vehicle or booth which as its primary business purpose, offers for sale books, magazines, periodicals or other printed matter, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(2) The following businesses that provide entertainment:

- (A) *Adult entertainment business* means any enterprise to which the public, patrons or members are invited or admitted, and where providing "adult entertainment," as defined herein, is a regular and substantial portion of its business.
- (B) *Adult motion picture theater* means an establishment containing a room with seats facing a screen or projection areas, where a regular and substantial portion of its business is the exhibition to customers of films, videotapes, or motion pictures which are intended to provide sexual stimulation or sexual gratification to the customers and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, other than motion pictures designated by the Motion Picture Association as Restricted or R-Rated.
- (C) *Adult theater* means an establishment located in an enclosed building where a regular and substantial portion of its business is providing the live performance of activities relating to specified sexual activities or exhibition of specified anatomical areas of live performers, for observation by customers and patrons.
- (D) *Adult entertainment cabaret* means an establishment where a regular and substantial portion of its business is providing adult entertainment which features strippers, male or female impersonators, go-go dancers, or live performances or materials which are primarily characterized by an emphasis on specified sexual activities or specified anatomical areas.
- (E) *Adult entertainment studio* means an establishment whose premises is physically arranged as to provide booths, cubicles,

rooms, compartments or stalls separate from the common areas of the premises, and where a regular and substantial portion of its business is providing entertainment which features materials or live performances characterized by an emphasis on or features materials relating to specified sexual activities or the exhibition of specified anatomical areas. The term "adult entertainment studio" includes the term "rap studio," "exotic dance studio," "sensitivity studio" or "encounter studio."

- (F) *Adult encounter parlor* means an establishment where a regular and substantial portion of its business is the provision of premises where customers congregate, associate, or consort with employees and/or performers or private contractors who display specified anatomical areas in the presence of such customers, with the intent of providing sexual gratification or stimulation to such customers.
- (G) *Body painting studio* means an establishment where a regular and substantial portion of its business is the maintaining, operating, or offering for compensation the applying of paint or other substance to or on the human body by any means of application, technique or process when specified anatomical areas of the subject's body are displayed for the customer's view, or where specified anatomical areas of the customer's body are displayed for the view of others.

(3) The following businesses that provide services:

- (A) *Bath house* means an enterprise where a regular and substantial portion of its business is offering baths with other persons present who are nude or displaying specified anatomical areas. Nothing herein, however, shall limit or void the authority of the city to regulate bath houses or similar establishments by other lawful means.
- (B) *Adult motel* means an enterprise where a regular and substantial portion of its business is offering public accommodations for consideration for the purpose of viewing closed circuit television transmissions, films, motion pictures, video cassettes, DVDs or other digital media, or other photographic reproductions which are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas and rent room accommodations for less than six hours at a time.

Adult entertainment means any live exhibition, performance, display or dance of any type, including, but not limited to, talking, singing, reading, listening, posing, serving food or beverages, soliciting for the sale of food, beverages or entertainment, pantomiming, modeling, removal of clothing or any service offered for amusement on a premises where such exhibition, performance, display or dance is intended to seek to arouse or excite the sexual desires of the entertainer, other entertainers or patrons, or if such entertainment involves a person who is nude or in such attire, costume or clothing as to expose to view any portion of the human genitals, pubic region, vulva, pubic hair, buttocks, female breast below a point immediately above the top of the areola or nipple or the human male genitals in a discernably erect state, even if completely and opaquely covered.

Contagious and communicable diseases means those diseases which are set out in the state department of health and environment regulations, K.A.R. 28-1-6 and as amended.

Employee means any and all persons, including managers, entertainers and independent contractors, who work in or at or render any services directly related to, the operation of an adult business.

Entertainer means any person who provides adult entertainment within an adult business as defined in this section, whether or not a fee is charged or accepted for entertainment.

Manager means any person who manages, directs, administers, or is in charge of the affairs and/or conduct of any portion of any activity at any adult business.

Operator means any person operating, conducting or maintaining an adult business.

Primary business purpose means:

- (1) More than 50 percent of the gross floor space is devoted to that purpose; or
- (2) More than 50 percent of the retail floor space is devoted to that purpose; or
- (3) More than 50 percent of the sales of the business are derived from that purpose.

Public place means any area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots and automobiles whether moving or not.

Server means any person who serves food or drink at an adult entertainment business.

Specified anatomical areas means:

- (1) Uncovered or exposed human genitals, pubic region or pubic hair; or buttock; or

female breast below a point immediately above the top of the areola or nipple; or any combination of the foregoing; or

- (2) Human male genitals in a discernible erect state, even if completely and opaquely covered.

Specified sexual activities means sexual conduct, whether actual or simulated; acts of human masturbation; sexual intercourse; physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed genitals, pubic area, buttocks or the breast of a female; or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification.

(Code 2008, § 5-801; Ord. No. 782)

5-802 License Required For Adult Business

- (a) It shall be unlawful for any person to operate or maintain an adult business in the city unless the owner, operator or lessee thereof has obtained an adult business license from the city, or to operate such business after such license has been revoked or suspended by the city.
- (b) It is unlawful for any entertainer, server, employee, operator, owner or manager to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult business.
- (c) It shall be prima facie evidence that any adult business that fails to have posted, in the manner required by this section, an adult business license, has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer, employee, owner or manager who performs any business service or entertainment in an adult business in which an adult business license is not posted, in the manner required by this section, had knowledge that such business was not licensed.

(Code 2008, § 5-802; Ord. No. 782)

5-803 License Required For Managers, Servers And Entertainers

It is unlawful for any person to work as an entertainer, server or manager at an adult business without first obtaining a license to do so from the city, or to work as an entertainer, server or manager at an adult business after such person's license to do so has been revoked or suspended.

(Code 2008, § 5-803; Ord. No. 782)

5-804 License Limited To Requested Purposes

All adult business licenses shall be issued only for the purposes requested by the

applicant on the application. Any change in the type of adult use shall invalidate the adult business license.

(Code 2008, § 5-804; Ord. No. 782)

5-805 License Application

(a) *Adult business license.* All persons desiring to secure a license to operate an adult business under the provisions of this chapter shall make a verified application with the city clerk. All applications shall be submitted in the name of the person proposing to conduct or operate the adult business. All applications shall be submitted on a form supplied by the city clerk and shall require the following information:

- (1) The name, residence address, home telephone number, occupation, date and place of birth and social security number of the applicant.
- (2) The name of the adult business, a description of the type of adult business to be performed on the licensed premises, and the name and address of the owner of the premises where the adult business will be located.
- (3) The names, residence addresses, social security numbers and dates of births of the applicant or all partners, if the applicant is a partnership; if the applicant is a corporation, the same information for all corporate officers and directors and stockholders who own more than ten percent or greater interest in the applicant corporation; and if the applicant is any other type of entity, the same information for all who have an ownership interest in the applicant entity.
- (4) The addresses of the applicant if he or she is an individual, of all partners if the applicant is a partnership, of all corporate officers and directors for the five years immediately prior to the date of application if the applicant is a corporation, or of all who have an ownership interest in the applicant if the applicant is any other type of entity.
- (5) A statement from the applicant if an individual, or from all partners if the applicant is a partnership, or if the applicant is a corporation from all corporate officers and directors, or if the applicant is any other entity from all who have an ownership interest in the applicant, whether any such person, or entity, in previously operating in this or another city, county or state, has had a business license of any type revoked or suspended, and if so, the reason for the suspension or revocation and the business activity subjected to the suspension or revocation.
- (6) A statement of the business, occupation or employment of the applicant, of all partners (if the applicant is a partnership), of all corporate officers and directors for the three years immediately preceding the date of the

application (if the applicant is a corporation), or of all who have an ownership interest in the applicant (if it is any other type of entity).

- (7) A statement from the applicant, and if the applicant is a partnership, a statement from all partners, and if the applicant is a corporation, a statement from each corporate officer and director, and if the applicant is any other form of entity, a statement from each person claiming an ownership interest in the entity, that each such person has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on any felony, whichever event is later, within five years immediately preceding the application, or has not been convicted of or diverted from prosecution on a misdemeanor, or released from confinement for conviction of a misdemeanor, whichever event is later, within two years immediately preceding the application, where such felony or misdemeanor involved sexual offenses, prostitution, indecent exposure, sexual abuse of another or pornography and related offenses, alcohol-related offenses, or controlled substances or illegal drugs or narcotics offenses as defined in the state statutes or municipal ordinances.

The statement shall also indicate that the applicant, each partner (if a partnership) or each corporate officer and director (if a corporation) or each person having an ownership interest (if any other type of entity) has not been convicted of a municipal ordinance violation or diverted from prosecution on a municipal ordinance violation, within two years immediately preceding the application where such municipal ordinance violation involved sexual offenses, sexual abuse of another or pornography or related offenses, indecent exposure, prostitution, alcohol, or sale of controlled substances or illegal drugs or narcotics.

- (8) On applications requesting a license to operate a bath house or body painting studio, the applicant shall provide for each person working on the premises a health certificate from a duly licensed Kansas or Missouri physician stating that within 90 days prior thereto, the applicant and all other persons working on the premises have been examined and found free of any contagious or communicable disease as defined herein.
- (9) A full set of fingerprints and a photograph, to be taken by the police department, of the applicant, or of all partners if the applicant is a partnership, or of all corporate officers and directors if the applicant is a corporation.
- (10) If the applicant is a corporation, a current certificate of registration issued by the state secretary of state.
- (11) A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the

information contained therein is true and correct and that the applicant has read the provisions of this chapter regulating adult businesses.

Failure to provide the information and documentation required by this subsection shall constitute an incomplete application which shall not be processed.

(b) *Manager, server or entertainer license.* All persons desiring to secure a license under the provisions of this chapter to be a manager, server, or entertainer at an adult business shall make a verified application with the city clerk. All applications shall be submitted in the name of the person proposing to be a manager, server or entertainer. All applications shall be submitted on a form supplied by the city clerk and shall require the following information:

- (1) The applicant's name, home address, home telephone number, date and place of birth, social security number, and any stage name or nicknames used.
- (2) The name and address of each adult business where the applicant intends to work as a manager, server or entertainer, and an "intent to hire" statement from an adult business that is licensed, or that has applied for a license, under the provisions of this chapter, indicating the adult business intends to hire the applicant to manage, serve or entertain on the premises. Failure to provide an "intent to hire" statement shall not invalidate the application.
- (3) A statement from the applicant, and if the applicant is a partnership, a statement from all partners or if the applicant is a corporation, a statement from each corporate officer and director or if the applicant is any other form of entity, a statement from all who have an ownership interest in the entity, that each such person has not been convicted of; or released from confinement for conviction of or diverted from prosecution on any felony, whichever event is later, within five years immediately preceding the application, or has not been convicted of or diverted from prosecution on a misdemeanor or municipal ordinance violation, or released from confinement for conviction of a misdemeanor or municipal ordinance violation, whichever event is later, within two years immediately preceding the application, where such felony or misdemeanor involved sexual offenses, prostitution, indecent exposure, sexual abuse of a child or pornography and related offenses, or alcohol, controlled substances or illegal drugs or narcotics offenses as defined in the state statutes or municipal ordinances.
- (4) If the applicant is an individual, a full set of fingerprints and a photograph of the applicant, to be taken by the police department.
- (5) The applicant shall present to the city clerk who shall copy documentation that the applicant has attained the age of 18 years at the

time the application is submitted. Any of the following shall be accepted as documentation of age:

- (A) A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;
- (B) A state-issued identification card bearing the applicant's photograph and date of birth;
- (C) An official and valid passport issued by the United States of America;
- (D) An immigration card issued by the United States of America;
- (E) Any other form of picture identification issued by a governmental entity that is deemed reliable by the city clerk;

Failure to provide the information required by this subsection shall constitute an incomplete application and shall not be processed.

- (c) *Facilities necessary.* No adult business license to conduct a bath house or body painting studio shall be issued unless an inspection by the county health inspector or his authorized representative reveals that the premises the applicant intends to conduct business from complies with each of the following minimum requirements:

- (1) The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition. Towels, linen and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets, provided that such paper is changed for every patron. No service or practice shall be carried on within any cubicle, room, booth, or any area within any permitted establishment which is fitted with a door capable of being locked.
- (2) Toilet facilities shall be provided in convenient locations. When five or more employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. A single water closet per sex shall be provided for each 20 or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the gender accommodated therein.
- (3) Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with

sanitary towels.

The county health inspector shall certify that the proposed business establishment complies with all of the requirements of this section and shall give or send such certification to the city clerk; provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof. The appropriate city official may recommend the issuance of a license contingent upon the compliance with any requirements in this section.

(d) *Application processing.* Upon receipt of a complete application for an adult business for a manager, server or entertainer license:

- (1) The city clerk shall immediately transmit one copy of the application to the chief of police for investigation of the application. In addition, the city clerk shall transmit a copy of the application to the codes administrator;
- (2) It shall be the duty of the chief of police to investigate such application to determine whether the information contained in the application is accurate and whether the applicant meets the terms of this section. The chief of police shall report the results of the investigation to the city clerk not later than ten working days from the date the application is received by the city clerk;
- (3) It shall be the duty of the codes administrator to determine whether the structure where the adult business will be conducted complies with the requirements and meets the standards of the applicable health, zoning, building code, fire, and property maintenance ordinances of the city. The codes administrator shall report the results of their investigation to the city clerk not later than ten working days from the date the application is received by the city clerk;
- (4) Upon receipt of the reports from the chief of police and the codes administrator, the city clerk shall schedule the application for consideration by the governing body at the earliest meeting consistent with the notification requirements established by law, provided the license application for an adult business and for a manager, server or entertainer license shall be approved or disapproved within 45 days from the date of filing of a completed application with the clerk's office. The applicant shall be notified in writing of the date when the governing body will consider the application.

(Code 2008, § 5-805; Ord. No. 782)

5-806 Examination Of Application, Issuance Of License, Disapproval

(a) If the application for an adult business or for a business manager, server or

entertainer is in proper form and accompanied by the appropriate license fee, the governing body shall examine the application, and after such examination, the governing body shall, if the applicant is qualified under the provisions of this article, approve a license as provided for by law, provided a license shall not be approved to any person ineligible pursuant to WCC 5-807.

- (b) The record of the governing body shall show the action taken on the application, and if the license is granted, the governing body shall direct the city clerk to issue the proper license. The license shall state that it is not transferable to other persons and the calendar year for which it is issued. The license shall be kept posted in a conspicuous place in the place of business that is licensed or where the licensee is working.
- (c) If an application for a license is disapproved, the applicant shall immediately be notified by registered or certified mail to the applicant's last known address, and the notification shall state the basis for such disapproval. Any applicant aggrieved by the disapproval of a license application may seek judicial review in the county district court in a manner provided by law.

(Code 2008, § 5-806; Ord. No. 782)

5-807 License; Ineligibility And Disqualification

No person is eligible nor shall a license be issued to:

- (a) An applicant for an adult business license if one or more of the following conditions exist:
 - (1) The applicant's premises is located within 250 feet of any other adult business for which there is a license issued. Measurements shall be made in a straight line without regard to intervening structures or objects, from the nearest point on the property line or premises boundary, if such is located in a shopping center, of the applicant's business to the nearest point on the property line of such other adult businesses.
 - (2) The applicant failed to supply all of the information requested on the application.
 - (3) The applicant gave materially false, fraudulent or untruthful information on the application.
 - (4) The applicant's proposed business premises does not comply with or meet the requirements of the applicable health, zoning, building code, fire, and property maintenance ordinances of the city, provided that upon a showing that the premises meets said requirements and that the applicant is otherwise qualified, the application shall be eligible for reconsideration by the governing body.

- (5) The applicant has been convicted, released from incarceration for conviction or diverted on any of the crimes set forth in WCC 5-805(a)(7) during the time period set forth in said subsection.
 - (6) The applicant has had an adult business or comparable license revoked or suspended in this or any other city during the past five years, if revocation or suspension was for any reason which would justify revocation or suspension of a license under this article.
 - (7) If the applicant is applying for a license to operate a bath house or body painting studio and has not produced a health certificate as required herein for all persons working on the premises.
- (b) An applicant for a manager, server or entertainer license if one or more of the following conditions exist:
- (1) The employer for whom the applicant intends to work does not have or is ineligible to receive an adult business license for any of the reasons stated in subsection (a) of this section;
 - (2) The applicant has been convicted, released from incarceration for conviction or diverted on any of the crimes set forth in WCC 5-805(b)(3) during the time period set forth in said subsection;
 - (3) The applicant failed to supply all of the information requested on the application;
 - (4) The applicant gave materially false, fraudulent or untruthful information on the application;
 - (5) The applicant has had a manager, server or entertainer license revoked or suspended in this or any other city during the past five years, if revocation or suspension was for any reason which would justify revocation or suspension of a license under this article.

(Code 2008, § 5-807; Ord. No. 782)

5-808 Standards Of Conduct

The following standards of conduct shall be adhered to by all adult business licensees, their employees and all managers, servers and entertainers and patrons of adult businesses, while on or about the premises of the business:

- (a) *Identification cards.* All or any manager, server or entertainer issued a license by the governing body under the provisions of this chapter shall, at all times when working in an establishment subject to the provisions of this chapter, have in their possession a valid identification card issued by the city, bearing the permit number, the employee's physical description and a photograph of such

employee. Such identification cards shall be laminated to prevent alteration, provided that all persons granted licenses under this chapter shall at all times keep their licenses displayed to the public in a prominent place on the premises.

- (b) *Age restriction.* Only persons 18 years of age or older shall be permitted on the premises of any adult businesses.
- (c) *Exterior observation.* The premises of all adult businesses will be so constructed as to ensure that the interior of the premises is not observable from the exterior of the building. In addition, all windows will be covered to prevent the viewing of the interior of the building from the outside and all doorways not constructed with an anteroom or foyer will be covered so as to prevent observation of the interior of the premises from the exterior of the building.
- (d) *Exterior display.* No adult business will be conducted in any manner that permits the observation of live performers engaged in an erotic depiction or dance or any material or persons depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined herein, from any exterior source by display, decoration, sign, show window or other opening.
- (e) No manager, employee, server or entertainer in an adult business other than a licensed bath house, shall appear in any fashion that exposes to view any specified anatomical area except when such manager, employee, server or entertainer is separated from the customers by a barrier and such manager, employee, server or entertainer is upon a stage at least two feet above the customer floor and such stage is at least six feet from the customers; provided, however, that in any business licensed to sell cereal malt beverages or alcoholic liquor, no such person shall appear in such a way as to expose to view any specified anatomical area.
- (f) *Certain acts prohibited while on the premises of an adult business.*
 - (1) While on the premises of an adult business, no manager, employee, server or entertainer shall perform any specified sexual activities as defined herein, wear or use any device or covering exposed to view which stimulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities as defined herein, or participate in any act of prostitution.
 - (2) While on the premises of an adult business, no employee, server, entertainer or patron of an adult business shall knowingly touch, fondle or caress any specified anatomical area of another person, or knowingly permit another person to touch, fondle or caress any specified anatomical area of such employee, server, entertainer or patron, whether such specified anatomical areas are clothed, unclothed, covered or exposed.
 - (3) While on the premises of an adult business, no employee, server or entertainer of an adult business shall be visible from the exterior of the

adult entertainment business while such person is unclothed or in such attire, costume or clothing as to expose to view any specified anatomical area.

- (4) No entertainer shall solicit, demand or receive any payment or gratuity from any patron or customer for any act prohibited by this chapter and no entertainer shall receive any payment or gratuity from any customer for any entertainment except while such entertainer is on the stage, a customer or patron may place such payment into a box affixed to the stage.
- (5) No owner, operator, manager or other person in charge of the premises of an adult business premises shall:
 - (A) Knowingly permit alcoholic liquor or cereal malt beverages to be brought upon or consumed on the premises;
 - (B) Knowingly allow or permit the sale, distribution, delivery or consumption of any controlled substance or illegal drug or narcotic on the premises;
 - (C) Knowingly allow or permit any person under the age of 18 years of age to be in or upon the premises;
 - (D) Knowingly allow or permit any act of prostitution or patronizing prostitution on the premises;
 - (E) Knowingly allow or permit a violation of this chapter or any other city ordinance provision or state law.
- (g) *Signs required.* All adult businesses that provide live entertainment shall have conspicuously displayed in the common area at the principal entrance to the premises a sign, on which uppercase letters shall be at least two inches high, and lowercase letters at least one inch high, which shall read as follows:

"THIS ADULT ENTERTAINMENT BUSINESS IS REGULATED AND LICENSED BY THE CITY OF WESTWOOD, KANSAS

ENTERTAINERS ARE NOT PERMITTED TO:

Engage in any type of sexual conduct or prostitution on the premises or to fondle, caress, or touch the breasts, pubic region, buttocks or genitals of any employee, patron or other entertainer, or to permit any employee, patron or other entertainer to fondle, caress or touch the breasts, pubic region, buttocks or genitals of said entertainer.

Be nude, unclothed, or in less than opaque attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, or any

portion of the pubic region, buttocks or genitals, unless upon a stage at least two feet above the customer floor and a sufficient distance from the customers to prevent the customers from touching the entertainers.

Demand or collect any payment or gratuity from any customer for entertainment, except while the entertainer is on stage, by placing such payment or gratuity into a box affixed to the stage.

CUSTOMERS ARE NOT PERMITTED TO:

Be on the stage at any time.

Touch, caress or fondle the breasts, pubic region, buttocks or genitals of any employee, server or entertainer or engage in solicitation for prostitution."

- (h) *Lighting required.* The premises of all adult businesses shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted to access at an illumination of not less than one footcandle as measured at the floor level, and such illumination must be maintained at all times that any customer or patron is present in or on the premises.
- (i) *Closed booths or rooms prohibited.* The premises of all adult businesses shall be physically arranged in such manner that the entire interior portion of any booths, cubicles, rooms or stalls are visible from a common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, drapes, or any other obstruction whatsoever. However, this provision shall not apply to dressing rooms and restrooms as provided for in subsection (j) of this section.
- (j) *Ventilation and sanitation requirements.* The premises of all adult businesses shall be kept in a sanitary condition and properly ventilated. Separate dressing rooms and restrooms for men and women shall at all times be maintained and kept in a sanitary condition and properly ventilated.
- (k) *Hours of operation.* No adult business may be open or in use between the hours of 12:00 midnight and 9:00 a.m. on any day other than a Sunday when the business may not be open between the hours of 12:00 midnight and 12:00 noon.

(Code 2008, § 5-808; Ord. No. 782)

5-809 License; Posting Or Display

- (a) Every person, partnership, corporation or other entity licensed under this article as an adult business shall post license in a conspicuous place and manner on the adult business premises.

- (b) Every person holding a server, manager or entertainment license shall post his or her license in his or her work area on the adult business premises so it shall be readily available for inspection by city authorities responsible for enforcement of this article.

(Code 2008, § 5-809; Ord. No. 782)

5-810 Manager On Premises

- (a) A manager shall be on duty at all adult businesses at all times the premises are open for business. The name of the manager on duty shall be prominently posted during business hours.
- (b) It shall be the responsibility of the manager to verify that any person who provides adult entertainment or works as a server within the premises possesses a current and valid adult servers license and that such licenses are prominently posted.
- (c) It shall also be the responsibility of the manager to ensure persons under the age of 18 years do not enter upon the premises.

(Code 2008, § 5-810; Ord. No. 782)

5-811 Inspectors And Inspections

All adult businesses shall permit representatives of the police department or any other city official acting in their official capacity to inspect the premises as necessary to ensure the business is complying with all applicable regulations and laws.

(Code 2008, § 5-811; Ord. No. 782)

5-812 Suspension, Revocation, Or Non-Renewal Of License

Whenever the city clerk has information that:

- (a) The owner or operator of an adult business or a holder of a manager, server or entertainer license has violated, or knowingly allowed or permitted the violation of, any of the provisions of this article; or
- (b) There have been violations of provisions of this article that have occurred under such circumstances that the owner or operator of an adult business knew or should have known that such violations were committed; or
- (c) The adult business license or the manager, server or entertainer license was obtained through false statements in the application for such license, or renewal thereof; or
- (d) The adult business licensee or the manager, server or entertainer licensee

failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or

- (e) The owner or operator, or any partner, or any corporate officer or director holding an adult business license has become disqualified from having a license by a conviction as provided in WCC 5-805(a)(7); or
- (f) The holder of a manager, server or entertainer license has become disqualified from having a license by any violation of this article or by a conviction as provided in WCC 5-805(b)(3);

then the city clerk shall make this information known to the governing body, which upon five days' written notice to the person holding the license conduct a public hearing to determine whether the license should be suspended or revoked. The governing body may pass a resolution setting forth the procedures for the conduct of such hearings. Based on the evidence produced at the hearing, the governing body may take any of the following actions:

- (1) Suspend the license for up to 90 days.
- (2) Revoke the license for the remainder of the license year;
- (3) Place the license holder on administrative probation for a period of up to one year, on the condition that no further violations of this article occur during the period of probation. If a violation does occur and after the hearing the violation is determined to have actually occurred, the license will be revoked for the remainder of the license year.

(Code 2008, § 5-812; Ord. No. 782)

ARTICLE 9 FRANCHISES

5-901 Title

5-902 Definitions

5-903 Franchise Requirement

5-904 Gas Distribution Systems And Gas Distribution Facilities

5-905 Preservation Of Police Power Authority And Applicability Of Regulations

5-906 Nature Of Rights Granted By Any Franchise

5-907 Indemnification Of The City

5-908 Liability Insurance And Bond Requirement

5-909 Franchise Applications

5-910 Franchise Renewal

5-911 Applicability

5-912 Federal And State Law

5-913 Failure To Enforce

5-914 Violations

5-901 Title

This article shall be referred to and cited as the "Master Franchise Code." (Throughout this article, the master franchise code may be referred to as "this code.")

(Code 2008, § 5-901)

5-902 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Entity means any individual persons, governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture or trust and shall include all forms of business enterprise not specifically listed herein.

Facilities means lines, pipes, mains, laterals, wires, cables, conduit, ducts, poles, towers, cabinets, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, gas distribution system and gas distribution facilities, together with all necessary appurtenances or other equipment thereto, or any part thereof, for the purpose of providing or otherwise facilitating any service.

Franchise means the grant, right, privilege and franchise by the city to provide, distribute, transport or sell a service within the city and/or to install, construct, maintain, extend or operate facilities along, across, upon, under or within the right-of-way. The grant, right, privilege and franchise shall be in accordance with the provisions of K.S.A. 12-2001 et seq., as amended, the city's Home Rule power, and applicable city ordinances.

Franchise fee means consideration paid in the form of a charge upon a franchisee as prescribed in the ordinance granting the franchise. Any such franchisee fee shall be subject to any applicable provisions of federal or state law.

Franchisee or *grantee* means any entity that has a franchise granted by the city pursuant to this code, K.S.A. 12-2001 et seq., as amended, and/or the city's Home Rule power.

Gas consumer means, without limitation, any entity that receives natural gas or other energy on a retail basis within the city through a gas distribution system or gas distribution facilities.

Gas distribution system or *gas distribution facilities* means a pipeline or system of pipelines, including, without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and services extensions, together with all necessary appurtenances thereto, or any part thereof, for the purpose of distribution or supplying natural gas or other energy for light, heat, power and all other purposes.

MCF means a measurement of natural gas equal to 1,000 cubic feet. It is assumed for purposes of this Code that one MCF equals 1,000,000 british thermal units (BTUs).

Other energy means any energy provided in a gaseous, liquid, or slurry mixture form through pipelines for light, heat, power, and all other purposes as an alternative or replacement for natural gas, but specifically, it shall not include electrical energy.

Reseller means a provider of service within the city whereby the provider purchases and resells the service of a duly authorized franchisee, but only where the duly authorized franchisee is already paying fees for the resold service under its franchise with the city (for example, the resale of local exchange service as contemplated by K.S.A. 12-2001(n)).

Right-of-way means present and future streets, alleys, rights-of-way, and public easements, including easements dedicated to the city in plats of the city for streets and alleys. The term "right-of-way" shall not include property owned by the city outside of said streets, alleys, rights-of-way, and easements, or public easements limited in their dedication of purpose or otherwise not intended for placement of facilities (for example, a public easement dedicated only for stormwater purposes).

Service means any utility or similar service to be provided, distributed, transported or sold to an entity by means of a delivery or distribution system that is comprised of facilities within the city, including, without limitation, telecommunication, cable, broadband, internet, open video systems, steam, electric, water, telegraph, data transmission, natural gas, other energy, or any other similar service.

(Code 2008, § 5-902)

5-903 Franchise Requirement

No entity shall provide, distribute, transport or sell a service within the city or shall install, construct, maintain, extend or operate facilities along, across, upon, under or within the right-of-way without a franchise authorizing the same, unless applicable federal or state law prohibits city enforcement of such requirement. This franchise requirement includes:

- (1) Entities with facilities within the city in order to provide, distribute, transport or sell service within the city;
- (2) Entities with facilities within the city in order to provide, distribute, transport or sell service outside, but not within the city; and
- (3) Entities without their own facilities within the city that lease or otherwise use the facilities of other entities in order to provide, distribute, transport or sell service within the city;

Provided, this franchise requirement shall not include a reseller, or include a

governmental entity that has entered into an agreement with the city pursuant to K.S.A. 12-2901 et seq., regarding the use and occupancy of the right-of-way.

(Code 2008, § 5-903)

5-904 Gas Distribution Systems And Gas Distribution Facilities

It shall be unlawful for any entity to install, construct, maintain, extend or operate or a gas distribution system or gas distribution facilities or to provide, distribute, transport or sell natural gas or other energy within the city on a retail basis without first obtaining a franchise authorizing the same and requiring a franchise fee. This franchise requirement applies to any provision, distribution, transportation or sale to a gas consumer within the city whether or not the portion of the entity's gas distribution system is in the right-of-way, provided, in the event the gas distribution system or gas distribution facilities of a franchisee are used by an entity without its own gas distribution system or gas distribution facilities within the city for the transportation or sale of said entity's natural gas or other energy to a gas consumer, said entity shall be exempt from the requirement of obtaining a franchise if it reports, calculates and pays (either directly or through the franchisee) a sum to be submitted to the city for such services that is equivalent to the calculation of the franchisee's franchise fee. In such event, if gross receipts are not or cannot be reported, a sufficient volumetric rate multiplied by the number of MCF of the transported natural gas or other energy may be used in making such calculation.

(Code 2008, § 5-904)

5-905 Preservation Of Police Power Authority And Applicability Of Regulations

Any rights granted pursuant to this article and pursuant to any franchise are subject to the authority of the city to adopt and enforce ordinances and regulations necessary to the health safety and welfare of the public. All entities subject to this article shall also be subject to and comply with all applicable federal and state laws, statutes and regulations, and all applicable rules, regulations, policies and ordinances enacted by the city, including, without limitation, the city's ordinance relating to the use and occupancy of the public right-of-way (WCC chapter 13, article 1 and amendments thereto). Provided that nothing in this article shall be deemed to waive a right, if any, that an entity might have to seek judicial or regulatory review as provided by law.

(Code 2008, § 5-905)

5-906 Nature Of Rights Granted By Any Franchise

Franchises shall not convey title, equitable or legal, in the right-of-way or any other public property, but shall give only the right to occupy the right-of-way for the purposes and period stated within the franchise. No franchise shall grant the right to use facilities owned or controlled by the city or a third party, without the consent of such party, nor

shall a franchise excuse a franchisee from obtaining appropriate access or attachment agreements before locating its facilities on the facilities owned or controlled by the city or a third party. Any franchise granted by the city shall be nonexclusive.

(Code 2008, § 5-906)

5-907 Indemnification Of The City

Any entity installing, constructing, maintaining, extending or operating facilities within the city or otherwise providing, distributing, transporting or selling a service within the city shall hold the city harmless from any and all damages or claims arising or accruing from the exercise of any right or privilege granted under this code or a franchise; the installation, construction, maintenance, extension, operation of its facilities within the city; and the negligence or intentional acts or omissions of its employees, agents, or servants in the exercise of said installation, construction, maintenance, extension, operation, provision, distribution, transportation or sale. Failure of said entity to obtain or maintain a franchise shall in no manner waive this requirement and obligation.

(Code 2008, § 5-907)

5-908 Liability Insurance And Bond Requirement

- (a) Each franchisee shall file with the city evidence of liability insurance with an insurance company licensed to do business in the state. The amount will be not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. The insurance will protect the city from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent or wrongful acts or omissions of the franchisee. The franchisee shall also have coverage for automobile liability in an amount of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. The city shall be an additional insured on all policies of franchisee, to the extent permitted by law, unless waived in writing by the city. If the franchisee is self-insured, it shall provide the city proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts, and shall agree to indemnify and hold the city harmless for any losses associated with franchisee's activities in the right-of-way. All contractors actually performing work for any franchisee shall be subject to the same insurance requirements set forth herein.
- (b) To the extent any franchisee installs, constructs, maintains, extends or operates any facilities in the right-of-way, it shall maintain a performance and maintenance bond as set forth in the city's ordinance relating to the use and occupancy of the public right-of-way (WCC chapter 13, article 1 and amendments thereto) or as set forth in the franchise ordinance of the franchisee. To the extent any franchisee installs, constructs, maintains, extends or operates any facilities anywhere else within the city, the city may require a bond in the

franchise when reasonably deemed necessary.

- (c) A copy of the liability insurance certificate and any required performance and maintenance bond must be on file with the city clerk.

(Code 2008, § 5-908)

5-909 Franchise Applications

- (a) *Applications.* All applications for a franchise shall be on forms provided or approved by the city. Any application fee shall be paid prior to processing by the city, unless otherwise agreed to by the city. Upon receipt of a completed application and any applicable fee, the designated city official shall prepare a report and make a recommendation respecting such application to the governing body. Each service subject to a franchise shall require a separate application.
- (b) *Application fee.* Subject to state statutes, an application fee shall be paid at the time of the application in the amount established by the city, provided the city may agree to defer submission of part or all of the application fee until all costs have been determined. As part of said application fee the city may include reimbursement for all reasonable costs incurred by the city in drafting, negotiating, adopting, and publishing the franchise, provided nothing herein shall prevent the city from having any publication or other reasonable costs billed directly to the applicant. Said application fee shall not be considered or credited against the collection of applicable franchise fees.

(Code 2008, § 5-909)

5-910 Franchise Renewal

Franchise renewals shall be in accordance with applicable law. The city and any franchisee, by mutual consent or as otherwise provided in such franchisee's franchise, may enter into renewal negotiations. The city may require such franchisee to update any application information and, subject to state statutes or any provisions in such franchisee's franchise, submit an application fee.

(Code 2008, § 5-910)

5-911 Applicability

The provisions of this article shall apply from and after the effective date of the ordinance from which this article is derived, and shall apply to the full extent of the terms in this article. Said provisions shall be deemed incorporated into each franchise.

(Code 2008, § 5-911)

5-912 Federal And State Law

The requirements set forth in this article shall be subject to the provisions of K.S.A. 12-2001 et seq., as may be amended, and any other applicable federal or state law.

(Code 2008, § 5-912)

5-913 Failure To Enforce

The failure of the city to insist upon the strict adherence to the requirements of this code or of any franchise shall not be construed as a waiver or relinquishment for the future of the rights of the city to enforce this code or any franchise or any term or provision thereof.

(Code 2008, § 5-913)

5-914 Violations

Any entity violating this code shall be subject to a fine of \$500.00 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this code to fullest extent allowed by law, including, but not limited to, the payment of a franchise fee or the equivalent thereof, and indemnification of the city.

(Code 2008, § 5-914)

ARTICLE 10 PROHIBITED DISCRIMINATION IN EMPLOYMENT, HOUSING, OR PUBLIC ACCOMMODATIONS AS TO SEXUAL ORIENTATION OR GENDER IDENTITY

[5-1001 Declaration Of Policy](#)

[5-1002 Definitions](#)

[5-1003 Unlawful Practices](#)

[5-1004 Exceptions](#)

[5-1005 Defenses](#)

[5-1006 Enforcement](#)

[5-1007 City Contracts](#)

5-1001 Declaration Of Policy

(a) The right of an otherwise qualified individual to be free from discrimination because of that individual's sexual orientation or gender identity is hereby recognized. This right shall include, but not be limited to, any of the following:

- (1) The right to pursue and hold employment and the benefits associated therewith without unlawful discrimination.
- (2) The right to the full enjoyment of any of the services, advantages or privileges of any place of public accommodation without unlawful

discrimination.

(3) The right to engage in property transactions, including obtaining housing for rent or purchase and credit therefor, without unlawful discrimination.

(4) The right to exercise any right granted under this article without unlawful retaliation.

(b) To protect these rights, it is hereby declared to be the purpose of this article to extend the law to prohibit discrimination and retaliation based upon sexual orientation and gender identity and to provide a local process for the acceptance, investigation and resolution of complaints of discrimination and retaliation relating to sexual orientation and/or gender identity arising hereunder.

(c) Such prohibition is in furtherance of providing equal protection to all residents of the city and, for purposes of the Kansas Preservation of Religious Freedom Act (K.S.A. 60-5301 et seq.) and other applicable law, the provisions set forth herein are determined to be the least restrictive means of furthering a compelling governmental interest.

(d) Nothing in this article shall be construed to make it lawful to discriminate or retaliate against individuals on the basis of race, color, religion, national origin, sex, age, disability, marital status, familial status, or military status. Such discrimination and retaliation is not addressed in this article because federal and state law consistently address unlawful discriminatory and retaliatory practices related to those characteristics and provide a complaint, investigation and enforcement process for such discrimination and retaliation.

(Ord. No. 1004, § 1(5-1001), 10-10-2019)

5-1002 Definitions

Except to the extent they are in conflict with the definitions in this section, the definitions contained within the Kansas Acts Against Discrimination (K.S.A. 44-1001 et seq.), and amendments thereto, shall apply to this article. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aggrieved individual means any individual who has a good faith belief that such individual has been injured by an unlawful discriminatory practice under this article.

Days means calendar days. If a deadline falls on a day city hall is not open (e.g., a weekend, a holiday recognized by the city, emergency closure) the deadline will be extended to the next day city hall is open.

Employee means any individual authorized to perform services within the city for an employer, and includes an officer of the employer, but does not include any individual

employed by such individual's parents, spouse or child or in the domestic service of any individual. The term "employee" also does not include an independent contractor.

Employer means any individual or entity, including, but not limited to, corporations, partnerships, limited liability companies, associations, labor organizations, mutual companies, joint-stock companies, trusts, or unincorporated organizations, employing four or more employees in the city (including all departments, boards, and agencies thereof), and any city contractor (with respect to contracts between the city and the contractor). For purposes of this article, the term "employer" shall not include any non-profit fraternal or social association/corporation or any religious organization.

Gender identity means an individual's actual or perceived (by the individual or another) gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics regardless of the individual's designated sex at birth.

Hearing officer means the city's municipal judge.

Investigator means the city's prosecutor.

Nonprofit fraternal or social association/corporation means an association or corporation that meets all of the following requirements:

- (1) It is organized in good faith for social or fraternal purposes;
- (2) Membership entails the payment of bona fide initiation fees or regular dues;
- (3) There exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or bylaws adopted by the membership;
- (4) There is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates; and
- (5) It is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole.

Place of public accommodation means and shall include every establishment within the city that is open to the public and offers any product, service or facility. The term "place of public accommodation" shall include, but not be limited to, all taverns, hotels, motels, apartment hotels, apartment houses with one or more tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof. The term "place of public accommodation" shall not, however, include:

- (1) A religious organization;
- (2) Any hotel, motel, restaurant or theater operated by a nonprofit fraternal or social

association/corporation which restricts its facilities and services to the members of such association/corporation and their guests; or

- (3) Any nonprofit fraternal or social association/corporation, or bona fide civic, political or religious organization, when the profits of such association/corporation or organization, above reasonable and necessary expenses, are solely for its benefit or mission.

Religious organization means an entity, association, or group such as a church, mosque, temple, synagogue, or other entity, association, or group principally devoted to religious practice or religious teaching.

Rent means to lease, to sublease, to let or otherwise to grant the right to occupy premises not owned by the occupant in exchange for payment or other consideration.

Rental housing means any real property, consisting of one or more dwelling units, which is required to obtain a license or permit pursuant to the provisions of this article.

Respondent means the individual or entity against whom a complaint alleging discrimination or retaliation has been filed with the city.

Sexual orientation means an individual's actual or perceived (by the individual or another) emotional, romantic, or sexual attraction to other people, such as heterosexual, homosexual, bisexual, pansexual or asexual.

(Ord. No. 1004, § 1(5-1002), 10-10-2019)

5-1003 Unlawful Practices

- (a) *Employment.* It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of an otherwise qualified individual:
 - (1) To refuse to hire or employ such individual, to bar or discharge such individual from employment, or to otherwise discriminate against such individual in compensation or in terms, conditions or privileges of employment without a valid business necessity;
 - (2) To limit, segregate, classify or make any distinction in regard to employees, or to follow any employment procedure or practice that, in fact, results in discrimination, segregation or separation, without a valid business necessity;
 - (3) To discharge, expel or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this article or because such person has filed a complaint, testified or assisted in any proceeding under this article.

(b) *Housing*. It shall be an unlawful discriminatory practice:

- (1) For an individual or entity to discriminate against any individual in the terms, conditions or privileges of the sale or lease of real property or the lease of rental housing, or in the provision of services or facilities in connection therewith, including, but not limited to, those as set forth in WCC chapter 8, article 9, because of sexual orientation or gender identity;
- (2) For any individual or entity to discriminate against any individual in such individual's use or occupancy of rental housing because of the sexual orientation or gender identity of individuals with whom such individual associates.

(c) *Public accommodation*. It shall be an unlawful discriminatory practice for the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, privileges, advantages and accommodations to any individual because of sexual orientation or gender identity.

(Ord. No. 1004, § 1(5-1003), 10-10-2019)

5-1004 Exceptions

Nothing in this article shall:

- (a) Prohibit a fraternal or social association/corporation in fact not open to the public, which as an incident to its primary purpose provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members;
- (b) Prohibit a religious organization or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, from limiting the sale, rental or occupancy of real property or rental housing which it owns or operates for other than a commercial purpose to individuals of the same religion, or from giving preference to such individuals, unless membership in such religion is restricted on account of sexual orientation or gender identity;
- (c) Prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of federal, state, or local law;
- (d) Be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, be forced to discharge qualified or competent

personnel, or be forced to retain personnel when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment;

- (e) Be construed to prohibit an employer from requiring all of its employees, as a condition of employment, to utilize the employer's applicable established internal human resource procedures to address any allegation of discrimination or retaliation in the workplace. The enforcement by an employer of any such requirement shall not, in itself, be deemed a violation of this article;
- (f) Be construed to require any person or entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law;
- (g) Be construed to prohibit an employer or place of public accommodation to post signs for restrooms and dressing rooms based on gender, or to approve, permit, authorize, or serve as a defense to conduct that would constitute the crimes of lewd and lascivious conduct or voyeurism as defined and prohibited by state law or this Code;
- (h) Apply to the extent the application or enforcement hereof is found, by a court of competent jurisdiction, to violate a person's rights protected under the Kansas Preservation of Religious Freedom Act, K.S.A. 60-5301 et seq., as amended;
- (i) Be construed to preclude any person from filing a complaint under this article from seeking any other relieve under local, state or federal law.

(Ord. No. 1004, § 1(5-1004), 10-10-2019)

5-1005 Defenses

It shall be a defense to any allegation of an unlawful discriminatory practice:

- (a) That the individual or entity did not know the aggrieved individual's sexual orientation or gender identity.
- (b) That the individual or entity acted in good faith and had reasonable grounds for believing that an act or omission was not a violation of this article.
- (c) That any adverse action taken against the aggrieved individual would have been taken regardless of the individual's sexual orientation or gender identity (i.e., the aggrieved individual violated the law, a workplace rule, a lease provision or policy applicable to all similarly situated individuals, such as employees, lessees, customers, etc.).

(Ord. No. 1004, § 1(5-1005), 10-10-2019)

5-1006 Enforcement

- (a) Any person aggrieved by an alleged violation of this article may file a written, verified complaint with the city clerk. The complaint may be filed personally or through an attorney (or if a minor, through the minor's parent, legal guardian or attorney). Any such complaint shall state sufficient information to identify the factual information supporting the alleged unlawful discriminatory practice and shall state the names and contact information of the aggrieved individual and/or entity alleged to have committed the unlawful discriminatory practices, and a description of the alleged unlawful conduct.
- (b) The complaint form must be filed within 60 days after the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event it must be filed within 60 days after the last act of discrimination. If the complaint contains allegations of alleged unlawful employment discrimination and the aggrieved individual's employer has an internal human resources procedure to address allegations of discrimination in the workplace (an internal process) and the employer also has a policy prohibiting discrimination in the workplace on the basis of an individual's sexual orientation or gender identity, then the aggrieved individual must first exhaust this internal process before the city will process a complaint, in which case the time to file such complaint is extended to 30 days after the date of the final decision in the internal process. The investigator may waive this prior exhaustion requirement upon demonstration to the investigator's satisfaction that prior exhaustion of the internal process would be futile. Futility shall be conclusively established if the employer fails to render a final decision on the aggrieved individual's complaint within 45 days from the date of the filing of the complaint.
- (c) The complaint form shall be submitted to the investigator. Upon receipt of a complete complaint, the investigator shall notify the respondents of the complaint, providing sufficient details related to the complaint so the respondents may respond. The investigator shall give the respondents 30 days to file a written answer to the complaint, and to provide any documentation or evidence related to the complaint. The investigator may, at the request of respondents, extend the answer period an additional 30 days. If the respondents charged with violating the provisions of this article is the city, the city will engage an independent investigator who shall not otherwise be an employee, agent, or contractor of the city and shall not have any association with the complainant or the respondents.
- (d) Following the conclusion of the answer period, the investigator may initiate an investigation period for further investigation, requesting that the complainant and/or respondents provide additional information, documentation or testimony as needed to facilitate the investigation of the complaint. This investigation period shall be concluded within 60 days after the investigator's last request for information, unless the investigator notifies the complainant and the respondents in writing of the need for additional time and reasons therefor.

- (e) Within 30 days after the conclusion of the investigation period, the investigator will review all evidence received during the investigation and make a determination, within the investigator's sound discretion, whether probable cause exists that the respondents committed an unlawful discriminatory practice.
- (f) If the investigator finds that probable cause does not exist, then the investigator shall notify the complainant and the respondents, and no further action shall be taken by the city. Any individual making false, malicious, or unfounded accusations against a person or entity subject to this article is guilty of a violation and upon conviction thereof shall be punished by a fine of \$100.00 for each such violation.
- (g) If the investigator finds that probable cause exists that an unlawful discriminatory practice was committed by respondents, the investigator shall notify the complainant and respondents and the investigator may attempt to engage the parties in conciliation and encourage them to settle the complaint between the parties. Alternatively, the parties may, by mutual agreement, select and pay for, at their own cost, a mediator or arbitrator to mediate or arbitrate the discrimination complaint. The parties may elect to mediate the complaint at any point following the initial filing of the complaint. In the event that a respondent agrees to mediate a complaint prior to filing the respondents' answer, the investigator may stay the requirement of filing an answer. Any such stay shall be lifted in the event that mediation is unsuccessful or in the event that respondent withdraws its consent to mediate in which case the respondent shall be required to file its answer within 15 days following either the conclusion of the mediation, or the date of the respondent's withdrawal of consent. The investigator may extend the time for signing a settlement agreement for good cause and with written notice to the parties.
- (h) If the complaint could not be conciliated and settled within 60 days of the date of the investigator's determination that probable cause exists (or by the last day of any extension, whichever is later), the complaint shall be set for a hearing before the hearing officer. The parties will be given at least ten days' written notice of the date, time and place of the hearing. At such hearing, the parties shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the hearing officer which procedures shall generally be consistent with K.S.A. 77-523 and K.S.A. 77-524 of the Kansas Administrative Procedure Act, as amended. The hearing officer shall also establish his or her own rules of evidence, which are not required to be the same rules of evidence used in courts of law. At such hearing the aggrieved individual and the respondents shall each be entitled to call witnesses and to present such other evidence as appropriate. The investigator is not required to participate, but may also call witnesses and present such other evidence as he/she deems appropriate. The hearing officer shall issue a written

determination within 30 days of the date of the hearing. The determination shall indicate whether the preponderance of the evidence proves that respondent committed the unlawful discriminatory practice against the complainant, and shall set forth the essential elements of the determination.

- (i) If the hearing officer finds that a violation of this article has occurred, the hearing officer may award to the complainant a civil penalty in the amount of up to \$1,000.00 for each violation. In addition, the hearing officer shall have the authority to revoke or suspend any license or licenses issued by the city to a party found to be in violation of this article. The hearing officer's determination to revoke or suspend any license or licenses issued by the city shall not become effective until after the exhaustion of all appeal rights as provided for herein. The hearing officer may condition the reinstatement of any revoked or suspended license upon such terms and conditions as the hearing officer finds are fair and appropriate and reasonably calculated to effect compliance with the requirements of this article.
- (j) Each party is to bear its own attorneys' fees, if any.
- (k) Any party aggrieved by a determination of the hearing officer under this section may appeal that determination to the district court of the County, in accordance with K.S.A. 60-2101(d), and amendments thereto. Within 30 days of service of the notice of appeal pursuant to K.S.A. 60-2101(d), as amended, or within further time allowed by the court or by other provision of law, the city shall transmit to the court a certified copy of the written determination of the hearing officer and a certified copy all evidence presented at the hearing. On appeal, the district court may enter such order or judgment as justice shall require, and may award the prevailing party its court costs in accordance with state law.
- (l) The investigator shall maintain all evidence received during the investigation for a period of two years after the deadline for appeal or completion of appeal, whichever is later. The hearing officer will maintain all evidence presented at the hearing for a period of two years after the deadline for appeal or completion of appeal, whichever is later. In no event shall the investigator or hearing officer permit or cause the loss or destruction of any evidence related to a complaint until all appeal rights have been fully and finally adjudicated.
- (m) The filing of a complaint for the alleged violation of this article or a response thereto shall in no way preclude any party from seeking other relief under state or federal law.

(Ord. No. 1004, § 1(5-1004), 10-10-2019)

5-1007 City Contracts

The city may condition any contract into which it may enter upon adherence to the requirements of this article, and a violation of this article may be a basis for the termination of any such contract. The hearing officer shall also communicate the finding

of a violation to the mayor and city clerk so that the city may determine if the respondent has any contracts with the city and if the violation found by the hearing officer may result in termination of such contracts or otherwise affect such contracts.

(Ord. No. 1004, § 1(5-1005), 10-10-2019)

ARTICLE 11 RENTAL PROPERTIES

[5-1101 Rental Housing: Purpose](#)

[5-1102 Definitions](#)

[5-1103 License Required](#)

[5-1104 Short-Term Rental Requirements](#)

[5-1105 Right To Inspect Rental Property](#)

5-1101 Rental Housing: Purpose

The purpose of this article is to protect the public health, safety and general welfare of the people of the city with regard to short-term rental housing, including protecting the character and stability of residential areas, and preserving the value of land and buildings throughout the city.

(Ord. No. 1029, § 2(5-1101), 5-12-2022)

5-1102 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Duplex, two-family house, means a dwelling having quarters with separate entrances for two families, the design of which may have two stories, with a separate dwelling on each floor, or adjacent accommodations on the same level.

Dwelling means any building or portion thereof, which is designed or used for residential dwelling purposes.

Multifamily dwelling means a dwelling in which more than two families or households live independently of each other and cook within their own living quarters.

Owner means any person, partnership, company, trust, firm, corporation, or other entity who, alone, or jointly or severally with others, is the title holder of any property upon which a dwelling is located. For purposes of this article, the term "owner" shall include the titleholder, any employee or agent of the titleholder, a trustee serving for the benefit of any titleholder, a conservator of the estate of any titleholder, or an executor or administrator of the estate of any deceased titleholder.

Property means the lot, tract, or parcel of real estate upon which a dwelling is located.

Short-term rental means any dwelling, dwelling unit, rooming unit, room or portion of any dwelling unit, rooming unit or room rented or leased for valuable consideration for periods of time less than 30 days and where the rental may only serve as an accessory use, provided that the term "short-term rental" shall not include a group home, as defined under K.S.A. 12-736(b)(1), as amended.

Single-family dwelling means any dwelling located on property which has been zoned as R-1 Single-Family Residential District pursuant to the zoning laws of the city.

(Ord. No. 1029, § 2(5-1102), 5-12-2022)

5-1103 License Required

It shall be unlawful for the owner of a single-family dwelling, duplex, or multifamily dwelling to lease or rent such dwelling, or offer to rent or lease such dwelling, whether as a long-term rental, short-term rental, or otherwise, without first obtaining a license as provided in article 1 of this chapter. If the rental property is offered for lease by a leasing agent of the owner, then the fee required shall be made and paid by the leasing agent, unless paid by the owner. If any rental property is offered for lease by the owner of a property who is not a resident of the county the owner must designate a resident agent who resides in the county. The agent shall be responsible for the payment of all fees and penalties as provided herein and in article 1 of this chapter.

(Ord. No. 1029, § 2(5-1103), 5-12-2022)

5-1104 Short-Term Rental Requirements

Properties rented or leased, or offered for rental or lease, on a short-term rental basis, and the owners thereof, shall comply with the following requirements:

- (a) Any owner hosting short-term rentals must provide written courtesy notices to the owners of all properties sharing an adjacent border or corner with the property upon which the short-term rental is or will be located, and to the owners of property across the street (or streets, if located on a corner lot). Evidence of this notification must be provided to the city prior to approval of a license under article 1 of this chapter.
- (b) Any short-term rental operating within the city must include the city license number on marketing materials and online platforms the owner or its agents are using to advertise the short-term rental. No exterior evidence that the property is being used as a short-term rental shall be allowed, including signs.
- (c) Owners shall post prominently in the short-term rental dwelling the city's rules and regulations regarding noise limits and on-street parking, limitations on numbers of pets and animals, the days and times of trash service/pick-up for the short-term rental property, and such other applicable regulations as the city may require.

- (d) No more than two persons per each bedroom being rented, plus one additional person per dwelling, not to exceed six guests per dwelling, may occupy the dwelling.
- (e) The dwelling may not be rented or offered for use as reception space, party space, meeting space, or for other similar events open to nonresident guests. No food service (e.g., bed and breakfast) may be provided by the host.

(Ord. No. 1029, § 2(5-1104), 5-12-2022)

5-1105 Right To Inspect Rental Property

The city shall have the right to enter upon any rental property or dwelling in accordance with the provisions of WCC 5-120.

(Ord. No. 1029, § 2(5-1105), 5-12-2022)

CHAPTER 6 ELECTIONS

6-101 Conduct Of Election

6-102 Hours Of Voting

6-103 Terms Of Office

6-104 Election Ties

6-105 Commencement Of Terms Of Office; Oath Of Office

6-106 Declaration Of Candidacy, Nomination Petition

6-107 Nonpartisan Elections

6-101 Conduct Of Election

The election of city officials shall be conducted in all respects as provided by the laws of the state governing the holding of city elections.

(Code 2008, § 6-101)

State law reference—K.S.A. 25-2101 et seq.

6-102 Hours Of Voting

At all city elections the polls shall be open at 7:00 a.m. and close at 7:00 p.m., unless different hours are set and publicly announced by the county election officer.

(Code 2008, § 6-102)

State law reference—K.S.A. 25-2111.

6-103 Terms Of Office

- (a) On the Tuesday succeeding the first Monday in November of 2017 and every four years thereafter, there shall be elected three council members for a term of four years.
- (b) On the Tuesday succeeding the first Monday in November of 2019 and every four years thereafter, there shall be elected a mayor and two council members for terms of four years.
- (c) The mayor and council members shall hold their offices for four years or until their successors are elected, qualify and are sworn in.

(Code 2008, § 6-103; Chattr. Ord. No. 17, 11-12-2015; Ord. No. 966, § 1, 11-12-2015)

6-104 Election Ties

Whenever a tie shall occur in the vote on any of the aforesaid officers, the result shall be decided by lot by the judges of election.

(Code 2008, § 6-104; Chattr. Ord. No. 6, § 2, 12-12-1968)

6-105 Commencement Of Terms Of Office; Oath Of Office

- (a) The term of office for all elected members of the governing body, including all members of the city council and the mayor, in those elections following the 2019 election shall commence upon their swearing-in, which shall occur at the city's December city council meeting following the certification of the election.
- (b) Every person elected or appointed to city office, before entering upon the duties of such office, shall take and subscribe an oath or affirmation as specified in K.S.A. 54-106, and amendments thereto, and every such oath or affirmation shall be filed with the city clerk.

(Code 2008, § 6-105; Ord. No. 1019, § 2, 4-8-2021)

State law reference—K.S.A. 25-2120.

6-106 Declaration Of Candidacy, Nomination Petition

Any person desiring to become a candidate for city office elected at large shall file with the county election officer, before the filing deadline, established in K.S.A. 25-205, and amendments thereto, a declaration of candidacy on a form furnished by the county election officer as specified by the secretary of state. The nomination petition must be signed by 25 of the qualified electors of the city or by a number of such qualified electors of the city equal to not less than ten percent of the ballots cast at the last general election, whichever is less.

(Code 2008, § 6-106; Chattr. Ord. No. 17, 11-12-2015; Ord. No. 966, § 2, 11-12-2015)

6-107 Nonpartisan Elections

The election of all city officials appointed by election, including the office of the mayor and all council offices, shall be conducted in a nonpartisan manner.

(Ord. No. 978, § 2(6-107), 1-12-2017)

CHAPTER 7 FIRE

ARTICLE 1 FIRE LIMITS

ARTICLE 2 FIRE PREVENTION

ARTICLE 3 STORAGE OF VOLATILE FLAMMABLES

ARTICLE 1 FIRE LIMITS

7-101 Fire Limits Established

7-101 Fire Limits Established

The fire limits of the city are hereby established as the corporate limits of the city.

(Code 1993; Code 2008, § 7-101)

ARTICLE 2 FIRE PREVENTION

7-201 Fire Prevention Code Incorporated

7-202 Fire Prevention Code; Amendments

7-203 Penalty

7-204 Burning Of Garbage, Trash, Grass, Leaves Prohibited

7-205 Accumulation Of Rubbish And Trash

7-206 Stacking Of Hay Or Straw; Exceptions

7-207 Keeping Of Packing Materials

7-208 Storage Of Ashes

7-209 Filling Gasoline Tanks Of Motor Vehicles

7-210 Fire Hazards; Generally

7-211 Fire Hazards; Inspections To Discover

7-212 Abatement Of Fire Hazards; Issuing Order

7-213 Abatement Of Fire Hazards; Service Of Order; Records

7-201 Fire Prevention Code Incorporated

There is hereby adopted by the governing body of the city, for the purpose of prescribing regulations, governing conditions hazardous to life and property from fire or explosion, that certain code and standards known as the International Fire Code, 2018 edition, including all the appendix chapters and amendments as set forth in WCC chapter 4, article 5.

(Code 2008, § 7-201)

7-202 Fire Prevention Code; Amendments

Wherever the term "municipality" is used in the code hereby adopted, it shall be held to mean the city.

(Code 2008, § 7-202)

7-203 Penalty

Any person, firm or corporation violating any provision of this article or failing or refusing to perform any duty imposed by this article shall be fined in a sum not to exceed \$500.00 or imprisoned for not more than 180 days or be both fined and imprisoned. A separate offense shall be deemed committed each and every day during which a violation occurs or continues.

(Code 1993, § 7-202; Code 2008, § 7-203; Ord. No. 720, § 2)

7-204 Burning Of Garbage, Trash, Grass, Leaves Prohibited

It shall be unlawful to burn within the city any garbage, trash, refuse, grass or leaves or any other material or substance.

(Code 1993, § 8-503; Code 2008, § 7-204)

7-205 Accumulation Of Rubbish And Trash

It shall be unlawful for any person to allow to accumulate or to keep in any part of any building or outside of and adjacent to any building or in any alley, sidewalk, street or premises within 30 feet of any building any rubbish, trash, wastepaper, excelsior, empty boxes, barrels or other combustibles which shall constitute a fire hazard.

(Code 2008, § 7-205)

7-206 Stacking Of Hay Or Straw; Exceptions

- (a) It shall be unlawful for any person to deposit, stack or store any hay or straw within 500 feet of any building located inside the fire limits of the city.
- (b) This provision shall not apply to hay bales or the like, which are part of any approved stormwater pollution prevention plan or other approved device to control silt or stormwater runoff, and shall also not apply to hay bales or the like which are part of a temporary decorative display for a period not to exceed 60 days, including, but not limited to, decorative hay bales for Thanksgiving or Halloween displays.

(Code 2008, § 7-206)

7-207 Keeping Of Packing Materials

It shall be unlawful to keep excelsior or other packing material in any other than metal or wood metal lined boxes or bins having self-closing or automatic covers. All refuse and trash from rooms where packing or unpacking is done shall be removed daily.

(Code 2008, § 7-207)

7-208 Storage Of Ashes

It shall be unlawful to store ashes inside of any nonfireproof building unless they are stored in a noncombustible container or receptacle, and a clearance of at least five feet shall be maintained between such container or receptacle and any combustible materials not placed therein. Ashes shall not be stored outside of any building in wooden, plastic, or paper product receptacles or dumped in contact with or in close proximity to any combustible materials.

(Code 2008, § 7-208)

7-209 Filling Gasoline Tanks Of Motor Vehicles

The engines of motor vehicles shall be stopped when the gasoline tanks of such vehicles are being filled with gasoline at service stations or other places where gasoline is supplied to motor vehicles. The driver or person in control of such vehicle when the gasoline tank of same is being filled who refuses, neglects or fails to stop the engine of such vehicle shall likewise be guilty of a violation of this chapter.

(Code 2008, § 7-209)

7-210 Fire Hazards; Generally

It is unlawful for any person to cause or create anywhere within the city, or to permit on any premises under his or her control, any situation or condition that is conducive to or likely to cause or permit the outbreak of fire or the spreading of fire. Any situation or condition conducive to the outbreak of or spreading of fire, is declared to be a fire hazard. The violation of or failure to comply with any law pertaining to the storage, handling or use of inflammable oils, explosives, liquefied petroleum gases, or fertilizers and all wires and other conductors charged with electricity, is declared to be a fire hazard. The placing of stools, chairs or any other obstruction in the aisles, hallways, doorway, or exit of any theater, public hall, auditorium, church or other place of indoor public assemblage, or the failure to provide any such place of public assemblage with sufficient, accessible and unobstructed fire exits and escapes is also declared to be a fire hazard. The obstruction of any street, avenue, alley, fire hydrant or any other condition that might delay the fire department in fighting fire is declared to be unlawful.

(Code 2008, § 7-210)

7-211 Fire Hazards; Inspections To Discover

It shall be the duty of the fire chief to inspect or cause to be inspected by fire department officers or members, as often as may be necessary, all buildings, particularly all mercantile buildings, manufacturing plants, warehouses, garages, hotels, boarding houses, roominghouses, theaters, auditoriums and all places of public assemblage, for the purpose of discovering the violation of any fire preventive law or any fire hazard and

ascertaining and causing to be corrected any conditions liable to cause fires and to see that all places of public assemblage, hotels and roominghouses have sufficient and unobstructed facilities for escape therefrom in case of fire.

(Code 2008, § 7-211)

7-212 Abatement Of Fire Hazards; Issuing Order

Whenever any city official or officer or member of the fire department shall find or discover any fire hazard or shall find in any building or upon any premises combustible or explosive material or dangerous accumulation of rubbish or unnecessary accumulation of paper, boxes, shavings or any other inflammable material, so situated as to endanger property by the probability of fire, or shall find or discover any violation of this chapter or any other law hazardous to public safety from fires, the fire chief shall order the fire hazard or danger from the fire forthwith abated and remedied and such order shall be complied with immediately by the owner or occupant of such buildings or premises. If the hazard or condition ordered abated and remedied is a violation of, or a failure to comply with any law, the fire chief shall report the matter to the city attorney and he or she shall, if he or she deems it advisable, prosecute the offender.

(Code 2008, § 7-212)

7-213 Abatement Of Fire Hazards; Service Of Order; Records

Any order made under WCC 7-212 shall be in writing and may be served personally upon the owner or occupant of the premises or by leaving it with any person in charge of the premises or if the premises are unoccupied and the owner is a nonresident of the city, then by mailing a copy to the owner's last known post office address, or by posting on the premises if the owner's address is unknown. One notice to either the occupant or owner shall be sufficient. The fire chief shall keep a record of and copies of all such orders and notices and shall follow up such notices at the expiration of the time for compliance therewith and when complied with make proper entry, and if not complied with, file a complaint with the municipal court against the property owner and/or occupant.

(Code 2008, § 7-213)

ARTICLE 3 STORAGE OF VOLATILE FLAMMABLES

7-301 Definitions

7-302 Unlawful Storage

7-303 Volatile Flammables Storage; Maximum Within City Limits

7-304 Service Stations

7-305 Penalty

7-301 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Volatile flammables means any gasoline, kerosene, fuel oil or any other easily ignited liquid or fuel that readily becomes a vapor at a relatively low temperature.

(Code 1993; Code 2008, § 7-301; Ord. No. 622, § 1)

7-302 Unlawful Storage

No gasoline, kerosene, fuel oil, inflammable or dangerous liquid or volatile flammables shall be stored within the city, except:

- (a) In underground tanks as provided for in the city's uniform building code, incorporated at WCC 4-201, and also as provided in WCC 7-303.
- (b) In storage containers necessary for public purpose fuel supplies and operated and controlled by the city.

(Code 2008, § 7-302; Ord. No. 622, § 2)

7-303 Volatile Flammables Storage; Maximum Within City Limits

No more than two approved sealed containers holding an aggregate of not more than ten gallons of volatile flammables for residential use can be stored within any structure within the city limits.

(Code 2008, § 7-303)

7-304 Service Stations

- (a) No gasoline service station hereafter erected shall have as part thereof more than three storage tanks and not more than two pump islands, each of the islands containing not more than three pumps.
- (b) No gasoline service station shall be erected hereafter unless said gasoline service station shall have no more than a total of two street or alley entrances, neither of which said entrances shall be wider than 30 feet.

(Code 1970, § 6-303, 6-304; Code 2008, § 7-304; Ord. No. 121, §§ 3, 4)

7-305 Penalty

Any person violating any provision of this article shall upon a conviction thereof be fined a sum of money not exceeding \$500.00, or be imprisoned for not more than 180 days or be both so fined and imprisoned. A separate offense shall be deemed and

committed each and every day during which a violation occurs or continues.

(Code 1993; Code 2008, § 7-305; Ord. No. 622, § 4)

CHAPTER 8 HEALTH AND WELFARE

ARTICLE 1 (RESERVED)

ARTICLE 2 GENERAL PROVISIONS

ARTICLE 3 HEALTH NUISANCES

ARTICLE 4 WEEDS AND NUISANCE PLANTS

ARTICLE 5 REFUSE DISPOSAL

ARTICLE 6 SWIMMING POOLS

ARTICLE 7 JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

ARTICLE 8 ENVIRONMENTAL RELEASES

ARTICLE 9 FAIR HOUSING CODE

ARTICLE 10 MINIMUM HOUSING CODE

ARTICLE 11 DANGEROUS AND UNFIT STRUCTURES

ARTICLE 12 MINIMUM PROPERTY PRESERVATION CODE

ARTICLE 13 RAT CONTROL

ARTICLE 14 INSURANCE PROCEEDS FUND

ARTICLE 15 ENVIRONMENTAL CODE

ARTICLE 16 ENVIRONMENTAL SANITARY CODE

ARTICLE 17 SMOKING REGULATIONS

ARTICLE 1 (RESERVED)

ARTICLE 2 GENERAL PROVISIONS

8-201 Adopted

8-202 Conflicting Provisions

8-203 Public Officer

8-204 Definitions

8-201 Adopted

The code known as the "Johnson County Sanitary Code of 2004" and all future amendments and supplements thereto, adopted by the county commissioners, is hereby incorporated herein by reference and made part of this chapter, save and except such portions as are hereinafter deleted or amended.

(Code 1993; Code 2008, § 8-201; Ord. No. 639)

8-202 Conflicting Provisions

In the event of conflicting provisions between the sanitary code incorporated in WCC 8-201, and this Code, this Code shall control.

(Code 1983; Code 2008, § 8-202)

8-203 Public Officer

The codes administrator ("public officer" or "enforcement officer") or his or her designee shall be charged with the administration and enforcement of this chapter unless otherwise designated.

(Code 1993; Code 2008, § 8-203)

8-204 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Diseased or hazardous trees are defined as those trees that may constitute a hazard to life and property, or harbor insects or disease which represent a potential threat to other trees within the city.

Weeds and nuisance plants means any of the following:

- (a) Brush and woody vines shall be classified as weeds, excluding ornamental plantings placed for ornamental purposes;
- (b) Weeds and grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
- (c) Weeds which bear or may bear seeds of a downy or wingy nature;
- (d) Weeds which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which either may or does constitute a menace to health, public safety or welfare;
- (e) Weeds and grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed eight inches in height, excluding ornamental plants such as pampas grass.
- (f) Volunteer trees growing on utility easements.

(Code 1993; Code 2008, § 8-402)

ARTICLE 3 HEALTH NUISANCES

[8-301 Nuisances Unlawful; Defined](#)

[8-302 Complaints; Inquiry And Inspection](#)

[8-303 Right Of Entry](#)

[8-304 Order Of Violation](#)

[8-305 Order Of Violation; Contents](#)

[8-306 Failure To Comply; Penalty](#)

[8-307 Abatement](#)

[8-308 Hearing](#)

[8-309 Costs Assessed](#)

[8-310 Deposits On Public Ground Prohibited](#)

[8-311 Compost Piles--Definitions](#)

[8-312 Compost Piles--Prohibited Contents](#)

[8-313 Compost Piles--Odors](#)

8-301 Nuisances Unlawful; Defined

It shall be unlawful for any person to maintain or permit any nuisance within the city as defined, without limitation, as follows:

- (a) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other offensive or disagreeable thing or substance thrown or left or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure or lot whether vacant or occupied;
- (b) All dead animals not properly disposed of within 24 hours after death, however, the burial of deceased domestic pets on the pet owner's private property is not considered a nuisance;
- (c) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
- (d) All stagnant ponds or pools of water;
- (e) All overgrown grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed, for ornamental purposes, or native grasses as approved on lists maintained by the county or the county's extension office;
- (f) Abandoned iceboxes, freezers or refrigerators kept on the premises under the control of any person, or any icebox, freezer or refrigerator not in actual use unless the door, opening or lid thereof is unfastened and removed therefrom;
- (g) All articles or things whatsoever caused, kept, maintained or permitted by any person to the injury, annoyance or inconvenience of the public or of any neighborhood;
- (h) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public ground so as to obstruct the same, except as permitted by the laws of the city.

(Code 1993; Code 2008, § 8-301)

State law reference—K.S.A. 21-6204.

8-302 Complaints; Inquiry And Inspection

The public officer shall make inquiry and inspection of premises upon receiving a

complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located, or is informed that a nuisance may exist by the chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings to the city administrator.

(Code 1993; Code 2008, § 8-302)

8-303 Right Of Entry

The public officer may request access and entry upon private property as permitted by law at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

(Code 2008, § 8-303)

8-304 Order Of Violation

- (a) Following review of the report submitted under WCC 8-302, the city, or its authorized representative, shall serve upon the owner, any agent of the owner of the property, any tenants, or any other person, corporation, partnership or association found by the public officer to be in violation of WCC 8-301 an order stating the violation. The order shall be served on the owner, agent and any tenants of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then service may be made by mailing the order by certified mail, return receipt requested, to the last known address of the owner.
- (b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24-month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods, including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(Code 2008, § 8-305)

State law reference—K.S.A. 12-1617e.

8-305 Order Of Violation; Contents

The order shall state the condition which is in violation of WCC 8-301. The order shall also inform the person, corporation, partnership or association that:

- (a) He, she or they shall have ten days from the receipt of the order to abate the condition in violation of WCC 8-301; provided, however, that the city administrator or designee shall grant one or more extensions of the ten-day period if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions in violation of WCC 8-301; or
- (b) He, she or they have ten days from the receipt of the order, plus any additional time granted under subsection (a) of this section, to request a hearing before the governing body or its designated representative of the matter as provided by WCC 8-308;
- (c) Failure to abate the condition or to request a hearing within the time allowed may result in prosecution as provided by WCC 8-306 and/or abatement of the condition by the city as provided by WCC 8-307.

(Code 2008, § 8-35)

8-306 Failure To Comply; Penalty

Should the person, corporation, partnership, association or other entity fail to comply with the order to abate the nuisance or request a hearing the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership, association or other entity and, upon conviction of any violation of provisions of WCC 8-301, be fined in an amount not to exceed \$500.00 or be imprisoned not to exceed 180 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

(Code 1993; Code 2008, § 8-306)

8-307 Abatement

In addition to, or as an alternative to prosecution as provided in WCC 8-306, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been served pursuant to WCC 8-304 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in WCC 8-305, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of ten days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in WCC 8-309. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;
- (b) Certified mail, return receipt requested; or
- (c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.
- (d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this article during the preceding 24-month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods, including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(Code 2008, § 8-307)

8-308 Hearing

If a hearing is requested within the ten-day period as provided in WCC 8-305, such request shall be made in writing to the city clerk. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefor, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in WCC 8-307.

(Code 1993; Code 2008, § 8-308)

8-309 Costs Assessed

If the city abates or removes the nuisance pursuant to WCC 8-307, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state

that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

(Code 2008, § 8-309)

8-310 Deposits On Public Ground Prohibited

It shall be unlawful for any person, firm or corporation to cause or to permit any offal, manure, rubbish or filth or permit any decaying animal or vegetable matter, or any foul or nauseous substance to be discharged out of or flow from the premises occupied by him or to throw upon or permit the same to be thrown upon, deposited or left in any stream or pond within the city or in or upon any street, alley, public square, vacant lot or other place in the city.

(Code 1970, § 7-203; Code 1993; Code 2008, § 8-310)

8-311 Compost Piles--Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Compost pile and/or compost bed means any accumulation or stack or a quantity heaped together of any mixture of material containing decayed organic matter and primarily used for fertilizing and conditioning of land.

(Code 1993; Code 2008, § 8-311; Ord. No. 637, § 1)

8-312 Compost Piles--Prohibited Contents

No compost bed or pile shall be allowed in any yard other than the rear yard.

(Code 1993, § 8-312; Code 2008, § 8-312; Ord. No. 637, § 2)

8-313 Compost Piles--Odors

No compost bed or pile shall be allowed to emit or cause any foul, unhealthful or disagreeable odors in the neighborhood in which said bed and pile exists.

(Code 1993; Code 2008, § 8-313; Ord. No. 637, § 3)

ARTICLE 4 WEEDS AND NUISANCE PLANTS

8-401 Weeds And Plants To Be Removed

8-402 (Reserved)

8-403 Public Officer; Notice To Remove

8-404 Abatement; Assessment Of Costs

8-405 Right Of Entry

8-406 Unlawful Interference

8-407 Noxious Weeds

8-408 Dead, Diseased, Or Otherwise Hazardous Tree Removal

8-401 Weeds And Plants To Be Removed

It shall be unlawful for any owner, agent, lessee, tenant, or other person occupying or having charge or control of any premises to permit weeds to remain upon said premises or any area between the property lines of said premises and the centerline of any adjacent street or alley, including, but not specifically limited to, sidewalks, streets, alleys, easements, rights-of-way and all other areas, public or private. All weeds as defined in WCC 8-204 are hereby declared a nuisance and are subject to abatement as hereinafter provided.

(Code 1993; Code 2008, § 8-401)

8-402 (Reserved)

8-403 Public Officer; Notice To Remove

(a) The codes administrator, or designee, is the public officer charged with the administration and enforcement of this article. The public officer or authorized assistant shall give written notice to the owner, occupant or agent of such property by mail or by personal service, or by posting on the property, to cut or destroy weeds; provided, however, that if the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified, return receipt requested, to the last known address of the owner. Such notice shall only be given once per calendar year.

(b) The notice to be given hereunder shall state:

(1) That the owner, occupant or agent in charge of the property is in violation of the city weed control law;

(2) That the owner, occupant or agent in control of the property is ordered to cut or destroy the weeds within ten days of the receipt of the notice;

- (3) That the owner, occupant or agent in control of the property may request a hearing before the governing body or its designated representative within five days of the receipt of the notice or, if the owner is unknown or a nonresident, and there is no resident agent, ten days after notice has been published by the city clerk in the official city newspaper;
 - (4) That if the owner, occupant or agent in control of the property does not cut or destroy the weeds or fails to request a hearing within the allowed time the city or its authorized agent will cut or destroy the weeds and assess the cost of the cutting or destroying the weeds, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property;
 - (5) That the owner, occupant or agent in control of the property will be given an opportunity to pay the assessment, and if it is not paid within 30 days of such notice, it will be added to the property tax as a special assessment;
 - (6) That no further notice will be given during the current calendar year prior to the removal of weeds from the property; and
 - (7) That the public officer should be contacted if there are questions regarding the order.
- (c) If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this article.

(Code 2008, § 8-403)

8-404 Abatement; Assessment Of Costs

- (a) If the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the time periods specified in WCC 8-403, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.
- (b) If the city abates or removes the nuisance pursuant to this section, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section.
- (c) The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected

in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

(Code 2008, § 8-404)

State law reference—K.S.A. 12-1617f.

8-405 Right Of Entry

The public officer, and the public officer's authorized assistants, employees, contracting agents or other representatives are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds pursuant to WCC 8-403.

(Code 1993; Code 2008, § 8-405)

8-406 Unlawful Interference

It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or the public officer's authorized representative from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute a code violation.

(Code 1993; Code 2008, § 8-406)

8-407 Noxious Weeds

- (a) Nothing in this article shall affect or impair the rights of the city under the provisions of the Noxious Weed Act (K.S.A. 2-1313a et seq.), relating to the control and eradication of certain noxious weeds.
- (b) For the purpose of this article, the term "noxious weeds" shall include, but is not limited to, kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans* L.), poison ivy, poison oak, Johnson grass (*Sorghum halepense*), and Sericea lespedeza.

(Code 2008, § 8-407)

State law reference—K.S.A. 2-1314.

8-408 Dead, Diseased, Or Otherwise Hazardous Tree Removal

The city shall remove or cause to be removed any dead or diseased or hazardous tree immediately, whether on public or private property, if such tree is deemed to pose an imminent or urgent threat to life, property, or public safety. The codes administrator or their designee will notify in writing the owners of such trees. Removal is the responsibility of the owners of such trees and shall be accomplished within 30 days of notification; however, if in the opinion of the city's representative, a tree poses an immediate threat to life and safety, the tree shall be removed within the time specified by that representative. In the event of an emergency tree removal, notification shall be served by a police officer to the resident of the property. In the event of failure to remove by the owner, the city shall have the authority to remove such trees and the city clerk is authorized to charge the cost of removal on the owner's property tax notice.

(Code 2008, § 8-408)

ARTICLE 5 REFUSE DISPOSAL

[8-501 Definitions](#)

[8-502 Refuse; Accumulation Prohibited](#)

[8-503 Hauling Refuse; Vehicles; Littering](#)

[8-504 Littering](#)

[8-505 Trash, Garbage, Refuse--Backyards; Occupants' Duties](#)

[8-506 Trash, Garbage, Refuse--Adjacent Alleys](#)

[8-507 Interfering With Containers](#)

[8-508 Rules And Regulations](#)

[8-509 Service Charge](#)

[8-510 \(Reserved\)](#)

[8-511 Placement](#)

8-501 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bulky item refuse includes appliances, beds, chairs, mattresses, box springs, hot water tanks, washers, dryers, refrigerators, tubs and other items not normally considered regular residential refuse.

Garbage means the animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking or serving of meat, produce or other foods and shall include unclean containers.

Recycling or recyclable material means newspapers, magazines, junk mail, office paper, telephone books, corrugated cardboard, chipboard cardboard, brochures, aluminum beverage cans, steel (tin) food/beverage cans, #1 through #7 plastic containers plastic containers, excluding those having previously contained household hazardous materials and automotive oils and fluids. Unacceptable plastics shall also include, but not necessarily be limited to, expanded polystyrene (Styrofoam).

Refuse means all trash, garbage, yard waste, and any other waste substance or product thrown out or discarded.

Solid waste means all garbage, refuse, waste tires, and other discarded materials, including, but not limited to, solid, semisolid, sludges, liquid and contained gaseous waste materials, excluding hazardous wastes, recyclables, yard waste or the waste of domestic animals.

Yard waste means all grass clippings, leaves, tree limbs, weeds and other plant or vegetation waste (excluding vegetation or plant materials that are garbage).

(Code 1970, § 7-413; Code 2008, § 8-501; Ord. No. 283, § 2; Ord. No. 325; Ord. No. 830, § 1; Ord. No. 894; Ord. No. 903; Ord. No. 913)

8-502 Refuse; Accumulation Prohibited

It shall be unlawful for any householder or business establishment to accumulate refuse except in a closed container and it shall be unlawful to fail to dispose of the same so that refuse shall not be scattered about the city, or become a nuisance, or fire hazard, or constitute a menace to the public health or safety, or become unsightly or constitute a violation of any ordinance of the city, and no material shall be burned.

(Code 1970, § 7-401; Code 1993; Code 2008, § 8-502; Ord. No. 894; Ord. No. 903; Ord. No. 913)

8-503 Hauling Refuse; Vehicles; Littering

It shall be unlawful to haul garbage, trash, or solid waste materials of any kind over the streets or public ways of the city, except in a vehicle so closed and covered as to prevent the loss of or escape of any refuse during transit, or except in closed and covered containers which will prevent the loss of or escape of any refuse during transit.

(Code 1970, § 7-406; Code 1993, § 8-504; Ord. No. 894; Code 2008, § 8-5; Ord. No. 894; Ord. No. 903; Ord. No. 913)

8-504 Littering

It shall be unlawful to deposit, leave, throw, place or abandon any garbage, trash, refuse, paper, bottles, cans or other solid waste material on public property or on the property of another except to deposit said materials in containers or receptacles

designated for that purpose.

(Code 1993, § 8-505; Code 2008, § 8-504; Ord. No. 512, § 1; Ord. No. 894; Ord. No. 903; Ord. No. 913)

8-505 Trash, Garbage, Refuse--Backyards; Occupants' Duties

The space in the rear of any business lot, house, or mercantile establishment between the rear of the building and the alley line, shall be kept clean and clear of all the matter set out in WCC 8-504. The occupants of the ground floor are hereby charged with the duty of keeping the said space clean, except such refuse or filth deposited by other occupants of the premises who must remove the same.

(Code 1970, § 7-408; Code 1993, § 8-506; Code 2008, § 8-505; Ord. No. 894; Ord. No. 903; Ord. No. 913)

8-506 Trash, Garbage, Refuse--Adjacent Alleys

The owner of the ground floor, or the occupant thereof, is hereby charged with the duty of keeping the alley in the rear of the premises, or adjacent thereto, clean and free from the matter set out in WCC 8-504.

(Code 1970, § 7-409; Code 1993, § 8-507; Code 2008, § 8-506; Ord. No. 894; Ord. No. 903; Ord. No. 913)

8-507 Interfering With Containers

No unauthorized person shall interfere with solid waste or recyclable material containers in any manner or remove the same or remove the contents thereof or place anything in any solid waste or recyclable material receptacle of another person.

(Code 1970, § 7-414; Code 1993, § 8-508; Code 2008, § 8-507; Ord. No. 283, § 4; Ord. No. 894; Ord. No. 903; Ord. No. 913)

8-508 Rules And Regulations

- (a) The city shall provide for solid waste and recyclable material collection from residences within the city by contract. Solid waste and recyclable material will be collected from each residence one day a week. Notice of the collection day shall be given to the citizens in advance.
- (b) Residents of the city shall be provided one 65-gallon cart for disposal of solid waste.
- (c) Residents of the city shall leave their solid waste at the curb side in the 65-gallon containers provided to residents which solid waste shall be in plastic bags or the like. Additional or overflow residential solid waste that is not able to

be placed in the 65-gallon container must be placed in plastic bags with a total weight not to exceed 40 pounds each and must display an approved overflow waste sticker available from the city at a cost set administratively by the city.

- (d) On a twice a month basis, on the same day as regular residential refuse collection, during the first and third collection day of each month, refuse collection shall additionally include the collection of bulky item refuse.
- (e) The weekly refuse collection shall not include collection of rocks, dirt, construction trash or rubbish or other construction materials or hot coals, hot ashes or other household hazardous waste materials, automobile parts, tires, batteries and items that cannot reasonably be transported or carried by two individuals and shall only provide for collection of yard waste and bulky item refuse as provided herein.
- (f) During the growing season (March 15 through January 15), the city shall provide for the removal of yard waste. Each resident shall be responsible for leaving such yard waste at the curb side of their residence. All yard waste must be placed in biodegradable paper bags, rigid containers marked with "YW," or appropriately bundled in bundles not exceeding four feet in length or 18 inches in diameter and tied with twine or string only. No single bag, container, or bundle of yard waste shall exceed 65 pounds in weight. Yard waste set outs are limited to a combined total of eight bags, containers or bundles per week. Additional yard waste set outs in excess of eight must have an appropriate sticker attached available from the city at a cost set administratively by the city.
- (g) Residents of the city shall leave their recycling materials at the curb side at the time of the weekly refuse collection in the 65-gallon recycling cart provided by the city to residents which is labeled for recycling use. Additional or overflow recycling materials may be placed in paper bags/sacks placed adjacent to the recycling bin.

(Code 2008, § 8-508; Ord. No. 894; Ord. No. 903; Ord. No. 913; Ord. No. 921)

8-509 Service Charge

The city shall assess a refuse collection service charge in the form of an assessment or charge against each real estate household within the city in an amount determined yearly by the governing body

(Code 1993, § 8-510; Code 2008, § 8-509; Ord. No. 755, § 3; Ord. No. 894; Ord. No. 903)

8-510 (Reserved)

8-511 Placement

No refuse or recyclable material shall be placed for collection more than 24 hours before the designated collection date, and all containers shall be removed from the curbside within 12 hours after each collection date. However, yard waste may be stored in appropriate containers outside, but behind the front facade of the house, prior to the next pick up date. All other refuse or recyclable material must be stored in the residence or garage, in a secured shed or undercroft of a porch, or out of sight or screened from view of persons not on the property. All refuse or recyclable material except yard waste shall be stored in tight, sealed containers of sufficient durability and security to prevent odors from spreading and to keep animals from getting into the container. Refuse bins shall be placed in such a way as to avoid impeding pedestrian or vehicle traffic.

(Code 2008, § 8-511; Ord. No. 830, § 2; Ord. No. 894; Ord. No. 903; Ord. No. 913)

ARTICLE 6 SWIMMING POOLS

8-601 Enclosures

8-602 Enclosures; Dimensions

8-603 Enclosures; Gates

8-601 Enclosures

- (a) This article shall be applicable to all existing and hereafter constructed swimming pools and family pools, other than indoor pools, which contain 24 inches or more of water in depth at any point. No person in possession of land within the city, either as owner, purchaser, lessee, tenant or licensee, upon which is situated a swimming pool or family pool, having a depth of 24 inches or more of water at any point, shall fail to provide and maintain a fence or wall as provided in WCC 8-602.
- (b) The provisions of this article shall not apply to temporary pools, such as inflatable pools for children. Such pools are only permitted for no more than five consecutive days at a time.
- (c) This article shall permit only permanent in-ground pools, permanently installed spas, hot tubs, Jacuzzis, whirlpools, and the like, except as stated above.

(Code 2008, § 8-601; Ord. No. 422, § 3)

8-602 Enclosures; Dimensions

Every outdoor swimming pool or family pool shall be completely surrounded by a fence or wall or both six feet in height, which shall be so constructed as not to have openings, holes or gaps larger than four inches in any dimension except for doors and gates. Spas, hot tubs and the like need not be fenced, provided they are locked and secured when not in use. Any pool which is 24 inches or less in depth need not be fenced or secured. A dwelling house or accessory building may be used as part of an enclosure.

(Code 1993; Code 2008, § 8-602; Ord. No. 422, § 1)

8-603 Enclosures; Gates

All gates or doors opening through an enclosure required by this article shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed and locked at all times when not in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.

(Code 1993; Code 2008, § 8-603; Ord. No. 422, § 2)

ARTICLE 7 JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY

[8-701 Findings Of Governing Body](#)

[8-702 Definitions](#)

[8-703 Nuisances Unlawful; Defined; Exceptions](#)

[8-704 Public Officer](#)

[8-705 Complaints; Inquiry And Inspection](#)

[8-706 Right Of Entry](#)

[8-707 Order Of Violation](#)

[8-708 Order Of Violation; Contents](#)

[8-709 Failure To Comply; Penalty](#)

[8-710 Abatement](#)

[8-711 Disposition Of Vehicle; Recovery Of Vehicle](#)

[8-712 Hearing](#)

[8-713 Costs Assessed](#)

8-701 Findings Of Governing Body

The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the city because they:

- (a) Serve as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
- (b) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;
- (c) Are a ready source of fire and explosion;
- (d) Encourage pilfering and theft;
- (e) Constitute a blighting influence upon the area in which they are located;
- (f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.

(Code 1993; Code 2008, § 8-701; Ord. No. 744, § 1)

8-702 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Inoperable means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed.

Vehicle means, without limitation, any automobile, truck, tractor or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

(Code 1993; Code 2008, § 8-702; Ord. No. 744, § 2)

8-703 Nuisances Unlawful; Defined; Exceptions

It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

(a) A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of city ordinance; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable:

- (1) Absence of a current registration plate upon the vehicle;
- (2) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
- (3) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway;
- (4) Absence of any indication of movement over a 60-day period.

(b) The provisions of this article shall not apply to:

- (1) Any motor vehicle which is enclosed in a garage or other building;
- (2) To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
- (3) To any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be

construed to authorize the maintenance of a public nuisance.

(Code 2008, § 8-703; Ord. No. 744, § 3)

8-704 Public Officer

The codes administrator, or designee, shall be the public officer charged with the administration and enforcement of this article.

(Code 2008, § 8-704)

8-705 Complaints; Inquiry And Inspection

The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located, or is informed that a nuisance may exist by the chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings to the city administrator.

(Code 1993; Code 2008, § 8-705; Ord. No. 744, § 4)

8-706 Right Of Entry

The public officer may obtain access and entry upon private property within reasonable hours and as provided by law, for the purpose of making inquiry and inspection to determine if a nuisance exists.

(Code 2008, § 8-706)

8-707 Order Of Violation

- (a) Following review of the report submitted under WCC 8-705, the city, or its authorized representative, shall serve upon the owner, any agent of the owner of the property, any tenants, or any other person, corporation, partnership or association found by the public officer to be in violation of WCC 8-703 an order stating the violation. The order shall be served on the owner or agent, and tenants, of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.
- (b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24-month period, the governing

body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods, including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(Code 2008, § 8-707)

State law reference—K.S.A. 12-1617e.

8-708 Order Of Violation; Contents

The order shall state the condition which is in violation of WCC 8-703. The notice shall also inform the person, corporation, partnership or association that:

- (a) He, she or they shall have ten days from receipt of the order to abate the conditions in violation of WCC 8-703; or
- (b) He, she or they have ten days from receipt of the order to request a hearing before the governing body or its designated representative of the matter as provided by WCC 8-712;
- (c) Failure to abate the condition or to request a hearing within the time allowed may result in prosecution as provided by WCC 8-709 and/or abatement of the condition by the city as provided by WCC 8-710.

(Code 1993; Code 2008, § 8-708; Ord. No. 744, § 7)

8-709 Failure To Comply; Penalty

Should a person fail to comply with the notice to abate the nuisance or request a hearing, the public officer may file a complaint in the municipal court of the city against such person and, upon conviction of any violation of provisions of WCC 8-703, the person may be fined in an amount not to exceed \$500.00 or be imprisoned not to exceed 180 days, or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

(Code 1993; Code 2008, § 8-709; Ord. No. 744, § 8)

8-710 Abatement

In addition to, or as an alternative to, prosecution as provided in WCC 8-709, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been sent pursuant to WCC 8-707 has neither alleviated the

conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in WCC 8-708, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of ten days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in WCC 8-713. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;
- (b) Service by certified mail, return receipt requested; or
- (c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.
- (d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this article during the preceding 24-month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods, including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(Code 2008, § 8-710)

8-711 Disposition Of Vehicle; Recovery Of Vehicle

- (a) Disposition of any motor vehicle removed and abated from private property pursuant to this article shall be as provided by K.S.A. Supp. 8-1102, as amended.
- (b) Any person attempting to recover a motor vehicle impounded as provided in this article, shall show proof of valid registration and ownership of the motor vehicle before the motor vehicle shall be released. In addition, the person desiring the release of the motor vehicle shall pay all reasonable costs associated with the impoundment of the motor vehicle, including transportation and storage fees, prior to the release of the motor vehicle.

(Code 2008, § 8-711)

8-712 Hearing

If a hearing is requested within the ten-day period as provided in WCC 8-708, such request shall be made in writing to the city clerk. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefor, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the matter provided in WCC 8-710.

(Code 1993; Code 2008, § 8-712; Ord. No. 744, § 10)

8-713 Costs Assessed

If the city abates or removes the nuisance pursuant to WCC 8-710, the city shall give notice to the owner or his or her agent by personal service or by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

(Code 2008, § 8-713)

ARTICLE 8 ENVIRONMENTAL RELEASES

8-801 Definitions

8-802 Strict Liability

8-803 Recovery Of Expenses

8-804 Conflict: State Laws

8-801 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Emergency action includes all exigent activities conducted in order to prevent or mitigate harm to the public health and safety and the environment from a release or threatened release of any material into or upon land, water or air.

Recoverable expenses includes those expenses of the city that are reasonable, necessary and allocable to an emergency action. The term "recoverable expenses" shall not include normal budgeted expenditures that are incurred in the course of providing what are traditionally city services and responsibilities, such as routine firefighting protection. Expenses allowable for recovery may include, but are not limited to:

- (1) Disposable materials and supplies consumed and expended specifically for the purpose of the emergency action.
- (2) Compensation of employees for the time and efforts devoted specifically to the emergency action.
- (3) Rental or leasing of equipment used specifically for the emergency action (e.g., protective equipment or clothing, scientific and technical equipment).
- (4) Replacement costs for equipment owned by the city that is contaminated beyond reuse or repair, if the equipment was a total loss and the loss occurred during the emergency action (e.g., self-contained breathing apparatus irretrievably contaminated during the response).
- (5) Decontamination of equipment contaminated during the response.
- (6) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts or specialists not otherwise provided for by the city).
- (7) Other special services specifically required for the emergency action.
- (8) Laboratory costs of analyzing samples taken during the emergency action.
- (9) Any costs of cleanup, storage, or disposal of the released material.
- (10) Costs associated with the services, supplies and equipment procured for a specific evacuation of persons or property.
- (11) Medical expenses incurred as a result of response activities.
- (12) Legal expenses that may be incurred as a result of the emergency action, including efforts to recover expenses pursuant to this article.

Release means any spilling, leaking, pumping, pouring, emitting, emptying,

discharging, injecting, escaping, leaching, dumping or disposing into or upon land, water or air, of any material.

Threatened release means any imminent or impending event potentially causing, but not resulting in, a release, but causing the city to undertake an emergency action.

(Code 1993; Code 2008, § 8-801; Ord. No. 741, § 1)

8-802 Strict Liability

Any person causing or responsible for a release or threatened release resulting in an emergency action shall be strictly liable to the city for the recoverable expenses resulting from the emergency action. There shall be a rebuttable presumption that any person owning or controlling property causing a release or threatened release is responsible for such release or threatened release.

(Code 1993; Code 2008, § 8-802; Ord. No. 741, § 2)

8-803 Recovery Of Expenses

- (a) *Itemization of recoverable expenses.* City personnel and departments involved in an emergency action shall keep an itemized record of recoverable expenses resulting from an emergency action. Promptly after completion of an emergency action, the appropriate city department shall certify those expenses to the city clerk.
- (b) *Submission of claim.* The city shall submit a written itemized claim for the total expenses incurred by the city for the emergency action to the responsible person and a written notice that unless the amounts are paid in full to the city within 30 days after the date of the mailing of the claim and notice, the city may file a civil action seeking recovery for the stated amount.
- (c) *Lien on property.* The city may cause a lien in the amount of recoverable expenses to be placed on any real property located within the city owned by the person causing or responsible for the emergency action.
- (d) *Civil suit.* The city may bring a civil action for recovery of the recoverable expenses against any and all persons causing or responsible for the emergency action.

(Code 1993; Code 2008, § 8-803; Ord. No. 741, § 3)

8-804 Conflict; State Laws

Nothing in this article shall be construed to conflict with state or federal laws requiring persons causing or responsible for releases or threatened releases from engaging in remediation activities and/or paying the cost thereof.

(Code 1993; Code 2008, § 8-804; Ord. No. 741, § 4)

ARTICLE 9 FAIR HOUSING CODE

8-901 Fair Housing

8-902 Sexual Orientation Or Gender Identity

8-903 Enforcement

8-904 Definitions

8-901 Fair Housing

- (a) It shall be unlawful for any person to refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable or deny, real property to any person because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.
- (b) It shall be unlawful for any person to discriminate against any person in the terms, conditions or privileges of sale or rental of real property, or in the provision of services or facilities in connection therewith, because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.
- (c) It shall be unlawful for any person to make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application, with respect to the sale or rental of real property that indicates any preference, limitation, specification or discrimination based on race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status, or an intention to make any such preference, limitation, specification, or discrimination.
- (d) It shall be unlawful for any person to represent to any person because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status that any real property is not available for inspection, sale or rental when such real property is in fact so available.
- (e) It shall be unlawful for any person for profit, to induce or attempt to induce any person to sell or rent any real property by representative regarding the entry or prospective entry into the neighborhood of persons of a particular race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.
- (f) It shall be unlawful for any person to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization or other service, organization or facility relating to the business of selling or renting real property, or to discriminate against him or her in the terms or conditions of such access, membership or participation, because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or

familial status.

- (g) It shall be unlawful for any person to discriminate against any person in his or her use or occupancy of real property because of the race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status of the people with whom such person associates.

(Code 2008, § 8-901; Ord. No. 756, § 1; Ord. No. 1004, § 2(8-901), 10-10-2019)

8-902 Sexual Orientation Or Gender Identity

The provisions of WCC chapter 5, article 10, as they relate to housing, are hereby incorporated herein by this reference.

(Ord. No. 1004, § 2(8-902), 10-10-2019)

8-903 Enforcement

To the extent of state and federal legal processes to address allegations of discrimination based on race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status, the city may decline to accept a complaint under this article and defer to the appropriate state or federal agency in which such complaints may be filed.

(Ord. No. 1004, § 2(8-903), 10-10-2019)

8-904 Definitions

Except to the extent they are in conflict with the definitions set forth in WCC chapter 5, article 10, the definitions contained within the Kansas Acts Against Discrimination (K.S.A. 44-1001 et seq.), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.), and the Discrimination Against Military Personnel Act (K.S.A. 44-1125 et seq.), and amendments thereto, shall apply to this article.

(Ord. No. 1004, § 2(8-904), 10-10-2019)

ARTICLE 10 MINIMUM HOUSING CODE

[8-1001 Title](#)

[8-1002 General](#)

[8-1003 Declaration Of Policy](#)

[8-1004 Definitions](#)

[8-1005 Duty Of Occupant Or Owner Of Occupied Or Unoccupied Building And Its Premises Or Vacant Premises](#)

[8-1006 Regulations For The Use And Occupancy Of Dwellings](#)

[8-1007 Maintenance And Repair; Dwellings](#)

[8-1008 Designation Of Unfit Dwellings](#)

[8-1009 Designation Of Blighted Premises \(Residential And Nonresidential\)](#)

[8-1010 Designation Of Blighted Buildings And Premises \(Nonresidential\)](#)

[8-1011 Inspection Of Buildings And Structures, And Premises](#)

[8-1012 Notice Of Violations; Procedures](#)

[8-1013 Public Officer: Authority](#)

[8-1014 City Administrator](#)

[8-1015 Governing Body; Authority](#)

[8-1016 Order To Correct And/Or Repair, Remove Or Demolish](#)

[8-1017 Demolition By Public Officer; Procedure And Costs](#)

[8-1018 Conflict Of Laws; Effect Or Partial Invalidity](#)

[8-1019 Governing Body; Appeals](#)

[8-1020 Right Of Petition](#)

8-1001 Title

This article shall be known as the "Minimum Standard for Housing and Premises Code."

(Code 2008, § 8-1001)

8-1002 General

Buildings used in whole or in part as a home or residence of a single family or person and every building used in whole or in part as a home or residence of two or more persons or families living in separate apartments and all premises, either residential or nonresidential, shall conform to the requirements of this article.

(Code 2008, § 8-1002)

8-1003 Declaration Of Policy

The governing body declares the purpose of this article is to protect, preserve, and promote the physical and mental health of the people, investigate and control communicable diseases, regulate privately and publicly-owned structures or dwellings, and all premises for the purpose of sanitation and public health, general appearance, and protect the safety of the people and promote the general welfare by legislation which shall be applicable to all dwellings, structures and premises now in existence or hereafter constructed or developed and which legislation:

- (a) Establishes minimum standards for basic equipment and facilities for light, ventilation and heating, for safety from fire, for the use and location and amount of space for human occupancy, and for safe and sanitary maintenance.
- (b) Establishes standards concerning unsightly and blighted buildings and premises, both residential and nonresidential structures.
- (c) Determines the responsibilities of owners, operators and occupants.

(d) Provides for the administration and enforcement thereof.

(Code 2008, § 8-1003)

8-1004 Definitions

Whenever the terms "dwelling," "dwelling unit," "roominghouse," "rooming unit," and "premises" are used in this article, they shall be construed as though they were followed by the words "or any part thereof." The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Basement means a portion of a building located partly underground, but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground.

Cellar means a portion of a building located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

Dwelling means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants, provided that temporary housing hereinafter defined shall not be regarded as a dwelling.

Dwelling unit means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, or intended to be used for living, sleeping, cooking and eating.

Habitable dwelling means any structure or part thereof that shall be used as a home or place of abode by one or more persons.

Habitable room means a room designed to be used for living, sleeping, eating or cooking purposes, excluding bathrooms, toilet rooms, closets, halls and storage places, or other similar places, not used by persons for extended periods.

Infestation means the presence, within or around a dwelling, of insects, rodents, or other pests.

Multiple dwelling means any dwelling containing more than two dwelling units.

Occupant means any person, over one year of age, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.

Operator means any person who has charge, care, owns, or has control of a premises or of a building or structure or part thereof, in which dwelling units or rooming units are let.

Owner means any person, firm, or corporation, who jointly or severally along with others, shall be in actual possession of, or have charge, care and control of any structure or dwelling unit or premises within the city as owner, employee, or agent of the owner, or as trustee or guardian of the estate or person of the title holder, and such person shall be deemed and taken to be the owner or owner of such property within the true intent and meaning of this article and shall be bound to comply with the provisions of this article to the same extent as the record owner and notice to any such person shall be deemed and taken to be a good and sufficient notice as if such persons were actually the record owner or owner of such property.

Plumbing means and includes all of the following supplied facilities and equipment: gas or fuel pipes, gas or fuel burning equipment, water pipes, garbage disposal units, waste pipes, flush toilets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents, heating, ventilation and air conditioning, and any other similar supplied fixtures, together with all connections to water, sewer, gas or fuel lines.

Premises shall mean any lot or land area, either residential or nonresidential, not covered by a structure and which is subject to a city tax in part or in whole.

Public officer means the codes administrator.

Refuse includes garbage, and trash.

- (a) *Garbage* means any accumulation of animal, fruit or vegetable waste matter that attends the preparation of, use of, cooking of, delivering of, or storage of meats, fish, fowl, fruit or vegetable.
- (b) *Trash (combustible)* means waste consisting of papers, cartons, boxes, barrels, wood and excelsior, tree branches, yard trimmings, wood furniture, bedding and leaves, or any other combustible materials.
- (c) *Trash (noncombustible)* means waste consisting of metals, tin cans, glass, crockery, other mineral refuse and ashes and street rubbish and sweepings, dirt, sand, concrete scrap, or any other noncombustible material.

Rooming unit means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Roominghouse means any dwelling, or that part of a dwelling containing one or more rooming units in which space is let by the owner or operator to more than two persons who are not husband and wife, son or daughter, mother or father, or sister or brother of the owner or operator.

Structure means anything constructed or erected on the ground or attached to something having a location on the ground.

Supplied means paid for, furnished, or provided by or under the control of, the owner or operator.

Temporary housing means any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, house or building or another structure, or to any utilities system on the same premises for more than 30 consecutive days.

(Code 2008, § 8-1004)

8-1005 Duty Of Occupant Or Owner Of Occupied Or Unoccupied Building And Its Premises Or Vacant Premises

- (a) It shall be the duty of the owner of every occupied or unoccupied dwelling, building and premises or vacant premises, including all yards, lawns and courts to keep such property clean and free from any accumulation of filth, rubbish, garbage, or any similar matter as covered by WCC 8-508 and 8-509.
- (b) It shall be the duty of each occupant of a dwelling unit to keep in clean condition the portion of the property which he or she occupies and of which he or she has exclusive control, to comply with the rules and regulations, to place all garbage and refuse in proper containers. Where care of the premises is not the responsibility of the occupant then the owner is responsible for violations of this code applicable to the premises.
- (c) If receptacles are not provided by the owner, then the occupant shall provide receptacles as may be necessary to contain all garbage and trash.
- (d) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his or her dwelling unit is the unit primarily infested.
- (e) Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a vermin-proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner and operator.
- (f) Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.

(Code 2008, § 8-1005)

8-1006 Regulations For The Use And Occupancy Of Dwellings

No person shall occupy as owner-occupant or let to another for occupancy any dwelling

or dwelling unit, for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the following requirements. The following requirements are hereby declared essential to the health and safety of the occupants of such dwelling or dwelling unit:

- (a) *Basement or cellar.* The basement or cellar of any dwelling shall be reasonably dry and ventilated and shall be kept free from rubbish accumulation.
- (b) *Bathing facilities.* Every dwelling unit shall contain within a room which affords privacy to a person in the room, a bathtub or shower in good working condition and properly connected to an approved water and sewer system.
- (c) *Drainage.* All courts, yards or other areas on the premises of any dwelling shall be so graded and drained that there is no pooling of the water thereon. Properly constructed wading and swimming pools and fishponds are excepted from this section.
- (d) *Entrances.*
 - (1) There shall be for each dwelling unit a normally used separate access either to a hallway, stairway, or street, which is safe and in good repair.
 - (2) A secondary exit to the ground shall be available in case of fire through windows, porch roofs, ladders or any combination that is free of hazard or egress.
- (e) *Floor area.* Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area, inside measurements. No floor space shall be included in determining habitable room area over which the ceiling is less than seven feet above the floor for the purpose of this subsection.
- (f) *Garbage and trash receptacles.* Every dwelling and every dwelling unit shall be provided with such receptacles, as may be necessary to contain all garbage and trash and such receptacles shall at all times be maintained in good repair.
- (g) *Heating.* Every dwelling and every dwelling unit shall be so constructed, insulated, and maintained and be provided by owner or occupant with heating units so that it is capable of reaching an air temperature of 70 degrees Fahrenheit under ordinary winter conditions. The chimney of the dwelling or dwelling unit shall be maintained in good order, and the owner of the approved heating equipment shall maintain it in good order and repair.
- (h) *Kitchen sink.* In every dwelling unit containing two or more rooms, there shall be at least one kitchen sink with public water under pressure and connected to the public sewer.
- (i) *Lavatory facilities.* Every dwelling unit shall contain within its walls a lavatory

basin in good working condition and properly connected to an approved water and sewer system and located in the same room as the required flush toilet or as near to the room as practicable.

- (j) *Lighting*. Every habitable room shall have a ceiling electric outlet and a duplex outlet in wall or floor, or at least two wall or floor outlets.
- (k) *Lighting of toilets and bathrooms*. Every toilet and every bathroom in every dwelling shall have at least one electric light in either the ceiling or on the wall.
- (l) *Plumbing*. All plumbing, water closets and other plumbing fixtures in every dwelling or dwelling unit shall be maintained in good working order.
- (m) *Privies*. All pit privies, privy vaults, "dry hopper" sewer-connected privies and frostproof closets are hereby banned. Portable toilets used for special events are not included in this provision.
- (n) *Toilet facilities*. There shall be at least one flush toilet in good working condition for each dwelling unit, which flush toilet shall be located within the dwelling and in a room which affords privacy.
- (o) *Ventilation*. Every habitable room in a dwelling or dwelling unit shall contain a window openable directly to the outside air and the total area of such window shall be not less than five percent of the floor area of such room. An approved system of mechanical ventilation or air conditioning may be used in lieu of openable windows. Such system shall be capable of providing not less than four air changes per hour, except that in toilet compartments such system shall provide a complete air change every five minutes and be automatically put in operation when the toilet compartment light is in the "on" position.
- (p) *Water heating facilities*. Every dwelling shall have supplied water heating facilities which are installed in an approved manner and are maintained and operated in a safe and good working condition and are properly connected with the hot water lines to the kitchen sink, lavatory and bathtub or shower.
- (q) *Windows and doors*. Every window and exterior door shall be reasonably weather-tight, lockable, and rodent-proof and shall be kept in good working condition and good repair.
- (r) *Parking*. One off-street parking space per property shall be required to facilitate compliance with on-street parking prohibitions during times of street cleaning and clearing.

(Code 2008, § 8-1006)

8-1007 Maintenance And Repair; Dwellings

Every dwelling and every part thereof shall be maintained in good repair by the owner or agent and be fit for human habitation. The roof shall be maintained so as not to leak

and all rainwater shall be drained therefrom so as not to cause dampness in the walls or ceilings. All floors, stairways, doors, porches, windows, skylights, chimneys, toilets, sinks, walls, and ceilings shall be kept in good repair and usable condition.

(Code 2008, § 8-1007)

8-1008 Designation Of Unfit Dwellings

The designation of dwellings or dwelling units as unfit for human habitation and placarding of such unfit dwellings or dwelling units shall be carried out in compliance with the following requirements:

- (a) The public officer may determine, or five citizens may petition in writing, that any dwelling unit is unfit for human use or habitation if he, she or they find that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the neighborhood, or which shall have a blighting influence on properties in the area.
- (b) Such conditions may include the following, without limitation:
 - (1) Defects therein increasing the hazards of fire, accident, or other calamities.
 - (2) Lack of:
 - a. Adequate ventilation.
 - b. Light.
 - c. Cleanliness.
 - d. Sanitary facilities.
 - (3) Dilapidation.
 - (4) Disrepair.
 - (5) Structural defects.
 - (6) Overcrowding.
 - (7) Inadequate ingress and egress.
 - (8) Unsightly appearance that constitutes a blight to the adjoining property, the neighborhood or the city.
 - (9) Air pollution.
- (c) *Placarding; order to vacate.* Any dwelling or dwelling unit condemned as unfit for human habitation, and so designated and placarded by the public officer

shall be vacated within a reasonable time as so ordered.

- (d) *Notice of violation.* Procedures as outlined in WCC 8-1012 are applicable hereto.
- (e) *Compliance required before reoccupancy.* No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the public officer.
 - (1) The public officer shall remove such placard whenever the defect upon which the condemnation and placarding action were based have been eliminated.
 - (2) It shall be unlawful for anyone to let, lease, occupy or permit the occupancy, whether for a consideration or not, of any dwelling so posted, and any violation of this provision shall constitute a public offense within the meaning of this article.
 - (3) It shall be unlawful for any person to deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except the public officer as herein provided, and any violation of this provision shall constitute a public offense within the meaning of this article.

(Code 2008, § 8-1008)

8-1009 Designation Of Blighted Premises (Residential And Nonresidential)

The designation of unsightly and blighted premises and elimination thereof shall be carried out in compliance with the following requirements:

- (a) The public officer may determine, or five citizens may petition in writing, that if the appearance of a premises is not commensurate with the character of the properties in the neighborhood or otherwise constitutes a blight to the adjoining property or the neighborhood or the city for such reasons as, but not limited to:
 - (1) Dead trees or other unsightly natural growth.
 - (2) Unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation, inadequate drainage.
 - (3) Violation of any other law or regulations relating to the use of land and the use and occupancy of the buildings and improvements.
- (b) *Notice of violation.* Procedures as outlined in WCC 8-1012 are applicable hereto.

(Code 2008, § 8-1009)

8-1010 Designation Of Blighted Buildings And Premises (Nonresidential)

- (a) Certain blighted conditions covered in WCC 8-1008 and 8-1009 concerning buildings and premises which are on the tax roll of the city are applicable to all nonresidential buildings and premises.
- (b) *Notice of violation.* Procedures of notification shall follow those prescribed in WCC 8-1012.

(Code 2008, § 8-1010)

8-1011 Inspection Of Buildings And Structures, And Premises

- (a) For the purpose of determining compliance with the provisions of this article, the public officer or his or her authorized representative is hereby authorized to make inspections to determine the condition, use, and occupancy of dwellings, dwelling units, rooming units, and the premises upon which the same are located. This requirement is applicable to existing dwellings or buildings.
- (b) The public officer is not limited by the conditions in subsection (a) of this section where new construction or vacant premises are involved and may make such inspections at any appropriate time.
- (c) The owner, operator, and occupant of every dwelling, dwelling unit, and rooming unit shall give the public officer, or his or her authorized representative, during reasonable hours, free access to such dwelling, dwelling unit, and rooming unit, and its premises, for the purpose of such inspection, examination and survey after identification by proper credentials.
- (d) Every occupant of a dwelling shall give the owner thereof, or his or her authorized agent or employee, access to any part of such dwelling, or its premises, at all reasonable times, for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any rule or regulation adopted and promulgated, or any order issued pursuant to the provisions of this article.

(Code 2008, § 8-1011)

8-1012 Notice Of Violations; Procedures

- (a) *Informal discussion.* Whenever the public officer or his or her authorized representative determines that there has been a violation of any provision of this article, the public officer will attempt to arrange with the alleged violator an informal discussion of violations, and whether repair and correction is justified.

(b) *Formal hearing.* If a satisfactory solution to the violations, either by correction, demolition or removal, is not forthcoming, then a legal notice of a formal hearing will be issued according to the following procedures:

- (1) Shall be in writing.
- (2) Shall list the violations alleged to exist or to have been committed.
- (3) Shall provide a reasonable time, but not less than 30 days in any event for the correction of the violations particularized.
- (4) Shall be addressed to and served upon the owner of the property, the operator of the dwelling, and the occupant of the dwelling unit or the rooming unit concerned, if the occupant is or may be responsible for violation.
- (5) If one or more persons whom the notice is addressed cannot be found or served after diligent effort to do so, service may be made upon such persons by posting a notice in a conspicuous place in or about the dwelling affected by the notice, in which event the public officer or his or her authorized representative shall include in the record a statement as to why such posting was necessary.
- (6) Delivery shall be by certified mail, return receipt requested, or by personal service. If service is made by certified mail, the public officer or his or her authorized representative shall include in the record a verified statement giving details regarding the mailing. In the event other methods of service are unavailing, service may be made by posting or publication.

(Code 2008, § 8-1012)

8-1013 Public Officer: Authority

For the purpose of protecting the city against unsightly or blighted premises, and to protect the health, welfare, and safety of the inhabitants of dwellings or dwelling units, the public officer referred heretofore is hereby authorized, with the consent and prior knowledge of the governing body, to enforce provisions of this code and of other laws which regulate or set standards affecting buildings and premises.

(Code 2008, § 8-1013)

8-1014 City Administrator

The city administrator is hereby authorized:

- (a) To informally review all alleged violations as provided in WCC 8-1012(a) prior to notification prescribed in WCC 8-1012(b).

- (b) To take action as prescribed in WCC 8-1012(b).
- (c) To exercise discretionary authority in specific cases where variance from the terms of this article:
 - (1) Will not adversely affect the public health, safety or welfare of inhabitants of the city;
 - (2) Is in harmony with the spirit of this article;
 - (3) Where literal enforcement of this article will result in unnecessary hardship.

(Code 2008, § 8-1014)

8-1015 Governing Body; Authority

The governing body is hereby authorized to hear appeals where there is opposition to any order, requirement, decision or determination by the public officer in enforcement of this article as outlined in WCC 8-1019.

(Code 2008, § 8-1014)

8-1016 Order To Correct And/Or Repair, Remove Or Demolish

At the time of the placarding and order to vacate specified by WCC 8-1008(c), the public officer shall also issue and cause to be served upon the owner a notice advising of the option of removal or demolition in lieu of correction and/or repair following the procedures as outlined in WCC 8-1012.

(Code 2008, § 8-1015)

8-1017 Demolition By Public Officer; Procedure And Costs

- (a) Failure to comply with the order under WCC 8-1016 for the alteration or improvement of such structure, the public officer, with the consent and prior knowledge of the governing body, may cause such condemned structure to be removed or demolished and the premises improved to eliminate the conditions outlined in WCC 8-1009.
- (b) The cost of demolition by a public officer shall be a lien upon the property upon which the cost was incurred and such lien, including as a part thereof an allowance of his or her costs and necessary attorneys' fees, may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property or shall be assessed as a special assessment upon the lot or parcel of land on which the structure was located and the city clerk at the time of certifying other city taxes, shall certify the unpaid portion of

the aforesaid costs and the county clerk shall extend the same on the tax rolls against the lot or parcel of land.

- (c) If the structure is removed or demolished by the public officer he or she shall offer for bids and sell the structure or the materials of such structure. The proceeds of such sale shall be credited against the cost of the removal or demolition and, if there is any balance remaining, it shall be paid to the parties entitled thereto after deduction of costs or judicial proceedings, if any, including the necessary attorneys' fees incurred therein, as determined by the court, if involved.

(Code 2008, § 8-1016)

8-1018 Conflict Of Laws; Effect Or Partial Invalidity

- (a) Conflicts between the provisions of this article with a provision of any zoning, building, fire, safety, or health ordinance or code of the city, existing prior to 2008, the provision shall prevail which establishes the higher standard.
- (b) Conflicts between this article with a provision of any other ordinance or code of the city existing on the effective date of the ordinance from which this article is derived, which establishes a lower standard, the provisions of this article shall be deemed to prevail and such other laws or codes are hereby declared to be repealed to the extent that they may be found in conflict with this code.

(Code 2008, § 8-1017)

8-1019 Governing Body; Appeals

- (a) Any person, firm, or corporation considering themselves aggrieved by the decision of the public officer and who desires to present a formal protest to the governing body shall, in writing, request a hearing before the governing body within ten days after receiving notice of the decision from the public officer, as provided in WCC 8-1012(b). Such protest and request for a hearing shall be filed with the office of the city clerk.
- (b) Upon receipt of a protest and request for a hearing, the city clerk shall notify in writing the governing body of such appeal.
- (c) The governing body shall, within 30 days of receipt of protest and request for a hearing, determine a date for the hearing.
- (d) Notice of the date for the hearing shall be sent to the appellant at least ten days before the hearing.
- (e) Except where an immediate hazard exists as described in WCC 8-1012, the filing of a protest and request for a hearing before the governing body as specified in subsection (a) of this section shall operate as a stay of the

enforcement of the public officer's order until such time as the governing body has reached a decision on the matter.

(Code 2008, § 8-1018)

8-1020 Right Of Petition

After exhausting the remedy provided in WCC 8-1018, any person aggrieved by an order issued by the public officer and approved by the governing body after a hearing on the matter, may within 30 days from the date which the order became final petition the district court of the county in which the property is located to restrain the public officer from carrying out the provisions of the order.

(Code 2008, § 8-1019)

ARTICLE 11 DANGEROUS AND UNFIT STRUCTURES

[8-1101 Purpose](#)

[8-1102 Definitions](#)

[8-1103 Enforcing Officer: Duties](#)

[8-1104 Procedure--Petition](#)

[8-1105 Procedure--Notice](#)

[8-1106 Procedure--Publication](#)

[8-1107 Procedure--Hearing, Order](#)

[8-1108 Duty Of Owner](#)

[8-1109 Duty Of Owner--Failure To Comply](#)

[8-1110 Duty Of Owner--Make Site Safe](#)

[8-1111 Assessment Of Costs](#)

[8-1112 Immediate Hazard](#)

[8-1113 Appeals From Order](#)

[8-1114 Scope Of Article](#)

8-1101 Purpose

The governing body has found that there may exist within the corporate limits of the city structures which are unfit for human use or habitation because of dilapidation, defects increasing the hazards of fire or accidents, structural defects or other conditions which render such structures unsafe, unsanitary or otherwise inimical to the general welfare of the city, or conditions which provide a general blight upon the neighborhood or surrounding properties. It is hereby deemed necessary by the governing body to require or cause the repair, closing or demolition or removal of such structures as provided in this article.

(Code 1993, § 4-301; Code 2008, § 8-1101)

State law reference—K.S.A. 12-1751.

8-1102 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Enforcing officer means the city building official or his or her authorized representative.

Structure includes any building, wall, superstructure or other structure which requires location on the ground, or is attached to something having a location on the ground.

(Code 1993, § 4-302)

State law reference—K.S.A. 12-1750.

8-1103 Enforcing Officer; Duties

The enforcing officer is hereby authorized to exercise such powers as may be necessary to carry out the purposes of this article, including the following:

- (a) Inspect any structure which appears to be unsafe, dangerous or unfit for human habitation;
- (b) Have authority to enter upon premises at reasonable hours for the purpose of making such inspections. Entry shall be made so as to cause the least possible inconvenience to any person in possession of the structure. If entry is denied, the enforcing officer may seek an order for this purpose from a court of competent jurisdiction;
- (c) Report all structures which he or she believes to be dangerous, unsafe or unfit for human habitation to the city administrator;
- (d) Receive petitions as provided in this article.

(Code 1993, § 4-303; Code 2008, § 8-1103)

8-1104 Procedure--Petition

Whenever a petition is filed with the enforcing officer by at least five residents charging that any structure is dangerous, unsafe or unfit for human habitation, or whenever it appears to the enforcing officer on his or her own motion that any structure is dangerous, unsafe or unfit for human habitation, he or she shall, if his or her preliminary investigation discloses a basis for such charges, report such findings to the city administrator.

(Code 1993, § 4-304; Code 2008, § 8-1104)

8-1105 Procedure--Notice

The city administrator, upon receiving a report as provided in this chapter, shall make a recommendation to the governing body as to whether a resolution should be passed fixing a time and place at which the owner, the owner's agent, any lien holder of records and any occupant of the structure may appear and show cause why the structure should not be condemned and ordered repaired or demolished.

(Code 1993, § 4-305; Code 2008, § 8-1105)

State law reference—K.S.A. 12-1752.

8-1106 Procedure--Publication

- (a) The resolution shall be published once each week for two consecutive weeks on the same day of each week. At least 30 days shall elapse between the last publication and the date set for the hearing.
- (b) A copy of the resolution shall be mailed by certified mail within three days after its first publication to each owner, agent, lien holder and occupant at the last known place of residence and shall be marked "deliver to addressee only."

(Code 1993, § 4-306; Code 2008, § 8-1106)

State law reference—K.S.A. 12-1752.

8-1107 Procedure--Hearing, Order

- (a) If, after notice and hearing, the governing body determines that the structure under consideration is dangerous, unsafe or unfit for human use or habitation, it shall state in writing its findings of fact in support of such determination and shall cause the resolution to be published once in the official city newspaper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will cause the structure to be razed and removed.
- (b) If the repair, alteration, or improvement of the structure can be made at a cost which shall not exceed 50 percent of the fair market value of the structure, the owner of the property shall, within the time specified in the order, repair, alter or improve the structure to render it safe and fit for use or human habitation, or shall vacate and close the structure until such time as he has complied with the order.
- (c) If the repair, alteration or improvement of the structure cannot be made at a cost of 50 percent or less of its fair market value, the owner shall, within the time specified in the order, remove or demolish the structure.

(Code 1993, § 4-307; Code 2008, § 8-1107)

8-1108 Duty Of Owner

Whenever any structure within the city shall be found to be dangerous, unsafe or unfit for human use or habitation, it shall be the duty and obligation of the owner of the property to render the same secure and safe or to remove the same.

(Code 1993, § 4-308; Code 2008, § 8-1108)

8-1109 Duty Of Owner--Failure To Comply

- (a) If, within the time specified in the order, the owner fails to comply with the order to repair, alter, improve or vacate the structure, the enforcing officer may cause the structure to be repaired, altered, improved, or to be vacated and closed.
- (b) If, within the time specified in the order, the owner fails to comply with the order to remove or demolish the structure, the enforcing officer may cause the structure to be removed and demolished.

(Code 1993, § 4-309; Code 2008, § 8-1109)

8-1110 Duty Of Owner--Make Site Safe

Upon removal of any structure, the owner shall fill any basement or other excavation located upon the premises and take any other action necessary to leave the premises in a safe condition. If the owner fails to take such action, the enforcing officer may proceed to make the site safe.

(Code 1993, § 4-310; Code 2008, § 8-1110)

8-1111 Assessment Of Costs

- (a) The cost to the city of any repairs, alterations, improvements, vacating, removal or demolition by the enforcing officer, including making the site safe, shall be reported to the city clerk.
- (b) The city shall give notice to the owner of the structure by restricted mail of the cost of removing the structure and making the premises safe and secure. The notice shall also state that payment of the cost is due and payable within 30 days following receipt of the notice.
- (c) If the costs remain unpaid after 30 days following receipt of notice, the city clerk may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of removing the structure and making the site safe. Any proceeds in excess of that required to recover the costs shall

be paid to the owner of the premises upon which the structure was located.

- (d) If the proceeds of the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901—40-3910, and amendments thereto, are insufficient to recover the above stated costs, or if there is no salvage, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments against the lot or parcel of land on which the structure was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs to the county clerk and who shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.
- (e) If there is no salvage material, or if the monies received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901—40-3910, and amendments thereto, are insufficient to pay the costs of the work and the costs of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants.

(Code 2008, § 8-1111)

State law reference—K.S.A. 12-1755.

8-1112 Immediate Hazard

When in the opinion of the building official any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, the city administrator may direct the enforcing officer to erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay. Such action may be taken without prior notice to or hearing of the owners, agents, lien holders and occupants. The cost of any action under this section shall be assessed against the property as provided in WCC 4-611.

(Code 1993, § 4-312; Code 2008, § 8-1112)

State law reference—K.S.A. 12-1756.

8-1113 Appeals From Order

Any person affected by an order issued by the governing body under this article may, within 30 days following service of the order, petition the district court of the county in which the structure is located for an injunction restraining the enforcing officer from

carrying out the provisions of the order pending final disposition of the case.

(Code 1993, § 4-313; Code 2008, § 8-1113)

8-1114 Scope Of Article

Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by the constitution, any other law or ordinance. Nothing in this article shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise or to exercise those powers granted specifically by K.S.A. 12-1750 through 12-1756.

(Code 1993, § 4-314; Code 2008, § 8-1114)

ARTICLE 12 MINIMUM PROPERTY PRESERVATION CODE

[8-1201 Purpose](#)

[8-1202 Definitions](#)

[8-1203 Applicability](#)

[8-1204 Interpretation](#)

[8-1205 Minimum Standards For Exteriors Of All Buildings](#)

[8-1206 Minimum Standards For Interiors Of Rented Or Leased Dwelling Units](#)

[8-1207 Accessory Structures](#)

[8-1208 Egress](#)

[8-1209 Enforcement](#)

[8-1210 Buildings Unfit For Human Habitation](#)

[8-1211 Broken Glass And Boarding Up](#)

[8-1212 Prosecution Of Violation](#)

[8-1213 Emergency Measures](#)

[8-1214 Serious Personal Finance Exemption](#)

[8-1215 Judicial Review Of Governing Body Decisions](#)

[8-1216 Penalties](#)

8-1201 Purpose

The general purpose of this article is to protect the public health, safety and the general welfare of the people of the city. These general objectives include, among others, the following specific purposes:

- (a) To protect the character and stability of residential and commercial areas within the city by legislation which shall be applicable to all dwellings and buildings now in existence or here after constructed.
- (b) To provide minimum standards for the maintenance of exteriors of all existing

buildings, and to thus prevent the creation of blight.

- (c) To provide minimum standards for the maintenance of the interiors of all rented or leased dwelling units.
- (d) To preserve the property value of land and buildings throughout the city.
- (e) To provide determinable minimum maintenance standards for dwellings and nonresidential structures and to thus facilitate private enforcement of legal rights and remedies.
- (f) To provide mechanisms for the enforcement and administration of this article to ensure that the purposes of this section are accomplished.

(Code 2008, § 8-1201; Ord. No. 792, § 4-40)

8-1202 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory structure means a subordinate structure located on the same lot as the main structure, or a portion of the main structure the use of which is clearly incidental to, and customarily found in connection with, the main structure or principal use of the land.

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Commercial area means any area, whether or not zoned in a nonresidential zone, which is occupied primarily by such nonresidential uses as retail, office, warehouse, wholesaling, or manufacturing businesses.

Building code means the building code of the city currently in use.

Deterioration means the condition of a building or part thereof, characterized by evidence of physical decay or neglect, excessive use, or lack of maintenance.

Dwelling means any building or portion thereof containing one or more dwelling units, but not including motels, hotels, rooming or boarding houses, institutions, or convalescent or nursing homes.

Dwelling unit means a building or portion of a building which is exclusively arranged, occupied, or intended to be occupied as living quarters for one family; a separate, independent living quarter consisting of one or more connected rooms with permanently installed bathroom and kitchen facilities.

Enforcement official means the official designated herein or otherwise charged with the

responsibilities of administering this article or his authorized representatives.

Exterior appurtenance means objects which are added to a structure for aesthetic or functional purposes. These include, but are not limited to, screens, awnings, trellises, television antennas, storm windows and storm doors.

Extermination means the control and elimination of insects, rodents or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food, by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the enforcement officials of the city.

Family means any number of people occupying a single dwelling unit living together as a single housekeeping unit, related by blood, marriage or formal adoption, plus not more than two additional people not so related, except that foster children shall be considered as formally adopted. A family may also include up to but not more than three unrelated people. In excess of three unrelated people living together shall not be considered a family. However, nothing herein shall preclude or prohibit any living arrangement otherwise protected by or provided for by state or federal law.

Fence means an independent structure forming a barrier at grade between lots, between a lot and street or an alley, or between portions of a lot. A barrier includes a wall or latticework screen but excludes a hedge or natural growth, or a barrier less than 18 inches in height which is used to protect plant growth.

Garbage means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Gutter means a trough attached to an eave to carry off water.

Habitable building means any structure or part thereof that shall be used as a home or place of abode by one or more persons.

Habitable room means every room in any building in which persons sleep, eat or carry on their usual domestic or social vocations or avocations. The term "habitable room" shall not include private laundries, bathrooms, toilet rooms, water closet compartments, pantries, storerooms, foyers, closets, corridors, rooms for mechanical equipment for services in the building, or other similar spaces not used by persons frequently or during extended periods.

Harborage places for insects, pests or rodents means any place where insects, pests or rodents can live, nest or seek shelter.

Interior maintenance standards means standards of maintenance of the inside elements and occupancy of rented or leased dwelling units only where the owner does not reside.

Minimum standards means the least quality admissible by this article.

Multiple-family dwelling means a building or portion thereof designed or altered for occupancy by two or more families living independently of each other in separate dwelling units.

Occupant means any person living and sleeping in a dwelling unit or having actual possession of said dwelling or rooming unit.

Openable area means that part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

Operator means any person who has charge, care or control of a building, or part thereof, which is let or offered for occupancy.

Owner means any person who, alone, jointly or severally with others, is in actual possession of, or has charge, care or control of, any building, dwelling or dwelling unit within the city as owner, employee or agent of the owner, or as trustee or guardian of the estate or person of the title holder; and such person shall be bound to comply with the provisions of this article to the same extent as the owner.

Person means a corporation, firm, partnership, association, organization and any other group acting as a unit as well as any individual. The term "person" shall also include an executor, administrator, trustee, receiver or other representative appointed according to law. Whenever the word "person" is used in any section of this article prescribing a penalty or fine, as to partnerships or associations, the word shall include the partners or members thereof, and as to corporations shall include the officers, agents or members thereof who are responsible for any violation of such section.

Premises means a lot, plot or parcel of land or any part thereof, including the buildings or structures thereon.

Provided means any material furnished, supplied, paid for or under the control of the owner.

Public hall means a hall, corridor or passageway for egress from a dwelling not within the exclusive control of one family or dwelling unit.

Public nuisance includes the following:

- (1) The physical condition or use of any premises regarded as a public nuisance at common law or by other provisions in this Code; or
- (2) Any physical condition, use or occupancy of any premises or its appurtenances, considered an attractive nuisance to children, including, but not limited to, abandoned wells, swimming pools, shafts, basements, excavations, unsafe

fences or structures, etc.; or

- (3) Any premises designated as unsafe for human habitation or use; or
- (4) Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or un-secure as to endanger life, limb or property; or
- (5) Any premises which are unsanitary, or which are littered with rubbish or garbage, or which have an uncontrolled growth of weeds; or
- (6) Any structure or building that is in a state of dilapidation, deterioration or decay; faulty construction; open, vacant or abandoned; damaged by fire to the extent as to not provide shelter, in danger of collapse or failure and is dangerous to anyone on or near the premises.

Repair means to restore to a sound and acceptable state of operation, serviceability. Repairs shall be expected to last approximately as long as would be the replacement by new items.

Replace means to remove an existing item or portion of a system and to construct or install a new item of similar or improved quality as the existing item when new. Replacement will ordinarily take place when the item is beyond repair.

Rubbish means nonputrescible solid wastes consisting of both combustible and noncombustible wastes.

Smoke detector means a device which detects visible or invisible particles of combustion and shall be either the ionization chamber or the photoelectric type device.

Structure means anything constructed or erected with a fixed location on the ground, or attached to something with a fixed location on the ground. Structures include, but are not limited to, buildings, walls, fences, poster panels, above-ground storage tanks, and similar uses. Excluded are sidewalks, pavement and public improvements such as utility poles, streetlight fixtures, and street signs.

Substandard means all structures which do not conform to the minimum standards established by this article or any other ordinance.

Supplied means paid for, installed, furnished or provided by or under the control of the owner operator.

Workmanlike means, whenever the words "workmanlike state of maintenance and repair" or "workmanlike state or manner" are used in this Code, that such maintenance and repair shall be made in a reasonably skillful manner.

Yard means an open space at grade on the same lots as a building or structure located between the main building and the adjoining lot line and/or street line. The measurement of a yard shall be the minimum horizontal distance between the lot line

and the building or structure.

(Code 2008, § 8-1202; Ord. No. 792, § 4-40.1)

8-1203 Applicability

- (a) Every building or premises shall conform to the requirements of this article, irrespective of when such building or premises shall have been constructed, altered or repaired. But nothing in this article shall be construed to require existing buildings or premises to comply with the requirements of the current building code, electrical code, plumbing code, or mechanical code; provided, however, that, after 2008, any repairing, reconditioning or remodeling of existing buildings shall be completed as required by this article.
- (b) *Landlord-tenant relations.* Nothing in this article or its enforcement shall be construed in any way to affect landlord-tenant relations nor shall relieve the tenant of any express or implied contractual obligations with the landlord. Further, should the enforcement official order the maintenance or repair of an element of a structure, the property owner shall not remove said element unless the enforcement official has first determined that the removal of said element would not increase the rate of deterioration of said structure.

(Code 2008, § 8-1203; Ord. No. 792, § 4-40.2)

8-1204 Interpretation

This article establishes minimum standards for principal buildings and accessory buildings and does not replace or modify standards otherwise established for the construction, replacement or repair of buildings except such as are in conflict with the provisions of this article. In any case where a provision of this article is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the city existing on the effective date of the ordinance from which this article is derived, the provision which establishes the higher standard for the promotion and protection of the safety and health of the people shall prevail. It is not the intention of this article to require reconstruction or replacement of existing facilities or structures in sound condition of repair in order to meet specific requirements of any of the above-mentioned codes unless there is an existing or probable health or safety hazard to the occupants or any residents of the city.

(Code 2008, § 8-1204; Ord. No. 792, § 4-40.3)

8-1205 Minimum Standards For Exteriors Of All Buildings

- (a) *Applicability.* It shall be unlawful for any person to occupy as owner-occupant or to let or hold out to another for occupancy any building for the purpose of carrying on a business, living, sleeping, cooking or eating which is not safe,

sanitary and fit for human occupancy and which does not comply with the particular requirements of this section.

- (b) *Foundation, exterior walls and roofs.* The foundation, exterior walls and roof shall be substantially watertight and weather-tight as can be determined from a ground level inspection, and protected against rodents, and shall be kept in sound condition and repair. The foundation elements shall adequately support the building at all points. Every exterior wall shall be maintained in a sound condition of repair and shall be free of any other condition which admits rain or excessive dampness to the interior portions of the building. All exterior surface materials must be treated, painted in a workmanlike manner, or otherwise maintained in a sound condition. Peeling paint, damaged or deteriorating exterior surfaces shall be repaired as soon as possible. Building debris and excess paint shall be removed within 30 days from initiating any construction or painting. Any person requiring additional time to conclude construction or painting may make application to the codes administrator for an extension of time. Roofs shall be adequate to prevent rainwater from causing excessive dampness in the walls. All cornices, rustications, quoins, moldings belt courses, lintels, sills, oriel windows, pediments, gutters and similar projections shall be kept in good repair and free from defects which make them hazardous and dangerous.
- (c) *Windows, doors, and hatchways.* Every window, door and basement hatchway shall be kept in sound condition and repair. Every window shall be fully supplied with windowpanes which are without dangerous cracks or holes. Every window sash shall be in good condition and fit reasonably tight within its frame. Every window, other than a fixed window, shall be capable of being easily opened and shall be held in position by window hardware and shall be equipped with window screens. Every door, door hinge and door latch shall be in functional condition. Knobs and/or handles shall be properly installed on all doors. Every door, when closed, shall fit reasonably well within its frame. All sliding doors shall have guides to prevent falling out of track. Every window, exterior door guides and frames shall be constricted and maintained in such relation to the adjacent wall construction as to completely exclude rain and excessive dampness substantially to exclude wind from entering the dwelling. Every basement hatchway and window shall be so constructed, screened or maintained as to prevent the entrance of rodents, insects, rain and surface drainage water into the building.
- (d) *Exterior appurtenance.* Exterior appurtenances, including, but not limited to, screens, awnings, trellises, television antennas, chimneys, storm windows, shutters, gutters, eaves, storm doors, fences, and retaining walls shall be installed in a safe and secure manner, and shall be maintained in good repair and must meet the requirements of all other portions of this Code.
- (e) *Stairways and porches.* Every stairway outside of the building or dwelling and every porch shall be kept in safe condition and sound repair. Every flight of

stairs and every porch floor shall be free of deterioration. Every stairwell and every flight of stairs which is four or more risers high and every porch which is four or more risers high shall have handrails or railings located on one side of same. Every rail and balustrade shall be firmly fastened and maintained in good condition. No flight of stairs shall have settled or have pulled away from supporting or adjacent structures so as to create a safety hazard. No flight of stairs shall have rotting, loose or deteriorating supports. The treads and risers of every flight of stairs shall be uniform in width and height. Every porch shall have a sound floor. No porch shall have rotting, loose or deteriorating supports.

- (f) *Driveways, sidewalks, and patios.* Driveways, sidewalks and patios shall be maintained in good repair and free of safety hazards. Cracks in concrete or asphalt surfaces causing a vertical off-set in excess of one inch shall be repaired or replaced so as to prevent accident or injury. All driveways, sidewalks, and patios shall be made of concrete, asphalt, brick or other dust-free, hard surface.
- (g) *Yards.* All areas which are not covered by lawn or vegetation shall be treated to prevent dust or the blowing or scattering of dust particles into the air. All trees, bushes or vegetation located on private property which overhang a public thoroughfare shall be properly trimmed to a minimum under clearance of eight feet over sidewalks or 14 feet over streets to avoid obstruction of the view and movement of vehicles and pedestrians. Hazardous trees and shrubs shall be promptly removed or trimmed to remove the hazard. All dead and diseased trees and shrubs shall be promptly removed. As part of the removal of any growth or vegetation all stumps shall be removed or ground to at least six inches below grade.
- (h) *Infestation.* Each building and dwelling and all exterior appurtenances on the premises shall be adequately protected against insects, rats, mice, entrance of insects, rats, mice, termites and other infestation. Building defects which permit the entrance of insects, rats, mice, termites and other infestation shall be corrected by the owner.
- (i) *Plantings.* No tree shall be planted less than three feet from any foundation or building line. No bush or shrub shall be planted or permitted to grow in such a fashion that it shall touch or come in contact with any building or part thereof. Further, no tree shall be permitted to grow along fence lines. However, any tree having a height of over five feet as of the date of enactment of the ordinance from which this section is derived, which has been planted within three feet from any foundation or building line shall be permitted to remain, but upon removal of the tree for any reason, no replanting may take place except in conformity with this article.
- (j) *Address numbers.* Each building shall display approved address numbers in a position to be clearly visible from the street. Numbers shall be a minimum of four inches high.

(Code 2008, § 8-1205; Ord. No. 792, § 4-41)

8-1206 Minimum Standards For Interiors Of Rented Or Leased Dwelling Units

- (a) *Applicability.* It shall be unlawful, in addition to the preceding section, for any person to rent, lease, or hold out to another for occupancy for the purpose of living, sleeping cooking or eating any dwelling unit which is not safe, sanitary and fit for human occupancy and which does not comply with the particular requirements of this section.
- (b) *Interior cellars, etc., to be maintained free from dampness.* In every rented or leased dwelling unit, cellars, basements and crawl spaces shall be maintained reasonably free from dampness to prevent conditions conducive to decay or deterioration of the structure.
- (c) *Interior structural members.* The supporting structural members of every rented or leased dwelling unit shall be maintained structurally sound, showing no evidence of deterioration which would render them incapable of carrying the imposed loads in accordance with the provisions of the building code.
- (d) *Interior stairs.* All interior stairs of every rented or leased dwelling unit shall be maintained in sound condition and good repair by replacing treads and risers that evidence excessive wear or are broken, warped or loose. Every inside stair shall be so constructed and maintained as to be safe to use and capable of supporting a load as required by the provisions of the building code.
- (e) *Interior handrails.* Every inside staircase or stairway in a rented or leased dwelling unit consisting of five or more steps shall be equipped with a handrail which shall be kept in sound conditions and good repair.
- (f) *Bathroom and kitchen floors.* Every toilet, bathroom and kitchen floor surface in a rented or leased dwelling unit shall be constructed and maintained with a material approved for the location and maintained so as to permit such floor to be easily kept in a clean and sanitary condition.
- (g) *Interior sanitation.* The interior of every rented or leased dwelling or dwelling unit shall be maintained in a clean and sanitary condition free from any accumulation of rubbish or garbage as specified in this section. Trash, garbage and other refuse shall be properly kept inside temporary storage facilities as required in this Code.
- (h) *Interior insect and rodent harborage.* Rented or leased dwellings or dwelling units shall be kept free from insect and rodent infestation, and where insects or rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health, as specified in this article. After extermination, property precautions shall be taken to prevent re-infestations.
- (i) *Interior walls, ceilings and floors.* Every rented or leased dwelling or dwelling

unit floor, interior wall and ceiling shall be kept in sound condition and good repair; and constructed of a building material recognized for that purpose.

(j) *Interior sanitary facilities.* The following minimum sanitary facilities in all rented or leased dwelling units shall be supplied and maintained in sanitary, safe working condition:

(1) *Toilet.* Every dwelling unit, except as otherwise permitted by subsection (j)(3) of this section, shall contain a room, separate from the other habitable rooms of the dwelling unit, which affords privacy to a person within such room, and which is equipped with a flush toilet and a lavatory basin, provided that such lavatory basin may be located outside such room if it is convenient to such room.

(2) *Bathtub or shower.* Every dwelling unit, except as otherwise permitted by subsection (j)(3) of this section, shall contain a room; separate from the other habitable rooms of the dwelling unit, which affords privacy to a person within such room and which is equipped with a bathtub or shower.

(3) *Shared toilet, lavatory basin, bathtub, or shower.* The occupants of two dwelling units in the same dwelling may share a single flush toilet, a single lavatory basin and a single bathtub or shower if:

- a. Neither of the two dwelling units contains more than three rooms, provided that for the purposes of this subsection, a kitchenette or an efficiency kitchen with not more than 60 square feet of floor area shall not be counted as a room; and
- b. The habitable area of each such dwelling unit shall equal not more than 350 square feet of floor area; and
- c. Such flush toilet, lavatory basin, and bathtub or shower is located so that the occupants of neither dwelling unit are required to pass through any rooms of the other dwelling unit to reach the facilities; and
- d. Such dwelling units are in the same dwelling and are arranged so that the occupants of neither dwelling unit are required to go out of doors to reach the facilities.

(4) *Kitchen sink.* Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to an approved water and sewer system.

(5) *Stove and refrigerator.* Every dwelling unit shall contain proper and safe connections for the installation of a stove and refrigerator.

(6) *Shelf and storage space for food.* Every room which is used partially or

exclusively for cooking shall contain adequate shelf and storage space for the preparation and storage of food.

- (k) *Interior water and sewer system.* Every kitchen sink, lavatory basin, bathtub or shower and toilet required under the provisions of this article shall be properly connected to a public water and sewer system. All sinks, lavatories, bathtubs and showers shall be supplied with hot and cold running water.
- (l) *Interior water heating facilities.* Every rented or leased dwelling unit shall be supplied with water heating facilities which are installed in an approved manner, properly maintained, and properly connected with hot water lines to the fixtures required to be supplied with hot water under the provisions of this article. Water heating facilities shall be capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub, shower, and laundry facility or other similar units, at a temperature of not less than 130 degrees Fahrenheit at any time needed.
- (m) *Interior heating facilities.* Every rented or leased dwelling unit shall be served with heating facilities which are installed in an approved manner, are maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms; bathrooms, and toilet rooms located therein to a temperature of at least 70 degrees Fahrenheit at a distance of three feet above floor level under ordinary winter conditions.
- (n) *Interior trash storage facilities.* Every rented or leased dwelling unit shall have adequate trash storage facilities whose type and location are in accordance with WCC 8-501 et seq.
- (o) *Interior garbage storage or disposal facilities.* Every rented or leased dwelling or dwelling unit shall be supplied with a garbage disposal facility which meets the city standards, which may be any adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit for the use of the occupants of each dwelling unit, or an approved garbage can or approved garbage bags.
- (p) *Interior functioning and maintenance of facilities and equipment.* Every supplied facility, piece of equipment or utility which is required under this article shall be so constructed and installed that it will function safely and effectively and shall be maintained in satisfactory working condition.
- (q) *Interior plumbing systems and fixtures.* In rented or leased dwelling units, water lines, plumbing fixtures, vents, drains, plumbing stack and waste and sewer lines shall be properly installed, connected and maintained in working order and shall be kept free from obstructions, leaks, and defects and capable of performing the function for which they are designed. All repairs and installations shall be made in accordance with the provisions of the building code or plumbing code of the city.
- (r) *Interior heating equipment.* Every heating, cooking, and water heating device

located in a rented or leased dwelling unit shall be properly installed, connected and maintained, and shall be capable of performing the function for which it was designed in accordance with the provisions of the building code.

- (s) *Interior ceiling heights; minimum.* At least one-half of the floor area of each habitable room of each rented or leased dwelling unit shall have a ceiling height of seven feet or more; and the floor area of that part of any room where the ceiling height is five feet or less, shall not be deemed as part of the floor area in computing the total area of that room for the purposes of this article.
- (t) *Interior ceiling heights; public halls and stairways.* Every public hall or stairway shall have a minimum vertical clearance of six feet eight inches at all places, provided that the enforcement officer may waive this requirement if the construction of the dwelling is such as to make this requirement impractical. Where a waiver is granted the owner or operator shall post a written warning of low clearance which shall be easily visible, and which shall be approved by the enforcement officer.
- (u) *Interior required space in dwelling units.* Every rented or leased dwelling unit shall contain 150 square feet or more, of floor space for the first occupant thereof and at least 100 square feet of additional floor space for each additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area; provided that an infant under the age of 12 months shall not be deemed an occupant for the purposes of this section. This section is not applicable to roominghouses.
- (v) *Interior occupancy of dwelling units below grade.* No rented or leased dwelling unit partially below grade shall be used for living purposes unless floors and walls are watertight; total window area, total openable area, and ceiling height are in accordance with this article, provided that, this provision can be waived by the enforcement officer; required minimum window area of every habitable room is entirely above the grade of the ground adjoining such window area, provided this provisions can be waived by the enforcement officer; and no basement or cellar, or part thereof, shall be used or leased for human occupancy or habitation if subject to flooding. For the purposes of this article, a basement or cellar shall be deemed to be subject to flooding if at any time there has been more than one-inch of water over the floor, and if the condition or conditions which caused the flooding to occur have not be subsequently corrected.
- (w) *Interior natural light in habitable rooms in rented or leased dwelling units.*
 - (1) Every habitable room shall have at least one window of approved size facing directly to the outdoors or to a court or other methods and devices that will provide the equivalent minimum performance requirements.
 - (2) The minimum total window area, measured between stops, for every habitable room shall be eight percent of the floor area of such room. In a basement or cellar a three square foot window area shall be deemed

sufficient. Whenever walls or other portions of a structure face a window of any room and such obstructions are located less than three feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors nor to a court, and shall not be included as contributing to the required minimum total window area for the room.

- (3) In the application of this article the standard for light for all habitable rooms shall be based on 250 footcandles of illumination on the vertical plan adjacent to the exterior of the light transmitting device and shall be adequate to provide an average illumination of six footcandles over the area of the room at a height of 30 inches above the floor level.
- (x) *Interior light in non-habitable workspace.* Every laundry, furnace room, and all similar non-habitable workspaces located in a rented or leased dwelling unit shall have one supplied electric light fixture available at all times.
 - (y) *Interior light in common halls and stairways.* Every inside stairway in every rented or leased dwelling, other than one- and two-family dwellings shall be adequately lighted at all times with an illumination of at least five candlepower per square foot in the darkest portion of the normally traveled stairs and passageways.
 - (z) Every rented or leased dwelling shall be serviced by electricity. Further, every electrical outlet and fixture, and all electrical wiring required by this section shall be properly installed, maintained in good and safe working condition, and shall be connected to the source of electricity in a safe manner. Every electrical outlet and fixture shall be installed, maintained and connected to the source of electric power in accordance with the provisions of the building code or electrical code of the city. For the purposes of this section, a two plug electric convenience outlet shall be deemed to be a single outlet. Every dwelling, unless otherwise specified, shall be electrically equipped as follows:
 - (1) Every habitable room shall contain two or more wall-type electric convenience outlets or one or more wall-type electric convenience outlets and one electric ceiling or wall light fixture.
 - (2) Every toilet room, bathroom, laundry room, and furnace room shall contain one or more ceiling or wall-type electric light fixtures.
 - (3) Every public hall, public stairway, basement and porch in an apartment house shall contain sufficient ceiling or wall-type electric light fixtures to comply with this Code.
 - (4) A separate electrical circuit shall be required as set forth in the building and electrical codes and requirements of the city for every eight electrical convenience outlets for alterations, repairs and additions.
 - (5) In dwellings utilizing electric heat and/or an electric cooling unit in which

the source of heat is wholly or partially operated by a centrally located electrical unit, a separate electrical circuit will be required for each device.

(6) All electrical wiring shall be according to the codes of the city.

- (aa) *Correction of interior defective electric system.* Where it is found, in the opinion of the enforcement officer, that the electrical system in a rented or leased dwelling constitutes a hazard to the occupants of the building by reason of inadequate service, improper fusing, insufficient outlets, improper wiring or installation, deterioration or damage, it shall be corrected to eliminate the hazard.
- (ab) *Adequate interior ventilation.* Every room in every rented or leased dwelling shall have at least one window which can be easily opened or such other device as will adequately ventilate the room. The total openable window area in every room shall be equal to at least 45 percent of the minimum window area size required in this Code, except that no openable window shall be required in bathrooms or toilet compartments equipped with an approved ventilation system.
- (ac) *Interior ventilation and light in bathroom and toilet.* Every bathroom and toilet compartment in every rented or leased dwelling unit shall comply with the light and ventilation requirements for habitable rooms as required by this Code, except that no window shall be required in bathrooms or toilet compartments equipped with an approved ventilation system. The enforcement officer may waive this requirement if the construction or use of the dwelling is such as to make this requirement impractical.
- (ad) *Interior storage of flammable liquids prohibited.* No rented or leased dwelling, dwelling unit or rooming unit shall be located within a building containing any establishment handling, dispensing or storing flammable liquids with a flash point of 110 degrees Fahrenheit or lower.
- (ae) *Interior cooking and heating equipment.* All cooking and heating equipment, components, and accessories in every heating, cooking and water heating device shall be maintained free from leaks and obstructions and kept functioning properly so as to be free from fire, health and accident hazards. All installations and repairs shall be made in accordance with the provisions of the building code or other laws or ordinances of the city applicable thereto.
- (af) *Interior maintenance of private areas.* Every occupant of a rented or leased dwelling shall maintain in a clean and sanitary condition that part of the dwelling and its premises which he or she occupies and controls. The occupant shall keep such premises free of litter, trash, garbage, salvage material, junk and building materials, unless properly stored. The occupant shall keep such premises reasonable free of breeding, harboring and feeding places for rodents

and insects. The occupant shall also keep such premises free of noxious weeds.

- (ag) *Disposal of trash.* Every occupant of a rented or leased dwelling shall dispose of his or her trash in a clean and sanitary manner by placing it in trash containers. Every dwelling shall have adequate trash storage facilities in accordance with WCC 8-501 et seq.
- (ah) *Disposal of garbage.* Every occupant of a rented or leased dwelling shall dispose of his or her garbage in a clean and sanitary manner by placing it in garbage disposal facilities or garbage storage containers, provided that if garbage disposal facilities are not supplied, it shall be the responsibility of the owner to supply proper garbage storage containers which may include garbage bags, for all units in roominghouses and apartment houses. Every dwelling unit offered for rent shall have adequate storage facilities, which shall be constructed to repel animals, for the deposit of garbage bags until the date of pickup. The type and location of these containers must conform to WCC 8-501 et seq. It shall be the responsibility of the owner or his agent to see that garbage bags are deposited at curbside as required in this Code.
- (ai) *Interior use and operation of supplied plumbing fixtures.* Every occupant of a rented or leased dwelling or part thereof shall keep the supplied plumbing fixtures therein clean and sanitary and shall be responsible for the exercise of reasonable care in their proper use and operation.
- (aj) *Extermination of interior pests.*
 - (1) *Generally.* Buildings shall be kept free from insect and rodent infestation, and where insects or rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.
 - (2) *Extermination from buildings.* Every owner of a dwelling or apartment shall be responsible for the extermination of insects, rodents, vermin or other pests whenever infestation exists in two or more of the dwelling units or in the shared or public parts of the structure.
 - (3) *Extermination from dwelling units.* The occupant of a dwelling unit in a dwelling or apartment shall be responsible for such extermination within the unit occupied by him whenever his dwelling unit is the only unit in the building that is infested.
- (ak) *Smoke detectors, fire extinguishers.* Operable working smoke detectors shall be installed in each sleeping room and one outside each sleeping room in the immediate vicinity and on each additional story of the dwelling. A fire extinguisher shall be kept in the kitchen.

- (al) The exterior of each leased dwelling shall comply with the requirements of WCC 8-1205, and leased dwellings shall not be in violation of any other ordinance.
- (am) *Occupancy permit required in rented or leased dwelling units where compliance with this article is not achieved.*
- (1) *Applicability.* This section shall apply only to occupancy of rented or leased dwelling units which have been found to be in noncompliance with this article and when the work ordered pursuant to this article has not been performed.
 - (2) *Scope.* Except as otherwise provided, it shall be unlawful for any person or family to occupy or for any owner or agent thereof to permit the occupancy of any rented or leased dwelling, dwelling unit or addition thereof, or part thereof, for any purpose unless compliance with the article is achieved and until an occupancy permit has been issued by the enforcement official. The occupancy permit shall not be issued until all violations of this article have been brought into compliance except as provided in subsection (am)(4) of this section. The occupancy permit so issued shall state that the occupancy complies with all of the provisions of this article.
 - (3) *Fee.* The fee for such occupancy permit, including inspection fee for each single-family residence and for apartments for each dwelling unit occupied shall be adopted from time to time by resolution of the governing body and listed in the city's master fee schedule. The fee shall also cover the first reinspection in the event a reinspection is necessary following the initial inspection. In the event further re-inspections are necessary to secure an occupancy permit or to comply with the terms of a conditional occupancy permit, each such reinspection after the first re-inspections shall require an additional fee as adopted from time to time by resolution of the governing body and listed in the city's master fee schedule.
 - (4) *Conditional occupancy permit.* A conditional occupancy permit may be issued by the enforcement official if, in their judgment, any deficiencies in structures covered by this article would not seriously endanger the health or safety of the occupants or the community, and provided that in the case of an owner-non-occupant an affidavit stating that the owner will correct deficiencies within a specified time and thus bring the structure into compliance with the provisions of this article has been provided. The renter or lessee occupant may occupy the dwelling while repairs are being made, so long as no part of the repair process poses a health or safety risk to said renter or lessee occupant. At such time as the dwelling complies with all the provisions of this article an occupancy permit will be issued as provided above, not to exceed the time limit stated in the

affidavit.

- (5) *Notice of requirement of occupancy permit to be posted.* The enforcement official shall post in a conspicuous place on every noncomplying rented or leased dwelling, a sign specifying that an occupancy permit is required to be issued prior to the occupation or continued occupation of any dwelling unit. Said notice shall remain on the dwelling unit or dwelling until compliance with this Code is achieved as determined by the enforcement official.

(Code 2008, § 8-1206; Ord. No. 792, § 4-41)

8-1207 Accessory Structures

Accessory structures shall not obstruct light and air of doors and windows of any building or dwelling unit, or obstruct a safe means of access to any dwelling unit, or create fire and safety hazards, or provide rat or insect harborage. Accessory structures shall be securely anchored.

(Code 2008, § 8-1207; Ord. No. 792, § 4-41.1)

8-1208 Egress

Every building and dwelling unit shall have a safe and unobstructed means of egress leading to safe and open space outside at the ground level. Passage through such exit shall not lead through any other building or dwelling unit.

(Code 2008, § 8-1208; Ord. No. 792, § 4-41.1)

8-1209 Enforcement

- (a) *Codes administrator.* It shall be the duty and responsibility of the codes administrator and his delegated representatives to enforce the provisions of this article. No order for correction of any violation under this article shall be issued without the approval of the codes administrator or his delegated representatives. The codes administrator may grant an extension or extensions of time to correct any violation of this article in an initial amount not to exceed 30 days. No extension of time shall be granted unless the codes administrator is satisfied that an extension is justified based upon such factors as type and extent of violations, extent to which health and safety to persons or property may be jeopardized due to said violation, weather conditions, and any other extenuating circumstances shall be used in determining any length of time to correct a violation of this article.
- (b) *Inspection.* Inspections shall be initiated under the following circumstances:

- (1) Where there is extensive deterioration of a building or dwelling;
 - (2) When, on the basis of a complaint or personal observation, the enforcement official reasonably suspects that a building or dwelling has code violations and as such constitutes a health and/or safety hazard;
 - (3) Where an inspection is a requirement of a specific building or dwelling improvement for which a building permit has been issued the enforcement official is authorized and directed to make inspections to determine whether buildings, dwellings or accessory structures and premises located within the city conform to the requirements of this article. For the purpose of making such inspections, the enforcement official is authorized, at reasonable times, with the consent of the owner thereof, to enter, examine and survey all building, dwellings, and accessory structures and premises;
 - (4) On an annual basis;
 - (5) Inspections may also take place by obtaining an administrative warrant as provided by law.
- (c) *Access for purposes of inspections.* The codes administrator is authorized to conduct inspections to determine the conditions of all structures and premises governed by this article in order to safeguard the safety, health and welfare of the public under the provisions of this article. The codes administrator is authorized to enter any structure or premises at any reasonable time for the purpose of performing the duties under this article. The owner, occupant or operator of every structure or premises governed by this article, or the person in charge thereof shall give the enforcement official free access thereto and to all parts hereof and to the premises on which it is located at all reasonable times for the purpose of such inspection, examination and survey. In the event the owner, operator or occupant shall refuse access to any structure or premises, the enforcement officer may make application to the district court for a search warrant.
- (d) *Remedy of defects.* The owner of any building shall remedy the condition specified in such notice within the time designated therein; however, the codes administrator may, at his discretion, extend the time for compliance with any such notice, in accordance with this article. Nothing herein, however, shall require the codes administrator to grant a notice or undertake any administrative action prior to a complaint issuing in the municipal court of the city. It shall not be a defense to any such complaint that the owner of any building has undertaken to remedy the condition specified.
- (e) *Reinspection.* At the time when the defects have allegedly been brought into compliance, the enforcement official shall reinspect the building, dwelling, or accessory structure and its premises. At this time, he shall make a reinspection, taking particular notice whether the violations previously noted have been

brought into compliance and whether any hazardous conditions have come into existence in the time which has elapsed since the first inspection.

- (f) *Noncompliance with article; notice to be given.* Whenever the enforcement official or his delegated representative finds evidence of a violation of any provisions of this article, he shall declare a code violation and give notice of same to the person responsible hereunder. Such notice shall be in writing and shall include a statement of each of the provisions of this article being violated together with a statement of the corrective action required to cure such violation. Such notice shall specify the period of time within which such remedial action shall be taken, which time shall be a reasonable period of time under all of the circumstances. In the event that the predicated items are not completed in the specified time, such notice shall specify that the owner or his agent has the right to appeal the decision of the enforcement official to the governing body within 30 calendar days. Such notice shall be served by delivering a copy to the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in such building as shown by the land records division of the county, or, if any such person cannot be found, by sending a copy of the notice by registered or certified mail with return receipt requested, or if same cannot be delivered, by posting a copy of such notice in a conspicuous place in or about the building affected by the notice. The notice shall be deemed served on the date served or received, or ten days after posting as herein provided.

- (1) Nothing herein shall preclude or limit the filing of a complaint alleging a violation of this section in municipal court, nor shall any administrative action be necessary prior to issuance of such a complaint.

- (g) *Hearing.* In the event the city shall undertake to abate or remedy any violation hereunder, and upon failure to commence the work of reconditioning or demolition within the time specified or upon failure to proceed with the work without unnecessary delay, the enforcement official shall notify the governing body, which shall call and have a full and adequate hearing upon the matter, giving at least 21 days' written notice of the time, place and purpose of the hearing. At that hearing, any party may be represented by counsel, and all parties shall have an opportunity to be heard. After the hearing, if the evidence supports a finding that the building or structure is a code violation or detrimental to the health or safety of any residents of the city, the board shall issue an order making specific findings of fact, based upon competent and substantial evidence, which shows the building or structure to be a code violation and detrimental to the health or safety of any residents of the city, and ordering the building or structure to be demolished and removed, or repaired. If the evidence does not support a finding that the building or structure is a code violation or detrimental to the health or safety of any residents of the city, no order shall be issued. Notice of any post hearing orders shall be given in the same manner as notice of a noncompliance.

- (h) *Performance of work by city; special tax bill.* If any order of the governing body is not obeyed within the time specified by the board which shall be no less than 30 calendar days, and if appeal of such order is not made as herein authorized, the enforcement officer may cause such building or structure to be repaired, vacated or demolished as provided in his post-hearing order. The enforcement officer shall certify the costs for such repair, vacation or demolition to the city clerk, who shall cause all such costs to be placed on the tax rolls of the property.
- (i) *Appeal.* The decision of the governing body may be appealed within 30 days by a party aggrieved thereby to the district court of the county.

(Code 2008, § 8-1209; Ord. No. 792, § 4-42)

8-1210 Buildings Unfit For Human Habitation

- (a) *Placard on building.* The designation of buildings or dwellings as unfit for human habitation and the procedure for such declaration and placarding of such unfit buildings or dwellings shall be carried out in compliance with the following requirements. Any buildings or dwellings which shall be declared unfit for human habitation and shall be so designated and placarded by the enforcement official when the person responsible has failed to correct the condition set forth in a notice issued in accordance with this article; one which is so damaged, decayed, dilapidated, unsanitary, unsafe, insect infested or rodent infested that it creates a serious hazard to the health or safety of the occupants or the public.
- (b) *Building to be vacated.* Any building or dwelling condemned as unfit for human habitation and so designated and placarded by the enforcement official, shall be vacated within a reasonable time as ordered by the enforcement official.
- (c) *Reoccupation of building.* No building or dwelling which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from and such placard removed by the enforcement official. The enforcement official shall remove such placard whenever the defect upon which the condemnation and placarding action were based have been eliminated.
- (d) *Unlawful to remove placard.* No person shall deface or remove the placard from any building or dwelling which has been condemned as unfit for human habitation and placarded as such, except as provided in subsection (c) of this section.
- (e) *Vacated buildings to be made secure.* The owner of every building or dwelling which is condemned as unfit for human habitation for continued occupancy shall make the dwelling or building safe and secure so that it shall not be dangerous to human life and shall not constitute a fire hazard or public nuisance. Any such vacant building or dwelling open at doors or windows, if unguarded, shall be deemed to be dangerous to human life as a fire hazard and public nuisance

within the meaning of this provision.

(Code 2008, § 8-1210; Ord. No. 792, § 4-43)

8-1211 Broken Glass And Boarding Up

- (a) *Applicability.* Every window, glazed exterior door, exterior transom, or exterior sidelight shall be provided with properly installed glass or other approved glazing material. In the event of breakage, the owner shall cause the simultaneous removal of broken glass from the premises and shall temporarily board up the affected openings with suitable material to provide protection from the elements, and to prevent entry of birds or animals, and to provide security to occupants or contents of the building. Within ten days after the boarding up, the owner shall cause the boarding material to be removed, and all affected openings shall be immediately re-glazed by the owner.
- (b) *Enforcement.* Whenever any exterior openings are found boarded up in an occupied building or dwelling it shall be the duty of the enforcement official to notify the owner or the agent of the requirement of subsection (a) of this section giving him a period of not more than ten working days in which to properly replace the broken glass or cause the building or dwelling to be vacated. If necessary, materials are not available within this period, the enforcement official may grant an extension of time at his discretion.
- (c) *Specifications.* All boarding up of exterior openings shall be accomplished in a neat, workmanlike manner with not less than unpainted three-eighths inch thick, weather resistant plywood cut to fit within the openings, fastened in place as securely as possible. The codes administrator is authorized to notify the owner or agent of any boarded up building or dwelling not complying with the requirement of subsection (b) of this section of the necessity of immediate compliance, and to order him to complete the replacement within ten working days.

(Code 2008, § 8-1211; Ord. No. 792, § 4-44.1)

8-1212 Prosecution Of Violation

- (a) *Prosecution.* In case any violation of this article is not remedied within the prescribed time period designated by the enforcement official, he shall request the legal representative of the city to institute an appropriate action or proceeding at law against the person or firm responsible for the failure to comply:
 - (1) To restrain, correct or remove the violation or refrain from any further execution of work;

- (2) To restrain or correct erection, installation or alteration of such building;
 - (3) To require the removal of work in violation;
 - (4) To prevent the occupation or use of the building, structure or part thereof, erected, constructed, installed or altered in violation of or not in compliance with the provisions of this article or in violation of a plan or specification under which an approval, permit or certificate was issued; and
 - (5) To enforce the penalty provision of this article.
- (b) *Penalty for violations.* Any person who shall violate any provision of this article shall, upon conviction thereof, be subject to the penalties provided for herein. Every day that a violation continues after due notice has been served, in accordance with the terms and provisions hereof, shall be deemed a separate offense.
- (c) *Remedies not exclusive.* The authority of the city and its rights and remedies herein shall be in addition to and not to the exclusion of all other authority, rights, or remedies.

(Code 2008, § 8-1212; Ord. No. 792, § 4-44.2)

8-1213 Emergency Measures

- (a) When any dwelling unit has become so damaged by fire, wind or other causes, or has become so unsafe, unhealthful or unsanitary that in the opinion of the enforcement official, life or health is immediately endangered by the occupation of the dwelling unit, the enforcement official is hereby authorized and empowered to revoke without notice any occupancy permit for such dwelling unit and to order and require the occupants to vacate the same forthwith and to order the owner or agent to proceed immediately with the corrective work and repairs required to make the dwelling unit safe and fit for human habitation, whether or not a notice of violation has been given as described in this article and whether or not legal procedures described by city ordinances have been instituted.
- (b) In the event the enforcement official determines that there is an immediate danger to the health, safety or welfare of any person, he may take emergency measures to vacate and repair the structure or otherwise remove the imminent danger.
- (c) Written notice shall be given to the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in such building or structure as promptly as possible. The cost of any such emergency work shall be collected in the same manner as herein above provided. Notice by posting said notice on the door of the building in question or in any other conspicuous fashion shall be

sufficient in the event the owner, occupant, lessee, mortgagee, agent or other person having an interest in such building or structure cannot be located.

(Code 2008, § 8-1213; Ord. No. 792, § 4-44.3)

8-1214 Serious Personal Finance Exemption

In cases concerning appeals to the governing body by any person subject to the requirements of this article where it is claimed strict compliance with the minimum standards contained herein would result in serious personal financial hardship to the applicant for exemption, the governing body after hearing may grant, in its sound discretion, an appropriate personal financial exemption or deferment from strict compliance with the provisions of this article. In reaching a decision under this section the governing body shall consider the age, size of family, extraordinary debts resulting from catastrophe or illness, lack of employment, source of income, and gross income of the person seeking the serious personal financial exemption, as well as any potential health and safety risk to occupants that may occur should said exemption be granted.

(Code 2008, § 8-1213; Ord. No. 792, § 4-44.4)

8-1215 Judicial Review Of Governing Body Decisions

For any decision of the governing body upon an order or action taken pursuant to this article, the method of judicial review shall be by a duly verified petition presented to the district court of the county. Such petition shall be filed with the court within 30 days after the filing of the governing body's decision. Such petition shall set forth with particularity the ground for such review. Any persons jointly or severally aggrieved by any decision of the governing body shall be entitled to petition for such review.

(Code 2008, § 8-1214; Ord. No. 792, § 4-44.5)

8-1216 Penalties

- (a) Any person convicted of a violation of this article shall be punished for that violation according to the penalty adopted by resolution of the governing body from time to time.
- (b) Every day that a violation continues shall be considered a separate offense, for which the violator may be arrested, tried and convicted without necessity of further notice.
- (c) Whenever the penalty is to be a fine or a fine and imprisonment, the penalty for a first, second, third, or fourth subsequent offense will be as adopted by resolution of the governing body from time to time.
- (d) In determining the applicable minimum fine, an offense shall be considered a recurring offense only if the defendant has previously pleaded, or been found,

guilty of violating the same minimum standard at the same location.

(Code 2008, § 8-1215; Ord. No. 792, § 4-44.6)

ARTICLE 13 RAT CONTROL

8-1301 Definitions

8-1302 Building Maintenance

8-1303 Notice To Rat-Stop

8-1304 Failure To Comply

8-1305 Replace Rat-Stoppage

8-1306 Notice To Eradicate Rats

8-1307 Conditions Conducive To Harborage Of Rats

8-1308 Inspections

8-1301 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building means any structure, whether public or private, that is adapted for occupancy as a residence, the transaction of business, the rendering of professional services, amusement, the display, sale or storage of goods, wares or merchandise or the performance of work or labor, including office buildings, public buildings, stores, theaters, markets, restaurants, workshops and all other houses, sheds and other structures on the premises used for business purposes.

Occupant means the person that has the use of, controls or occupies any business building or any portion thereof, whether owner or tenant. In the case of vacant business buildings or any vacant portion of a business building, the owner, agent or other person having custody of the building shall have the responsibilities of an occupant of a building.

Owner means the owner of any building or structure, whether individual, firm, partnership or corporation.

Rat harborage means any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside a structure of any kind.

Rat-stoppage means a form of ratproofing to prevent the ingress of rats into buildings from the exterior or from one building to another, consisting essentially of the closing of all openings in the exterior walls, ground or first floors, basements, roofs and foundations, that may be reached by rats from the ground by climbing or by burrowing, with material or equipment impervious to rat-gnawing.

(Code 2008, § 8-1301)

8-1302 Building Maintenance

All buildings and structures located within the present or future boundaries of the city shall be rat-stopped, freed of rats and maintained in a rat-stopped and rat-free condition.

(Code 2008, § 8-1302)

8-1303 Notice To Rat-Stop

Upon receipt of written notice from the city, the owner of any building or structure specified therein shall take immediate measures for the rat-stoppage of such building or structure. The work shall be completed in the time specified in the written notice, which shall be within 15 days, or within the time of any written extension thereof that may have been granted by the city.

(Code 2008, § 8-1303)

8-1304 Failure To Comply

If the owner fails to comply with such written notice or extension, then the city is authorized to take such action as may be necessary to completely rat-stop the building or structure at the expense of the owner, and the city clerk shall submit bills for the expense thereof to the owner of the building or structure. If the bills are not paid within 60 days, the city clerk shall certify the amount due to the city treasurer and the charge shall result in a tax levy against the property where the work has been done. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for rat-stoppage.

(Code 2008, § 8-1304)

8-1305 Replace Rat-Stoppage

It shall be unlawful for any occupant, owner, contractor, public utility company, plumber or any other person to remove the rat-stoppage from any building or structure for any purpose and fail to restore the same in a satisfactory condition or to make any new openings that are not closed or sealed against the entrance of rats.

(Code 2008, § 8-1305)

8-1306 Notice To Eradicate Rats

Whenever the city notifies in writing the owner of any building or structure theretofore rat-stopped as hereinabove defined, that there is evidence of rat infestation of the building or structure, the owner shall immediately institute appropriate measures for freeing the premises so occupied of all rats. Unless suitable measures for freeing the

building or structure of rats are instituted within five days after the receipt of notice, and unless continually maintained in a satisfactory manner, the city is hereby authorized to free the building or structure of rats at the expense of the owner thereof, and the city clerk shall submit bills for the expense thereof to the owner of the building or structure and if the same are not paid, the city clerk shall certify the amount due from the owner to the city treasurer, and the owner shall be promptly billed therefor. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for the eradication measures.

(Code 2008, § 8-1306)

8-1307 Conditions Conducive To Harborage Of Rats

- (a) All food and feed kept within the city for feeding animals shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-stopped building.
- (b) It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building or premises so that the same shall afford food and harborage for rats.
- (c) It shall be unlawful for any person to accumulate or to permit the accumulation on any premises or on any open lot any lumber, boxes, barrels, bricks, stone or similar materials that may be permitted to remain thereon and which are rat harborages, unless the same shall be placed on open racks that are elevated not less than 12 inches above the ground, evenly piled or stacked.
- (d) Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health department deems it necessary to eliminate such harborage, he or she may require the owner to install suitable cement floors in basements or to replace wooden first or ground floors or require the owner to correct such other interior rat harborage as may be necessary in order to facilitate the eradication of rats in a reasonable time and thereby to reduce the cost of such eradication.
- (e) All bird feed and grass seed shall be kept and stored in rat-free and rat-proof containers. Spillage from bird feeders shall be policed daily.

(Code 2008, § 8-1307)

8-1308 Inspections

The codes administrator is empowered to make such inspections and re-inspections of the interior and exterior of any building or structure as in his or her opinion may be necessary to determine full compliance with this article.

(Code 2008, § 8-1308)

ARTICLE 14 INSURANCE PROCEEDS FUND

[8-1401 Scope And Application](#)

[8-1402 Lien Created--Generally](#)

[8-1403 Lien Created--Encumbrances](#)

[8-1404 Lien Created--Pro Rata Basis](#)

[8-1405 Procedure](#)

[8-1406 Fund Created; Deposit Of Monies](#)

[8-1407 Building Inspector; Investigation, Removal Of Structure](#)

[8-1408 Removal Of Structure; Excess Monies](#)

[8-1409 Removal Of Structure; Disposition Of Funds](#)

[8-1410 Effect Upon Insurance Policies](#)

[8-1411 Insurers; Liability](#)

8-1401 Scope And Application

The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901—40-3910, whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this article.

(Code 2008, § 8-1401; Ord. No. 776, § 1, 4-401)

8-1402 Lien Created--Generally

The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city, which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.

(Code 2008, § 8-1402; Ord. No. 776, § 1, 4-406)

8-1403 Lien Created--Encumbrances

Prior to final settlement on any claim covered by WCC 8-1402, the insurer shall contact the county treasurer to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer.

(Code 2008, § 8-1403)

8-1404 Lien Created--Pro Rata Basis

Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

(Code 2008, § 8-1404)

8-1405 Procedure

- (a) When final settlement on a covered claim has been agreed to or arrived at between the named insured and the company, and the final settlement exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company shall execute a draft payable to the city administrator in an amount equal to the sum of 15 percent of the covered claim payment, unless the chief building inspector of the city has issued a certificate to the insurance company that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.
- (b) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.
- (c) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company and the insured, whereupon the chief building inspector shall contact the named insured by certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this article.

(Code 2008, § 8-1405; Ord. No. 776, § 1, 4-402)

8-1406 Fund Created; Deposit Of Monies

The city administrator is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All monies received by the city administrator as provided for by this article shall be placed in said fund and deposited in an interest-bearing account.

(Code 2008, § 8-1406; Ord. No. 776, § 1, 4-403)

8-1407 Building Inspector; Investigation, Removal Of Structure

- (a) Upon receipt of monies as provided for by this article, the city administrator shall immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.
- (b) Within 20 days of the receipt of said monies, the chief building inspector shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended.
- (c) Prior to the expiration of the 20 days established by subsection (b) of this section, the chief building inspector shall notify the city administrator whether he or she intends to initiate proceedings under K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended.
- (d) If the chief building inspector has determined that proceedings under K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the monies by the city administrator.
- (e) Upon notification to the city administrator by the chief building inspector that no proceedings shall be initiated under K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended, the city administrator shall return all such monies received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company. Such return shall be accomplished within 30 days of the receipt of the monies from the insurance company.

(Code 2008, § 8-1407; Ord. No. 776, § 1, 4-404)

8-1408 Removal Of Structure; Excess Monies

If the chief building inspector has proceeded under the provisions of K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended, all monies in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

(Code 2008, § 8-1408; Ord. No. 776, § 1, 4-405)

8-1409 Removal Of Structure; Disposition Of Funds

If the chief building inspector, with regard to a building or other structure damaged determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city administrator under the authority of WCC 8-1405(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance

proceeds, the chief building inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city administrator under WCC 8-1405(a), the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.

(Code 2008, § 8-1409)

8-1410 Effect Upon Insurance Policies

This article shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

(Code 2008, § 8-1410; Ord. No. 776, § 1, 4-407)

8-1411 Insurers; Liability

Insurers complying with this article or attempting in good faith to comply with this article shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article.

(Code 2008, § 8-1411; Ord. No. 776, § 1, 4-408)

ARTICLE 15 ENVIRONMENTAL CODE

[8-1501 Title](#)

[8-1502 Legislative Findings Of Fact](#)

[8-1503 Purpose](#)

[8-1504 Rules Of Construction](#)

[8-1505 Definitions](#)

[8-1506 Public Officer](#)

[8-1507 Enforcement Standards](#)

[8-1508 Unlawful Acts](#)

[8-1509 Order Of Violation](#)

[8-1510 Penalty](#)

[8-1511 Abatement](#)

[8-1512 Hearing](#)

[8-1513 Appeals](#)

[8-1514 Costs Assessed](#)

[8-1515 Construction](#)

8-1501 Title

This article shall be known as the "Environmental Code."

(Code 2008, § 8-1501)

8-1502 Legislative Findings Of Fact

The governing body has found that there exist within the city unsightly and hazardous conditions due to dilapidation, deterioration or disrepair of walls, siding, fences or structure exteriors; accumulations increasing the hazards of accidents or other calamities; structural defects; uncleanliness; unsightly stored or parked material, equipment, supplies, grocery carts, machinery, vehicles or parts thereof. Such conditions are inimical to the general welfare of the community in that they have a blighting influence on the adjoining properties, the neighborhood and the city, or are injurious to the health and safety of the residents of the city. The governing body desires to promote the public health, safety and welfare by the repair, removal, abatement, and regulation of such conditions in the manner hereafter provided.

(Code 2008, § 8-1502)

8-1503 Purpose

The purpose of this article is to protect, preserve, upgrade, and regulate the environmental quality of industrial, commercial and residential neighborhoods in this city, by outlawing conditions which are injurious to the health, safety, welfare or aesthetic characteristics of the neighborhoods and to provide for the administration and enforcement thereof.

(Code 2008, § 8-1503)

8-1504 Rules Of Construction

For the purpose of this article, the following rules of construction shall apply:

- (a) *Any part thereof.* Whenever the words "premises," "structure," "building" or "yard" are used they shall be construed as though they were followed by the words "or any part thereof."

(Code 2008, § 8-1504)

8-1505 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned motor vehicle means any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149, inclusive, as amended; or is parked in violation of any city ordinance; or is incapable of moving under its own power; or is in a

junked or wrecked condition.

Accessory structure means a secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns, or outbuildings.

Commercial or industrial means used or intended to be used primarily for other than residential purposes.

Dilapidation, deterioration or disrepair means any condition characterized by, but not limited to, holes, breaks, rot, decay, crumbling, cracking, peeling or flaking paint, rusting, or other evidence of physical damage, neglect, lack of maintenance, excessive use or weathering.

Exterior means those parts of a structure which are exposed to the weather or subject to contact with the elements, including, but not limited to, sidings, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.

Garbage means, without limitation, any accumulation of animal, fruit or vegetable waste matter that results from the handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.

Person means any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who has charge, care, control or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession.

Premises means any lot, plot or parcel of land including the structures thereon. The term "premises" shall also mean any lot, plot or parcel of land without any structures thereon.

Refuse means garbage and trash.

Residential means used or intended to be used primarily for human habitation.

Structure means anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, including any appurtenances belonging thereto.

Trash means combustible waste consisting of, but not limited to, papers, cartons, boxes, barrels, wood, pallets, excelsior, furniture, bedding, rags, cigarettes, cigarette butts, cigars, cigar butts, leaves, yard trimmings, or tree branches and noncombustible waste consisting of, but not limited to, metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, clinkers, or street rubbish and sweepings, and broken or damaged shopping carts.

Weathered means deterioration caused by exposure to the elements.

Yard means the area of the premises not occupied by any structure.

(Code 2008, § 8-1505)

8-1506 Public Officer

The codes administrator, or designee, is the public officer to be charged with the administration and enforcement of this article.

(Code 2008, § 8-1506)

8-1507 Enforcement Standards

No person shall be found in violation of this article unless the public officer, after a reasonable inquiry and inspection of the premises, believes that conditions exist of a quality and appearance not commensurate with the character of the neighborhood. Such belief must be supported by evidence of a level of maintenance significantly below that of the rest of the neighborhood. Such evidence shall include conditions declared unlawful under WCC 8-1508 but shall not include conditions which are not readily visible from any public place or from any surrounding private property.

(Code 2008, § 8-1507)

8-1508 Unlawful Acts

It shall be unlawful for any person to allow to exist on any residential, commercial or industrial premises, conditions which are injurious to the health, safety or general welfare of the residents of the community or conditions which are detrimental to adjoining property, the neighborhood or the city. For the purpose of fair and efficient enforcement and administration, such unlawful conditions shall be classified as follows:

- (a) Exterior conditions (yard) shall include, but not be limited to, the scattering over or the parking, leaving, depositing or accumulation on the yard of any of the following:
 - (1) Lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk, trash, or refuse;
 - (2) Abandoned motor vehicles; or
 - (3) Furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, toilets, bathtubs, showers, interior plumbing, mannequins, and plumbing or construction materials not affixed or used in connection with the property, or other such items of personal property.
 - (4) Nauseous substances, carcasses of dead animals or places where

animals are kept in an offensive manner.

(b) Exterior conditions (structure) shall include, but not be limited to, deteriorated, dilapidated, or unsightly:

- (1) Exteriors of any structure;
- (2) Exteriors of any accessory structure; or
- (3) Fences, walls, or retaining walls.

(Code 2008, § 8-1508)

8-1509 Order Of Violation

(a) Following the findings of the codes administrator under WCC 8-1507, the city, or its authorized representative, shall serve upon the owner, any agent of the owner of the property, tenant, or any other person, corporation, partnership or association found by the public officer to be in violation of WCC 8-1508, an order stating the violation. The order shall be served on the owner, agent or tenant of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24-month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods, including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. The order shall state:

(1) The condition which has caused the violation of this article; and

(2) That the person in violation shall have:

- (A) Ten days from the receipt of the order to alleviate the exterior conditions (yard) violation; and/or;
- (B) 45 days from the receipt of the order to alleviate the exterior conditions (structure) violation; or in the alternative;
- (C) Ten days from the receipt of the order, plus any additional time granted under subsection (c) of this section, to request, as provided in WCC 8-1512 a hearing before the governing body or

its designated representative on the matter.

- (c) The governing body (or its designee) shall grant one or more extensions to the time periods stated in subsections (b)(2)(A) and (B) of this section, if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions which have caused the violation of this article.
- (d) Failure to alleviate the condition or to request a hearing may result in prosecution under WCC 8-1510 and/or abatement of the condition by the city according to WCC 8-1511 with the costs assessed against the property under WCC 8-1514.

(Code 2008, § 8-1509)

State law reference—K.S.A. 12-1617e.

8-1510 Penalty

The public officer may file a complaint in the municipal court against any person found to be in violation of WCC 8-1508; provided, however, that such person shall first have been sent a notice as provided in WCC 8-1509 and that the person has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in WCC 8-1509. Upon such complaint in the municipal court, any person found to be in violation of WCC 8-1508 shall upon conviction be punished by a fine of not more than \$500.00, or by imprisonment, for not more than 180 days, or by both such fine and imprisonment, for each offense. For the purposes of this article, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist.

(Code 2008, § 8-1510)

8-1511 Abatement

In addition to, or as an alternative to, prosecution as provided in WCC 8-1510, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been served pursuant to WCC 8-1509 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in WCC 8-1509, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of ten days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in WCC 8-1514. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;
- (b) Certified mail, return receipt requested; or
- (c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.
- (d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding 24-month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods, including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(Code 2008, § 8-1511)

8-1512 Hearing

If a hearing is requested within the ten-day period as provided in WCC 8-1509, such request shall be made in writing to the city clerk. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefor, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in WCC 8-1511.

(Code 2008, § 8-1512)

8-1513 Appeals

Any person affected by any determination of the governing body under WCC 8-1511 and 8-1512 may appeal such determination in the manner provided by K.S.A. 60-2101.

(Code 2008, § 8-1513)

8-1514 Costs Assessed

If the city abates or removes the nuisance pursuant to WCC 8-1511, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

(Code 2008, § 8-1514)

8-1515 Construction

Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its laws nor to prevent or punish violations thereof. The powers conferred by this article shall be in addition to and supplemental to the powers conferred by the state constitution, by any other law or by ordinance.

(Code 2008, § 8-1515)

ARTICLE 16 ENVIRONMENTAL SANITARY CODE

[8-1601 Incorporation Of County Environmental Sanitary Code](#)

[8-1602 Penalty, Scheduled Fines](#)

8-1601 Incorporation Of County Environmental Sanitary Code

There is hereby incorporated by reference for the purpose of regulating certain environmental and sanitary issues within the corporate limits of the city, that certain body of regulations known as the "Johnson County Environmental Sanitary Code," as adopted by the board of county commissioners on January 29, 2004, by Resolution No. 008-04, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. At least one copy of the county environmental sanitary code shall be marked or stamped "Official Copy as Adopted by Ordinance No.

850," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of the ordinance from which this section is derived, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge, and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost of the city, such number of official copies of such county environmental sanitary code similarly marked, as may be deemed expedient.

(Code 2008, § 8-1601; Ord. No. 850, § 1)

8-1602 Penalty, Scheduled Fines

The penalty for a violation of any provision of the county environmental sanitary code shall be a fine not to exceed \$500.00, and/or a definite term of confinement in the county jail, not to exceed 180 days.

(Code 2008, § 8-1602; Ord. No. 850, § 2)

ARTICLE 17 SMOKING REGULATIONS

[8-1701 Purpose](#)

[8-1702 Definitions](#)

[8-1703 Prohibition Of Smoking In Buildings Which Are Places Of Employment And All Enclosed Public Buildings](#)

[8-1704 Where Smoking Is Not Regulated](#)

[8-1705 Responsibilities Of Proprietors, Owners And Managers](#)

[8-1706 Penalty For Violation](#)

[8-1707 \(Reserved\)](#)

[8-1708 Burning Of Garbage](#)

8-1701 Purpose

It is the purpose of this article that the city promotes public health by decreasing citizens' exposure to secondhand smoke and creates smoke free environments for workers and citizens through regulation in the workplace and all public places.

(Code 2008, § 8-1701; Ord. No. 883, § 1)

8-1702 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employee means any person who performs services for an employer, with or without compensation.

Employer means a person, partnership, association, corporation, trust, or other organized group of individuals, including the city or any agency thereof, which utilizes the services of one or more employees.

Enclosed means a space bound by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and halls.

Open office areas means indoor areas without permanent walls, or walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.

Place of employment means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, hotel or motel sleeping rooms, private rooms in nursing homes, private meeting/conference rooms and halls not open to the general public while being used for private functions or located within private clubs and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.

Public place means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a public place.

Service line means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco or nicotine product.

Sports arena means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(Code 2008, § 8-1702; Ord. No. 883, § 1)

8-1703 Prohibition Of Smoking In Buildings Which Are Places Of Employment And All Enclosed Public Buildings

(a) Smoking shall be prohibited in all enclosed buildings which are places of

employment within the city.

- (b) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- (c) Each employer having any enclosed building which is a place of employment located within the city shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements: "Smoking shall be prohibited in all enclosed buildings within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed buildings."
- (d) The smoking policy shall be communicated to all employees within four weeks of the adoption of the ordinance from which this article is derived.
- (e) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- (f) Smoking shall be prohibited in all enclosed public places within the city, including, but not limited to, the following places:
 - (1) Any vehicle of public transportation, including, but not limited to, buses and taxicabs, but not limousines for hire.
 - (2) Elevators.
 - (3) Restrooms.
 - (4) Libraries, educational facilities, child care and adult day care facilities, museums, auditoriums, aquariums and art galleries.
 - (5) Any health care facility, health clinics or ambulatory care facilities, including, but not limited to, laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors' offices and dentists' offices.
 - (6) Any indoor place of entertainment or recreation, including, but not limited to, gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools.
 - (7) Service lines.
 - (8) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; provided, however, that smoking may take place on stage during live theatrical performances, where smoking is integral to the plot or storyline and prior notice is given to the audience.
 - (9) Shopping malls.

- (10) Sports arenas, including enclosed places in outdoor arenas.
- (11) Bars.
- (12) Restaurants.
- (13) Convention facilities.
- (14) All public areas and waiting rooms of public transportation facilities, including, but not limited to, bus and airport facilities.
- (15) Any other area used by the public or serving as a place of work, including open office areas.
- (16) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including, but not limited to, joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.
- (17) All enclosed buildings owned by the city.
- (18) Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.
- (19) Within 25 feet of any public entrance to a public place; provided, however, that this prohibition shall not apply to the following: any portion of the public right-of-way that may be within 25 feet of said entrance, and the outdoor seating area of a restaurant or drinking establishment where smoking is allowed. With respect to said outdoor seating area, smoking may be allowed only if reasonable efforts are made to minimize the chance of smoke affecting the inside occupants of the establishment.

(Code 2008, § 8-1703; Ord. No. 883, § 1)

8-1704 Where Smoking Is Not Regulated

Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

- (a) Private residences, not serving as enclosed places of employment or an enclosed public place. Further, smoking shall be regulated in private residences used as a child care, adult day care or health care facility.
- (b) An existing retail establishment whose primary business is the sale of tobacco products and new retail establishments whose primary business is the sale of tobacco products which are located in a stand-alone building not attached to or the part of any building devoted to other uses.

(Code 2008, § 8-1704; Ord. No. 883, § 1)

8-1705 Responsibilities Of Proprietors, Owners And Managers

- (a) The person having control of a place, business, office or other establishment or activity subject to this article shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this article in that place and shall take all necessary steps to prevent or stop another person from smoking in violation of this article. For the purposes of this section, the term "necessary steps" means to take all reasonable actions to prevent smoking in violation of this article by employees, patrons and visitors in the place, business, office or establishment, including:
 - (1) Posting no-smoking signs and removing all ashtrays;
 - (2) Verbally asking a person who is smoking to extinguish the smoking materials;
 - (3) Refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and
 - (4) Applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws.
- (b) If the employee, patron or visitor smoking in violation of this article is hard of hearing, the communications with that person may be written, in sign language or other effective means of communication.

(Code 2008, § 8-1705; Ord. No. 883, § 1)

8-1706 Penalty For Violation

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this article shall be guilty of a public offense, punishable by a fine not exceeding \$50.00.
- (b) A person having control of a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of a public offense, punishable by:
 - (1) A fine not exceeding \$100.00 for a first violation.
 - (2) A fine not exceeding \$200.00 for a second violation within one year.
 - (3) A fine not exceeding \$500.00 for each additional violation within one year.
- (c) Each day on which a violation of this article occurs shall be considered a separate and distinct violation.

- (d) In addition to the fines established by this section, violation of this article by a person having control of a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(Code 2008, § 8-1706; Ord. No. 883, § 1)

8-1707 (Reserved)

8-1708 Burning Of Garbage

This article shall not apply to any other regulations or ordinances of the city pertaining to the burning of garbage, trash or similar substances.

(Code 2008, § 8-1708; Ord. No. 883, § 1)

CHAPTER 9 MUNICIPAL COURT

[9-101 Established](#)

[9-102 Practice And Procedure](#)

[9-103 Time And Place Of Sessions](#)

[9-104 Municipal Judge; Appointment](#)

[9-105 Municipal Judge; Absence; Vacancy; Pro Tem](#)

[9-106 Municipal Judge; Powers And Duties](#)

[9-107 Municipal Judge; Salary](#)

[9-108 Court Clerk](#)

[9-109 Payment Of Fine](#)

[9-110 Payment Of Fine; Failure To Pay Separate Violation](#)

[9-111 Failure To Appear](#)

[9-112 Court Costs](#)

9-101 Established

There is hereby established a municipal court for the city. The municipal court shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city.

(Code 1983; Code 2008, § 9-101)

9-102 Practice And Procedure

The Kansas Code of Procedure for Municipal Courts, as set forth in K.S.A. 12-4101 et seq., and all acts amendatory or supplemental thereto shall govern the practice and procedure in all cases in the municipal court.

(Code 1983; Code 2008, § 9-102)

9-103 Time And Place Of Sessions

Municipal court shall be held in the municipal courtroom in the city hall building on such days and at such hours as the municipal judge designates. Remote video appearances may be permitted at the discretion of the judge.

(Code 2008, § 9-103)

9-104 Municipal Judge; Appointment

The municipal court shall be presided over by a municipal judge. The mayor, subject to the approval of the city council, shall appoint the judge of the municipal court.

(Code 1993, § 9-103; Code 2008, § 9-104; Chatr. Ord. No. 9, § 3)

9-105 Municipal Judge; Absence; Vacancy; Pro Tem

In the event the municipal judge is temporarily unable to preside due to absence, illness or disqualification, the municipal judge shall designate an attorney or other qualified person to act as judge pro tempore. In the event the municipal judge fails to appoint a judge pro tempore, the judge pro tempore shall be appointed in the same manner as the municipal judge is selected. The judge pro tempore shall receive compensation in the same manner as the compensation of the regular municipal judge. In the event a vacancy shall occur in the office of municipal judge, a successor shall be appointed to fill the unexpired term in the same manner as the municipal judge was appointed.

(Code 2008, § 9-105)

9-106 Municipal Judge; Powers And Duties

The municipal judge shall have such powers and duties as set forth in the Kansas Code of Procedure for Municipal Courts (K.S.A. 12-4101 et seq.) and all acts amendatory or supplemental thereto.

(Code 1983, § 9-104; Code 2008, § 9-106)

9-107 Municipal Judge; Salary

The municipal judge shall receive a salary as shall be fixed by contract.

(Code 1983, § 9-105; Code 2008, § 9-107)

9-108 Court Clerk

There is hereby established the office of the clerk of the municipal court of the city. The duties of the office shall be those prescribed by the Code for Municipal Courts set forth in K.S.A. 12-4101 et seq.

(Code 2008, § 9-108)

9-109 Payment Of Fine

Where a municipal court judgment against any person results in a fine and/or court costs only, the same shall be satisfied by paying the amount of such fine and/or court costs to the municipal court immediately on the rendition of judgment, or at such time as the municipal judge shall determine.

(Code 2008, § 9-109)

9-110 Payment Of Fine; Failure To Pay Separate Violation

It shall be unlawful for any person to willfully fail to pay any lawfully imposed fine for a violation of any law of the city within the time authorized by the court and without lawful

excuse having been presented to the court on or before the date the fine is due. Such conduct constitutes a violation of this article, regardless of the full payment of the fine after such time.

(Code 2008, § 9-110)

9-111 Failure To Appear

- (a) It shall be unlawful for any person charged with violation of any law of the city to fail to appear before the municipal court when so scheduled to appear, unless lawful excuse for absence is presented to the court on or before the time and date scheduled for appearance.
- (b) For the purpose of subsection (a) of this section, failure to appear shall include willfully incurring a forfeiture of an appearance bond and failure to surrender oneself within 30 days following the date of such forfeiture by one who is charged with a violation of the laws of the city and has been released on bond for appearance before the municipal court for trial or other proceeding prior to conviction, or willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days after his or her conviction of a violation of the laws of the city has become final by one who has been released on an appearance bond by any court of this state.
- (c) Any person who is released upon his or her own recognizance, without surety, or who fails to appear in response to a summons, notice to appear, or traffic citation duly served upon him or her personally shall be deemed a person released on bond for appearance within the meaning of subsection (b) of this section.
- (d) Failure to appear, upon conviction thereof, shall be punishable by incarceration for up to 30 days and/or a fine of up to \$250.00.

(Code 2008, § 9-111)

9-112 Court Costs

In addition to witness fees, mileage and assessments as provided by state statute, the imposition of which the court is authorized to impose as costs, in each case filed in the municipal court of the city, where there is a finding of guilty or a plea of guilty, a plea of no contest, forfeiture of bond or diversion, the court shall assess court costs in the amount for each complaint or charge filed unless waived or suspended by the court. The amount of the court costs will be adopted by resolution of the governing body from time to time and listed on the city's master fee schedule. Court costs shall not be assessed for parking violations.

(Code 1993, § 9-107; Code 2008, § 9-112; Chatr. Ord. No. 12, § 2; Ord. No. 865, § 1)

CHAPTER 10 POLICE

ARTICLE 1 POLICE DEPARTMENT

ARTICLE 2 PROPERTY IN POLICE CUSTODY

ARTICLE 3 LAW ENFORCEMENT TRUST FUND

ARTICLE 4 ALARM SYSTEMS

ARTICLE 1 POLICE DEPARTMENT

10-101 Police Force

10-102 Duties Of Chief Of Police And Assistants

10-103 Chief Of Police; Powers

10-104 Arrests By Law Enforcement Personnel

10-105 City Administrator: Command; State Of Emergency

10-106 Emergency Temporary Law Enforcement Personnel

10-107 Rules Of Conduct

10-108 Reward Monies; Disposition

10-109 Canine Corps

10-101 Police Force

The regular police force of the city shall consist of the chief of police, assistant chief of police and such law enforcement personnel as the governing body may provide. The chief of police under direction of the city administrator, shall have supervision and be in charge of the police department and any law enforcement personnel appointed by the chief of police.

(Code 1970, § 9-101; Code 2008, § 10-101)

10-102 Duties Of Chief Of Police And Assistants

It shall be the duty of the chief of police and the assistant chief of police and other police officers, to see that the laws of the state and all ordinances of the city and all resolutions of the governing body are properly enforced and obeyed within the police jurisdiction of the city. Whenever an arrest is made, they shall attend all trials in municipal court unless excused by the municipal judge. They shall promptly serve all process papers, notices or orders required by law. They shall also perform such other duties as may be required by the law.

(Code 1970, § 9-102; Code 2008, § 10-102)

10-103 Chief Of Police; Powers

The chief of police shall at all times have power to make or order an arrest, with a warrant, for any offense against the laws of the state or of the city, and bring the offender for trial before the proper officer of the city, and to arrest without a warrant in all cases where any such offense shall be committed, or attempted to be committed, in his or her

presence and such other powers as provided by law. The chief of police shall have power to make such rules and regulations as may be necessary for the proper and efficient conduct of the department.

(Code 1970, § 9-103; Code 2008, § 10-103)

10-104 Arrests By Law Enforcement Personnel

The law enforcement personnel of the city shall have power to arrest all offenders against the laws of the state, or of the city, by day or night, in the same manner as the chief of police, and keep them in the city jail, or other place to prevent their escape, until a trial can be had before the proper officer.

(Code 1970, § 9-104; Code 2008, § 10-104)

10-105 City Administrator: Command; State Of Emergency

The city administrator, and in the absence of the city administrator the president of the council, shall assume command of the police department when and only when a state of emergency exists within the city. If a state of emergency is declared to exist by the city administrator, he or she shall submit to the governing body at its next meeting a written report stating the cause of the emergency and its duration. Emergency as used herein is defined as a major crime or a public disaster.

(Code 1970, § 9-105; Code 2008, § 10-105)

10-106 Emergency Temporary Law Enforcement Personnel

The city administrator may appoint qualified temporary law enforcement personnel in the event of an emergency or other exigent circumstances, or as soon as it is practicable whenever a vacancy occurs in the police department. Such personnel shall serve at the pleasure of the city administrator. Should the city administrator desire to appoint any temporary law enforcement personnel or any other person to a permanent position of law enforcement personnel, he or she shall submit the appointment to the city council for approval as provided by law.

(Code 1970, § 9-108; Code 2008, § 10-106)

10-107 Rules Of Conduct

The city policy and procedures manual is hereby incorporated by reference, as if the same were set out in full herein, for the purpose of providing rules and regulations governing all members of the police department of the city. Copies of the department operation manual are available from the department.

(Code 2008, § 10-107)

10-108 Reward Monies; Disposition

All money due to or received by the chief of police or any law enforcement personnel on account of any reward accruing to him or her in consequence of any action in the line of duty shall be deposited to the credit of a fund for aid of law enforcement personnel of the city in payment of benefits for sickness and injury and allied uses. If no such fund has been established by the police department, said monies shall be deposited with the city treasurer and shall become general funds of the city.

(Code 1970, § 9-111; Code 2008, § 10-108)

10-109 Canine Corps

Any dog used by the city whether owned, leased, rented or borrowed, for the purpose of performing duties with the police department shall be commissioned as a member of the Canine Corps and shall perform such duties as may be designated by the chief of police or the officer in charge of such unit and who has been designated the responsibility for the handling and supervision of such animal.

(Code 1993; Code 2008, § 10-109; Ord. No. 598, § 6.15-1)

ARTICLE 2 PROPERTY IN POLICE CUSTODY

[10-201 Regulations](#)

[10-202 Disposition](#)

[10-203 Disposition; Exempt Property](#)

[10-204 Claiming Property](#)

[10-205 Proof Of Ownership](#)

[10-206 Auction](#)

10-201 Regulations

The police department is required to establish regulations detailing the collection, storage, and inventory of property which may come under its control by any manner.

(Code 2008, § 10-201)

10-202 Disposition

Any property which has been acquired or turned over to the police department and has been classified in accordance with procedures existing in the police department as unclaimed or for which the proper owner cannot be ascertained shall be kept for a minimum of 90 days. After a period of 90 days, such property, except as provided in WCC 10-203, shall be sold at public auction to the highest bidder and the proceeds after expenses shall be paid to the city general fund.

(Code 2008, § 10-202)

10-203 Disposition; Exempt Property

The following classes of property shall be considered exceptions to WCC 10-202 and shall be dealt with in the following manner:

- (a) Cash money shall be turned over to the city general fund unless it shall be determined to have collector's value, in which case it shall be auctioned according to the provisions in WCC 10-202.
- (b) Firearms which are available for disposition may be dealt with in the following manner:
 - (1) If compatible with law enforcement usage, they may be turned over to the police department inventory.
 - (2) They may be sold to a firearms dealer who maintains the appropriate federal firearms license.
 - (3) They may be destroyed.
 - (4) In no case shall firearms be sold at public auction.
- (c) Other weapons such as knives, etc., which are deemed to have a legitimate value may be sold at auction, however, homemade weapons or weapons of a contraband nature shall be destroyed.
- (d) Any items determined to be contraband such as explosives, narcotics, etc., shall be destroyed.
- (e) Items of a pharmaceutical nature, which, while not contraband when properly dispensed, or which are of an over-the-counter-variety, shall be destroyed.
- (f) Foodstuffs, if sealed and undamaged may be turned over to any appropriate social service agency or destroyed, but shall not be auctioned.
- (g) Alcohol products such as beer, wine, whiskey, etc., shall be destroyed.
- (h) Items with a value in excess of \$500.00 may be sold after advertising said item in a general circulation newspaper on at least two occasions. Such sales shall be by closed bid.
- (i) Property which was seized under a warrant, or otherwise as part of a criminal investigation, will be disposed of according to the provisions of K.S.A. 22-2512.
- (j) Abandoned vehicles in police custody that remain unclaimed will be disposed of according to the procedures provided by K.S.A. 8-1102.

(Code 2008, § 10-203)

10-204 Claiming Property

The police department shall be required to make reasonable attempts to locate the owner of any property in storage. However, the responsibility for claiming and identifying any such property shall rest solely with the owner.

(Code 2008, § 10-204)

10-205 Proof Of Ownership

Claimants to any property in police storage shall be required to present reasonable proof of ownership and no property shall be released unless such reasonable proof is presented.

(Code 2008, § 10-205)

10-206 Auction

At such time as it has been determined that an auction is necessary to dispose of unclaimed property, an inventory listing all property to be disposed of shall be prepared and kept on file in the police department. Notice of an auction shall be published at least twice in a general circulation newspaper prior to the date of the auction. The notice shall specify the date, time and place of the auction and shall also notify prospective buyers or potential claimants that a list of items to be auctioned is available at the police department and any claims on property must be made prior to the start of the auction.

(Code 2008, § 10-206)

ARTICLE 3 LAW ENFORCEMENT TRUST FUND

10-301 Established

10-302 Proceeds Of Sales

10-303 Use Of Monies

10-304 Quarterly Report

10-305 Construction Of Article

10-301 Established

There is hereby established a fund in the city treasury entitled "Special Law Enforcement Trust Fund." The purpose of this fund is to provide for depository for the proceeds of sale and any monies forfeited to the city police department pursuant to state statutes relating to controlled substance investigation forfeitures.

(Code 1993, § 10-201; Code 2008, § 10-301; Ord. No. 732, § 1)

10-302 Proceeds Of Sales

Any proceeds of sales and any monies forfeited to the city police department pursuant to the provisions of state statutes shall be deposited in the "Special Law Enforcement

Trust Fund."

(Code 1993, § 10-202; Code 2008, § 10-302; Ord. No. 732, § 2)

10-303 Use Of Monies

(a) All monies in the trust fund shall be expended only upon approval of the governing body and only for the following law enforcement purposes:

- (1) To defray costs of prorated or complex investigations.
- (2) Providing additional technical equipment or expertise.
- (3) To provide matching funds to obtain federal grants.
- (4) Other law enforcement purposes deemed appropriate by the governing body.

(b) No monies in the trust fund shall be used for payment of normal operating expenses of the police department or for any other expense or non-law enforcement expense of the city.

(Code 1993, § 10-203; Code 2008, § 10-303; Ord. No. 732, § 3)

10-304 Quarterly Report

The police department shall submit a quarterly report to the governing body specifying the type and approximate value of any forfeited property received and the amount of any proceeds received, however, no report will be provided if no changes occurred since the last quarterly report. Neither the police department nor governing body shall anticipate future forfeitures or proceeds therefrom in the adoption and approval of its annual budgets.

(Code 1993, § 10-204; Code 2008, § 10-304; Ord. No. 732, § 4)

10-305 Construction Of Article

The provisions of this article shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

(Code 1993, § 10-205; Code 2008, § 10-305; Ord. No. 732, § 5)

ARTICLE 4 ALARM SYSTEMS

[10-401 Permit Required; Unlawful Acts; Exception](#)

[10-402 Application For Permit; Non-Transferability; Exceptions](#)

[10-403 Regulations; Requirements And Duties](#)

[10-404 Nuisance Alarm Systems Prohibited](#)

[10-405 Direct Alarm Systems To Be Disconnected](#)
[10-406 Disturbing Alarms To Be Disconnected Or Modified](#)
[10-407 Notification Of Nuisance Alarms](#)
[10-408 Responsible Party](#)
[10-409 False Alarms; Fees Required](#)
[10-410 Designation Of Alarm Coordinator; Duties](#)
[10-411 Penalty](#)

10-401 Permit Required; Unlawful Acts; Exception

No person shall possess or operate an alarm system designed with the intent of eliciting a police response without first obtaining a permit for such alarm system, provided the provisions of this section are not applicable to local alarm systems affixed to motor vehicles.

(Code 1993, § 5-901; Code 2008, § 10-401; Ord. No. 700, § 1)

10-402 Application For Permit; Non-Transferability; Exceptions

Every alarm user shall obtain an alarm users permit from the chief of police within 30 days after the effective date of the ordinance from which this article is derived or prior to use of an alarm system. Alarm permits are nontransferable. Each building, structure or facility maintaining one or more alarm systems must obtain an alarm users permit. Each permit shall bear the signature of the chief of police and shall be physically upon the premises using the alarm system and shall be available for inspection by the chief of police, his or her designate or any officer. An alarm user which is a governmental political unit shall be subject to this article; but such governmental unit shall not be subject to any fees or the imposition of any penalty as provided herein.

(Code 1993, § 5-902; Code 2008, § 10-402; Ord. No. 700, § 2)

10-403 Regulations; Requirements And Duties

- (a) Any seller, vendor or installer of any type of alarm system shall obtain a permit from the chief of police prior to the selling or installing of any alarm system within the city.
- (b) The chief of police or his or her designate may require inspection of any and all alarm systems installed within the city.
- (c) Local alarm systems shall be equipped to automatically discontinue emitting an audible sound within 15 minutes after activation.
- (d) The chief of police or his or her designate shall have the right to discontinue any alarm emitting an audible sound.
- (e) Alarm users shall submit with their permit application to the chief of police a release of liability releasing the city, any police officer or any other city employee

from damages caused either personally or to any property when in response to the activation of such alarm system and also release the city, any police officer or other city employee from damages from disconnecting, resetting or not resetting the alarm system.

(Code 1993, § 5-903; Code 2008, § 10-403; Ord. No. 700, § 3)

10-404 Nuisance Alarm Systems Prohibited

It shall be unlawful for any person or business to own or operate any burglary, robbery, fire, medical, or panic alarm system deemed to be a nuisance. Nuisance alarm systems shall be defined as follows:

- (a) *False alarms.* Any alarm which elicits a response from the police and/or fire departments more than six times in any 12-month period when no emergency exists. Exempt from this subsection are newly installed systems, which shall receive a grace period of 30 days or four false alarms, whichever occurs first; alarm signals caused by violent conditions of nature or other extraordinary circumstances beyond control of the owner or operation; alarm systems owned or operated by any governmental political unit.
- (b) *Direct telephone alarms.* Any alarm which is programmed to automatically dial any telephone number, listed or unlisted, directly into any city building for the purpose of transmitting a voice recording of an emergency message.
- (c) *Disturbing alarms.* Any alarm which emits an audible signal which is not automatically discontinued within 15 minutes of activation.

(Code 1993, § 5-904; Code 2008, § 10-404; Ord. No. 700, § 4)

10-405 Direct Alarm Systems To Be Disconnected

It shall be unlawful for any alarm user to fail to disconnect any direct telephone alarm as defined in WCC 10-404(b) within 72 hours of receipt of written notice from the police department that such a programmed connection exists.

(Code 1993, § 5-905; Code 2008, § 10-405; Ord. No. 700, § 5)

10-406 Disturbing Alarms To Be Disconnected Or Modified

It shall be unlawful for any alarm user to fail to disconnect or modify any disturbing alarms as defined in WCC 10-404(b) within 72 hours of receipt of written notice from the police department that such a condition exists.

(Code 1993, § 5-906; Code 2008, § 10-406; Ord. No. 700, § 6)

10-407 Notification Of Nuisance Alarms

At the time of the sixth false alarm in any 12-month period, the city shall notify the responsible party by first class mail of such occurrence and that additional false alarms shall require the payment of fees as per WCC 10-409 of this article. Such written notification shall be assumed to have been delivered three days after mailing.

(Code 1993, § 5-907; Code 2008, § 10-407; Ord. No. 700, § 7)

10-408 Responsible Party

The responsible party shall be the resident for a residential alarm system and the business owner or manager for a business alarm system, regardless of whether such system is owned, leased, rented, or otherwise controlled.

(Code 1993, § 5-908; Code 2008, § 10-408; Ord. No. 700, § 8)

10-409 False Alarms; Fees Required

- (a) Any alarm system which has recorded three or more false alarms within any 12-month period shall be subject to fees as adopted from time to time by resolution of the governing body and listed in the city's master fee schedule.
- (b) The payment of the fee shall be submitted to the city within ten days of receiving notice that such fee is due.

(Code 1993, § 5-909; Code 2008, § 10-409; Ord. No. 700, § 9)

10-410 Designation Of Alarm Coordinator; Duties

There is hereby established the position of alarm coordinator. The alarm coordinator shall:

- (a) Maintain records necessary to carry out the terms of this article; such records shall be confidential.
- (b) Make notifications as outlined in WCC 10-407.
- (c) Establish, distribute, and enforce such rules and regulations as may be necessary for implementation of this article, and make same available upon request.
- (d) Determine which alarms constitute false alarms as defined in WCC 10-404(a).

(Code 1993, § 5-910; Code 2008, § 10-410; Ord. No. 700, § 11)

10-411 Penalty

Any person convicted of a violation of any of the provisions of or failing to comply with any of the mandatory requirements of this article shall be guilty of a public offense and

punished by a fine of not more than \$500.00 or by imprisonment not to exceed 30 days, or by both such fine and imprisonment. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by any such person.

(Code 1993, § 5-911; Code 2008, § 10-411; Ord. No. 700, § 12)

CHAPTER 11 PUBLIC OFFENSES

ARTICLE 1 UNIFORM OFFENSE CODE

ARTICLE 2 LOCAL REGULATIONS

ARTICLE 3 FIREWORKS

ARTICLE 1 UNIFORM OFFENSE CODE

11-101 Incorporating Uniform Public Offense Code

11-102 Short; Citation; Reference

11-103 Reference Applies To Amendments

11-104 Title, Chapter And Section Headings

11-105 Supplements Authorized

11-106 Effect Of Code On Past Actions And Obligations

11-107 Prohibited Acts

11-108 Civil Remedies Preserved

11-109 (Reserved)

11-110 Uniform Public Offense Code, Additions And Deletions (Reserved)

11-101 Incorporating Uniform Public Offense Code

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the city, that certain code known as the "Uniform Public Offense Code," 2023 edition, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. At least one copy of the uniform public offense code shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Westwood, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

(Code 2008, § 11-101; Ord. No. 879, § 1; Ord. No. 888, § 1; Ord. No. 900, § 1; Ord. No. 912, § 1; Ord. No. 917, § 1; Ord. No. 929, § 1; Ord. No. 938, § 1; Ord. No. 954, § 1; Ord. No. 962, § 1, 8-13-2015; Ord. No. 973, § 1, 8-11-2016; Ord. No. 983, § 1, 7-13-2017; Ord. No. 993, § 1, 9-13-2018; Ord. No. 1003, § 1, 9-12-2019; Ord. No. 1032, § 1, 10-13-2022; Ord. No. 1035, § 1, 8-10-2023)

11-102 Short; Citation; Reference

This article shall be known as the "Uniform Public Offense Code, City of Westwood, Kansas," and it is sufficient to refer to this article as the uniform public offense code (or "UPOC") in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part of portion thereof as an addition to,

amendment to, correction or repeal of the uniform public offense code. Any such ordinance shall effectively add to, amend, correct or repeal the ordinance section which is the basis for the appropriate code provision Further reference may be had to the titles, chapters, sections and subsections of the "Uniform Public Offense Code" and such reference shall apply to that number title, chapter, section or subsection as it appears in the code.

(Code 1993; Code 2008, § 11-102; Ord. No. 745, § 1)

11-103 Reference Applies To Amendments

Whenever a reference is made to this article as the uniform public offense code or to any portion thereof or to any ordinance of the city, the reference shall apply to all amendments, corrections, and additions now or thereafter made.

(Code 1993; Code 2008, § 11-103; Ord. No. 745, § 1)

11-104 Title, Chapter And Section Headings

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof.

(Code 1993; Code 2008, § 11-104; Ord. No. 745, § 1)

11-105 Supplements Authorized

This article shall be kept current and the city clerk is authorized to cause the periodic preparation of loose leaf supplements. The supplements may be added to this Code by insertion of new pages for omitted sections, amended sections, sections for ordinances passed in the interim of code preparation and new provisions, or may be added as supplemental materials to the city's official online Code.

(Code 1993; Code 2008, § 11-105; Ord. No. 745, § 1)

11-106 Effect Of Code On Past Actions And Obligations

Neither the adoption of the ordinance from which this article is derived, nor the repeal or amendments of any ordinances or part or portion of any ordinances of this city, shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date of the ordinance from which this article is derived, nor be construed as a waiver of any license, fee or penalty at the effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, on the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof, required fine paid, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining, shall continue in full

force and effect.

(Code 1993; Code 2008, § 11-106; Ord. No. 745, § 1)

11-107 Prohibited Acts

Whenever in this city any act or omission is made unlawful, it includes causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission.

(Code 1993, § 11-108; Code 2008, § 11-107; Ord. No. 745, § 1)

11-108 Civil Remedies Preserved

This article does not bar, suspend or otherwise affect any civil right or remedy authorized by law to be enforced in a civil action, based on conduct which it makes punishable.

(Code 1993, § 11-110; Code 2008, § 11-108; Ord. No. 745, § 1)

11-109 (Reserved)

11-110 Uniform Public Offense Code, Additions And Deletions (Reserved)

ARTICLE 2 LOCAL REGULATIONS

[11-201 Alcoholic Liquor](#)

[11-202 Interference With Law Enforcement Officer](#)

[11-203 Resisting Arrest](#)

[11-204 Failure To Appear](#)

[11-205 Drugs](#)

[11-206 Blasting](#)

[11-207 Unlawful Removal Of Materials To Be Recycled](#)

[11-208 Pedestrian On Public Roadways](#)

[11-209 Disturbing The Peace](#)

[11-210 Camping On Private Property](#)

11-201 Alcoholic Liquor

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alcoholic beverage or alcoholic liquor means, alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but not including cereal malt beverages.

Cereal malt beverage means any fermented but un-distilled liquor brewed or made from malt or from a mixture of malt or malt substitute, or any flavored malt beverage, but does not include any such liquor which contains more than 3.2 percent alcohol by weight.

- (b) *Unlawful acquisition of alcoholic beverage.* No person under 21 years of age shall obtain or purchase or attempt to obtain or purchase alcoholic beverage from any person except as authorized by law. Violation of this section is a Class B offense.
- (c) *Unlawful possession or consumption of alcoholic beverage.* No person under 21 years of age shall possess or consume alcoholic beverage except as authorized by law. Violation of this section is a Class B offense.
- (d) *Unlawful acquisition of cereal malt beverages.* No person under the legal age for consumption of cereal malt beverage shall obtain or purchase cereal malt beverage from any person except as authorized by law. Violation of this section is a Class B offense.
- (e) *Legal age for consumption of cereal malt beverage.* Legal age for consumption of cereal malt beverage means 21 years of age.
- (f) *Unlawful possession or consumption of cereal malt beverages.* No person under the legal age for consumption of cereal malt beverage shall possess or consume cereal malt beverage except as authorized by law. Violation of this section is a Class B offense.
- (g) *Intoxicating liquors and cereal malt beverages consumption prohibited in certain places.*
 - (1) It is unlawful for any person to consume any cereal malt or alcoholic beverages in or upon any street, avenue, alley or sidewalk, public way, public parking lot or upon any public property or within any vehicle in or upon any such place; provided, further, that it is unlawful for any person to have in his or her possession in any such place, an open cereal malt beverages container or alcoholic beverage container; provided, further, that the chief of police may authorize the consumption of cereal malt and alcoholic beverages on public property, at a block party if the street is blocked, or with a parade permit, pursuant to a valid application submitted to the chief of police and when the chief of police determines that such activity would not be detrimental to the health, safety and morals of the community.
 - (2) No person shall knowingly or unknowingly sell, or give away, furnish, dispose of, procure, exchange or deliver, or permit the selling, giving away, furnishing, disposing of, procuring of, exchanging or delivering of any cereal malt or alcoholic beverage, in any eating and drinking

establishments, building, structure, land or premises, for consumption in such building or structure or for consumption upon such land or premises, unless such person has applied for and been granted the proper license as provided for in WCC chapter 3.

- (3) It is unlawful for any person to be intoxicated on any highway, street, or in any public place or building in the city.
- (4) Nothing in this chapter shall be deemed to prevent, regulate, or control the lawful consumption of cereal malt and alcoholic beverages upon private property by those occupying such private property as the owner, or as a lessee and by the guests of the owner or lessee, provided that no charges made by the owner or lessee for the serving or mixing of any drink or drinks or of cereal malt or alcoholic beverages or for any substance co-mixed with such beverages.
- (5) Violation of this section is a Class B offense.

(Code 1993, § 11-105; Code 2008, § 11-201; Ord. No. 745, § 3)

11-202 Interference With Law Enforcement Officer

It is unlawful for any person to knowingly and intentionally interfere with, molest or assault, a law enforcement officer. Violation of this section is a Class B offense.

(Code 1993, § 11-206; Code 2008, § 11-202; Ord. No. 745, § 3)

11-203 Resisting Arrest

It is unlawful for any person to resist arrest by knowingly and intentionally obstructing, resisting, opposing, or interfering with a law enforcement officer while such officer is engaged in making an arrest. Violation of this section is a Class B offense.

(Code 1993, § 11-207; Code 2008, § 11-203; Ord. No. 745, § 3)

11-204 Failure To Appear

It is unlawful for any person to fail to appear by willfully incurring a forfeiture of an appearance bond and failing to surrender one's self within 30 days of the date of such forfeiture by one who is charged with a public offense, has been released on bond for appearance before the municipal court of this city for trial or other proceeding prior to conviction, or willfully incurring a forfeiture of an appearance bond and failing to surrender one's self within 30 days after his or her conviction of a public offense has become final by one who has been released on an appearance bond by any court. Any person who is released upon his or her own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, shall be deemed a person released on bond for appearance within the meaning of this section. The provisions of

this section shall not apply to any person who forfeits a cash bond supplied pursuant to law or city ordinance upon an arrest for a traffic offense. Violation of this section is a Class B offense.

(Code 1993, § 11-208; Code 2008, § 11-204; Ord. No. 745, § 3)

11-205 Drugs

The provisions of the Uniform Controlled Substances Act (K.S.A. 65-4101 et seq.) and amendments hereto relating to controlled substances are hereby incorporated by reference.

(Code 1993, § 11-213; Code 2008, § 11-205; Ord. No. 745, § 3)

11-206 Blasting

It shall be unlawful for any person to blast or cause to be blasted rocks, stumps or other material unless the object or area to be blasted be covered in such a manner as to prevent any fragment, rocks, or other material from ascending into the air. A violation of this section is a Class B offense.

(Code 1993, § 11-214; Code 2008, § 11-206; Ord. No. 745, § 3)

11-207 Unlawful Removal Of Materials To Be Recycled

- (a) It shall be unlawful for any person not under contract with the city to remove any item, including, but not limited to, newspapers, aluminum cans, glass bottles or plastic containers placed in or adjacent to city recycling containers or receptacles.
- (b) Violation of this section is a Class C offense.

(Code 1993, § 11-215; Code 2008, § 11-207; Ord. No. 745, § 3)

11-208 Pedestrian On Public Roadways

(a) Prohibitions.

- (1) Where a sidewalk is provided and its use is practicable it shall be unlawful for any pedestrian to walk, jog or run along and upon an adjacent roadway.
- (2) Where a sidewalk is not available, any pedestrian walking, jogging or running along and upon a highway shall walk, jog or run only on a shoulder, as far as practicable from the edge of the roadway.
- (3) Where neither a sidewalk nor a shoulder is available, any pedestrian walking, jogging or running along and upon a highway shall walk, jog or

run as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk, jog or run only on the left side of the roadway.

(4) Except as otherwise provided in this article, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

(b) *Pedestrian reflective clothing.* Any pedestrian using the public streets for walking, jogging and/or running in the city from one-half hour after sunset to one-half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and/or vehicles on a highway and/or streets at a distance of 500 feet ahead shall be required to wear on his or her person some type of reflective apparel or materials of sufficient size and placement so as to be visible to vehicular traffic from a distance of 200 feet.

(c) Violation of this section is a Class C offense.

(Code 1993, § 11-216; Code 2008, § 11-208; Ord. No. 745, § 3)

11-209 Disturbing The Peace

(a) It shall be unlawful for any person to make, continue, maintain or cause to be made or continued any excessive, unreasonable or unusually loud noise or any noise which either annoys or disturbs others of reasonable sensitivities, or which injures or endangers the comfort, repose, health, peace or safety of others within the city.

(b) It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. Neighboring inhabitants shall include persons living within or occupying residential districts of single or multifamily dwellings and shall include areas where multiple-unit dwellings and high-density residential districts are located.

(c) No person shall congregate with other persons because of, participate in, or be in any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons of reasonable sensitivities residing in any residential area. No person shall visit or remain within any residential dwelling unit or within the vicinity of a residential dwelling unit wherein such party or gathering of people is taking place except persons who have gone there for the sole purpose of abating the disturbance. A police officer may order all persons present in any group or gathering from which such sound emanates, other than the owners or tenants of the dwelling unit, to

immediately disperse in lieu of being charged under this section. Owners or tenants of the dwelling unit shall immediately abate the disturbance and, failing to do so, shall be in violation of this section.

(d) *Prima facie violation.* The operation of any tool, equipment, vehicle, electronic device, set, instrument, television, phonograph and machine or other noise or sound producing device, at any time in such a manner as to be plainly audible at any adjacent property line, or for 50 or more feet in the case of a multiple-family dwelling, between the hours of 10:00 p.m. and 7:00 a.m. (except on Sundays, which such latter time shall be 8:00 a.m.), shall be prima facie evidence of a violation of this section.

(e) *Exemptions.* Sounds emanating from the following shall be exempt from the provisions of subsections (a) through (d) of this section:

- (1) Emergency vehicles;
- (2) Public safety vehicles;
- (3) Emergency activities of the fire or police department;
- (4) Emergency activities of any utility company;
- (5) Emergency activities of municipal maintenance vehicles and equipment;
- (6) Public projects, snow removal, or any other public, emergency, or safety activities;
- (7) Heating, ventilation, air-conditioning units or generators used during power outages;
- (8) Noise from construction sites, until 9:00 p.m. on weekdays;
- (9) Noise from parades, carnivals, fairs and other like public displays or entertainment for which a permit has been issued by the city according to WCC 12-104, while operating under the conditions allowed by the permit.

(f) *Statement of intent.* No provision of this article shall be construed to limit or abridge the rights of any person to peacefully assemble and express opinions. It is the purpose of this article to protect individuals from unreasonable intrusions caused by excessive, unnecessary, unreasonable or unusually loud noises.

(Code 1993, § 11-217; Code 2008, § 11-209; Ord. No. 747, § 1)

11-210 Camping On Private Property

Overnight camping on private property within the city limits is prohibited without first obtained, in advance, the permission of the owner of the property. Overnight camping on private property is only permitted two nights per calendar week.

(Code 2008, § 11-210)

ARTICLE 3 FIREWORKS

11-301 Definition

11-302 Use Of Fireworks Prohibited

11-303 Penalty

11-301 Definition

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fireworks means and includes any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation, and shall include blank cartridges in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles or other fireworks of the like construction, and any fireworks containing any explosive substance.

(Code 1993, § 7-301; Code 2008, § 11-301; Ord. No. 268, § 1)

11-302 Use Of Fireworks Prohibited

It shall be unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, possess, or use or explode any fireworks in the city. This section shall not apply to a city sponsored display, or display for which a permit has been granted by the governing body.

(Code 1983, § 7-302; Code 2008, § 11-302; Ord. No. 598)

11-303 Penalty

Any person convicted of violating the provisions of this article shall be fined not more than \$500.00, or imprisoned not more than six months, or both.

(Code 1983, § 7-303; Code 2008, § 11-303; Ord. No. 598)

CHAPTER 12 PUBLIC PROPERTY

ARTICLE 1 PUBLIC USE REGULATIONS

ARTICLE 2 CITY PARKS

ARTICLE 3 COMMUNITY FORESTRY

ARTICLE 1 PUBLIC USE REGULATIONS

12-101 Definitions

12-102 Rules And Regulation

12-103 Exclusive Use; When

12-104 Concessions; Carnivals; Fairs

12-105 Hold City Harmless

12-106 (Reserved)

12-107 Misconduct

12-108 (Reserved)

12-109 (Reserved)

12-110 (Reserved)

12-111 Sanitation

12-112 Prohibition Against Alcoholic Beverages And Cereal Malt Beverages

12-113 Hunting

12-114 Fires

12-115 Preservation Of Natural State

12-101 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public grounds includes the city buildings, city parks, and any other public property open or available for general use by the public.

(Code 1983; Code 2008, § 12-101)

12-102 Rules And Regulation

The city governing body is authorized to adopt suitable rules and regulations governing the use of all public grounds of the city and the facilities thereon, as defined in WCC 12-101, which shall be open and available to the general public. Such rules and regulations shall fix the conditions under which said grounds and facilities may be used and the charges, where charges are authorized, to be paid to the city for such purposes.

(Code 1983; Code 2008, § 12-102)

12-103 Exclusive Use; When

The city may, in accordance with sound public policy, grant permission to any individual, society or organization for exclusive use of public grounds and facilities for temporary periods only. Such permission shall not be inconsistent with the use for which grounds or facilities were acquired and made available for public use by the city.

(Code 1983; Code 2008, § 12-103)

12-104 Concessions; Carnivals; Fairs

The city clerk may issue a permit for the use of public grounds of the city by persons; organizations or companies for concessions, carnivals, fairs and other like public displays or entertainment.

(Code 1983; Code 2008, § 12-104)

12-105 Hold City Harmless

No person, organization or company shall be granted a license for concessions, carnivals, fairs and other like public displays or entertainment until they first shall have agreed, in writing, to waive any claim against and shall indemnify and hold the city, the city governing body or its representatives harmless against the claims of any or all persons for injury to any person or damage to any property occasioned by or in connection with the use of the premises for which the license was issued. In addition, any licensee shall be required to provide proof of insurance that is satisfactory to the city.

(Code 1983; Code 2008, § 12-105)

12-106 (Reserved)

12-107 Misconduct

It shall be unlawful for any person to:

- (a) Cut, break, deface, injure or carry away any tree, shrub or bush growing on public property;
- (b) Injure, deface or destroy property of any kind in any park or playground;
- (c) Drive or ride any horse, bicycle or motorized vehicle except upon designated roadways in public parks or playgrounds;
- (d) To interfere in any manner with the water supply, water pipes, gas supply or gas pipes upon public property.

(Code 1983; Code 2008, § 12-107)

12-108 (Reserved)

12-109 (Reserved)

12-110 (Reserved)

12-111 Sanitation

All waste material, paper, trash, rubbish, tin cans, bottles, containers, garbage and refuse of any kind whatsoever shall be deposited in disposal containers provided for such purposes. No such waste or contaminating material shall be discarded otherwise. No sticks, stones, trash or other objects shall be thrown or discarded in or on any park lands, fountains, pools, drinking fountains, sanitary facilities, or other improvements.

(Code 2008, § 12-111)

12-112 Prohibition Against Alcoholic Beverages And Cereal Malt Beverages

It shall be unlawful for any person to use, consume or have on the premises of any park or other public grounds within the city any alcoholic liquor or cereal malt beverage, unless a permit is obtained from the city.

(Code 2008, § 12-112)

12-113 Hunting

It shall be unlawful for any person to pursue, catch, trap, maim, kill, shoot or take any wildlife, either bird or animal, in any manner at any time while in any public grounds. This subsection shall not apply to anyone authorized by the city to undertake such activities, including, but not limited to, the city's animal control officers.

(Code 2008, § 12-113)

12-114 Fires

It shall be unlawful for any person to build or kindle any fire on any public grounds except in the ovens, stoves, or grills provided for that purpose by the city, and such fire must be extinguished by the person or party starting such fire, immediately after use thereof.

(Code 2008, § 12-114)

12-115 Preservation Of Natural State

It shall be unlawful for any person, except duly authorized city employees, to take, injure, or disturb any live or dead tree, plant, shrub, or flower, or otherwise interfere with the natural state of public grounds.

(Code 2008, § 12-115)

ARTICLE 2 CITY PARKS

[12-201 City Laws Extended To Parks](#)

[12-202 Police Jurisdiction Over Parks](#)

[12-203 Damaging Park Property](#)

[12-204 Dangerous Weapons Not Allowed](#)

[12-205 General Regulations](#)

[12-206 City Park Rules](#)

12-201 City Laws Extended To Parks

The laws of the city shall extend to and cover all city parks.

(Code 2008, § 12-201)

12-202 Police Jurisdiction Over Parks

The city shall have police regulations governing any public parks belonging to the city and the chief of police and law enforcement officers of the city shall have full power to enforce city laws governing city parks and shall maintain order therein.

(Code 2008, § 12-202)

12-203 Damaging Park Property

It shall be unlawful for any person, except duly authorized city employees, to willfully or wantonly remove, injure, tarnish, deface or destroy any building, walk, bench, tree or improvement or property of any kind belonging to any park owned by the city.

(Code 2008, § 12-203)

12-204 Dangerous Weapons Not Allowed

- (a) Except as provided in subsection (b) of this section, it shall be unlawful for any person to shoot or discharge any firearm or dangerous weapon within the limits of any city parks.
- (b) The provisions of subsection (a) of this section shall not apply to duly authorized law enforcement officers in the performance of official duty.

(Code 2008, § 12-204)

12-205 General Regulations

The city may post such rules and regulations, as are approved by the governing body, pertaining to the use of the city parks in a conspicuous place in each city park.

Violations of these posted rules shall constitute a violation of this code.

(Code 2008, § 12-205)

12-206 City Park Rules

The governing body hereby establishes the following rules of conduct for users of all city parks:

- (1) No swimming or wading is permitted in the park fountain.
- (2) Alcoholic liquor or cereal malt beverages are allowed inside the park only upon proper application and permit by the governing body.
- (3) Tennis court time limits are:
 - a. Two-some: 45 minutes.
 - b. Four-some: 60 minutes.
- (4) All trash, bottles or debris must be placed in trash containers.
- (5) No excessive noise will be allowed, especially in the evening hours that may disturb neighboring residents.
- (6) No climbing of trees is allowed.
- (7) No bicycles, skateboards, roller blades or roller skates are allowed.
- (8) No sticks, stones, trash or other objects shall be thrown or discarded in or on any park lands, fountains, pools, drinking fountains, sanitary facilities, or other improvements.

(Code 1993, § 12-201; Code 2008, § 12-206; Ord. No. 557; Ord. No. 702; Ord. No. 766)

ARTICLE 3 COMMUNITY FORESTRY

12-301 Definitions

12-302 Creation

12-303 Duties And Responsibilities

12-304 Tree Species To Be Planted

12-305 Distances And Clearances For Planting

12-306 Public Tree Care

12-307 Clearance Over Streets And Walkways

12-308 Removal Of Stumps

12-309 Injuring Trees And Shrubs

12-301 Definitions

The following words, terms and phrases, when used in this article, shall have the

meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Community forest means all street and park trees as a total resource.

Park trees means trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

Public trees means trees on public grounds.

Street trees means trees, shrubs, bushes, and all other woody vegetation, on the public right-of-way, of all streets, alleys, avenues, boulevards, and other public rights-of-way within the city.

(Code 1993; Code 2008, § 12-301)

12-302 Creation

There is hereby created and established a community forestry program under the direction of the public works director.

(Code 1993; Code 2008, § 12-302)

12-303 Duties And Responsibilities

It shall be the responsibility of the public works director to develop and administer an annual urban forest program to include the care, replacement, maintenance, and removal or disposition of trees and shrubs in parks, along streets and in other public areas.

(Code 1993; Code 2008, § 12-303)

12-304 Tree Species To Be Planted

The city shall make available a list of recommended trees for planting in public areas. This list shall be available to residents of the city upon request to aid in the selection of trees for private properties. The list of recommended trees shall be updated periodically to reflect new developments or species that will affect the population of the community forest.

(Code 1993; Code 2008, § 12-304)

12-305 Distances And Clearances For Planting

- (a) No additional trees shall be planted in any public right-of-way. Trees shall not be planted closer than three feet from a sidewalk or seven feet from a street that

has no sidewalk, regardless of whether or not in the right-of-way.

- (b) No tree shall be planted closer than 35 feet from any street corner, measured from the point of the nearest intersection of curbs or curbings.
- (c) No tree shall be planted closer than ten feet from any fireplug.
- (d) Special permission must be obtained from the public works director or their designee when planting trees within 20 feet of any point on a line on the ground immediately below any overhead utility wire, or within five lateral feet of any ground water line, sewer line, transmission line, or other utility.

(Code 2008, § 12-305)

12-306 Public Tree Care

- (a) The city shall have the right to plant, prune, spray, maintain, and remove trees, plants, and shrubs within right-of-way or bounds of all streets, alleys, lanes, squares, and public grounds, as may be necessary to ensure the public safety or to preserve or enhance the beauty of such public grounds.
- (b) The public works director or their designee may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, waterlines, or other public improvements, or is seriously affected with any injurious insect or disease.
- (c) The abutting property owners shall have the right to perform normal tree care on all street trees in compliance with American National Standards Institute (ANSI) and other standards applicable thereto.

(Code 1993, § 12-307; Code 2008, § 12-306)

12-307 Clearance Over Streets And Walkways

Clearance over streets and walkways shall be the responsibility of the abutting property owner. A clearance of eight feet must be maintained over walkways and a clearance of 14 feet must be maintained over streets. Property owners are responsible for trees on their own property as well as trees on the public right-of-way that abuts their property. The city shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight, or interferes with visibility of any traffic control device or sign.

(Code 2008, § 12-307)

12-308 Removal Of Stumps

All stumps of street and public trees shall be removed below the surface of the ground

so that the top of the stump shall not project above the surface of the ground.

(Code 1993, § 12-313; Code 2008, § 12-308)

12-309 Injuring Trees And Shrubs

No person shall willfully break, cut, take away, destroy, injure, mutilate, or attempt to willfully break, cut, take away, destroy, injure or mutilate any tree, shrub, vine, flower or landscaping standing, growing, or being on any public ground, street, sidewalk, promenade or park in the city, unless that person is a city employee or tree care professional performing any of the tasks in WCC 12-306 on behalf of the city.

(Code 2008, § 12-309)

CHAPTER 13 PUBLIC RIGHTS-OF-WAY

- [13-101 General](#)
- [13-102 Definitions](#)
- [13-103 Purpose](#)
- [13-104 Policy](#)
- [13-105 Administration](#)
- [13-106 Requirements Of Service Provider](#)
- [13-107 Mapping Requirement Of Service Provider](#)
- [13-108 Service Provider's Right To Sell, Transfer, Lease, Assign, Sublet Or Dispose](#)
- [13-109 Use Of The Right-Of-Way](#)
- [13-110 Facility Relocation](#)
- [13-111 Protection Of The Public](#)
- [13-112 Right-Of-Way Vacation](#)
- [13-113 Abandoned And Unusable Facilities](#)
- [13-114 Permit Requirement](#)
- [13-115 Permit Applications](#)
- [13-116 Liability Insurance, Performance And Maintenance Bond Requirement](#)
- [13-117 Right-Of-Way Permit Fees And Costs](#)
- [13-118 Issuance Of Permit](#)
- [13-119 Permitted Work](#)
- [13-120 Right-Of-Way Repair And Restoration](#)
- [13-121 Cleated Or Flanged Wheels On Pavement Prohibited](#)
- [13-122 Damage Or Modification To Paving Or Curbs](#)
- [13-123 Storage On Right-Of Way](#)
- [13-124 Obstructing Streets](#)
- [13-125 State Highway Right-Of-Way](#)
- [13-126 Compliance With Law](#)
- [13-127 Remedies Not Exclusive](#)
- [13-128 Joint Applications](#)
- [13-129 Supplementary Applications](#)
- [13-130 Other Obligations](#)
- [13-131 Denial Of Permit](#)
- [13-132 Revocation Of Permit](#)
- [13-133 Work Requirements And Inspections](#)
- [13-134 Appeals Process](#)
- [13-135 Indemnification](#)
- [13-136 Force Majeure](#)
- [13-137 Federal, State And City Jurisdiction](#)
- [13-138 \(Reserved\)](#)
- [13-139 City's Failure To Enforce](#)
- [13-140 Penalties](#)
- [13-141 Reservation Of Rights](#)
- [13-142 Interpretation](#)

13-101 General

No person shall excavate, construct, or use the facilities within the right-of-way of the city except as provided herein.

(Code 2008, § 13-101)

13-102 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned facilities means those facilities owned by the ROW user that are not in use and will not be utilized by the owner in the future.

Affiliate means any person controlling, controlled by or under the common control of a service provider.

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

Applicant means any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.

Area of influence means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.

Base station means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. The term "base station" does not mean a tower or equipment associated with a tower and does not include any structure that, at the time the relevant application is filed with the authority, does not support or house wireless communication equipment or facilities.

City means the City of Westwood, Kansas, a municipal corporation and any duly authorized representative.

Collocation means the mounting or installation of communication facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for services.

Construct means and includes to construct, install, erect, build, affix or otherwise place

any fixed structure or object, in, on, under, through or above the right-of-way.

Day means calendar day unless otherwise specified.

Eligible facilities request means any request for modification of an existing tower or base station that does not substantially change 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.

Emergency means a condition that:

- (a) Poses a clear and immediate danger to life or health, or of a loss of property; or
- (b) Requires immediate repair or replacement in order to restore service to a user.

Excavate means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.

Excavation fee means the fee charged by the city for each street or pavement cut which is intended to recover the costs associated with construction and repair activity of the ROW user and its contractors and/or subcontractors.

Facility means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, wireless communication facilities, or other equipment.

FCC means Federal Communications Commission.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the state or of any other state of the United States and any agency or instrumentality of the state or of any other state of the United States or of the United States.

KCC means the Kansas Corporation Commission.

Pavement means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material, including, but not limited to, any material used or approved by the city in street resurfacing.

Permit and inspection fee means the fee charged by the city to recover its cost incurred for right-of-way management, including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits and, other costs the city may incur in managing the provisions of this chapter.

Permittee means any person to whom a right-of-way permit is issued to excavate a right-of-way.

Public improvement means any project undertaken by the city for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including, without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, streetlights, public facilities, parks, public easements, recreational facilities, irrigation system, public improvements, public buildings or public lands.

Public lands means any real property of the city or any interest therein that is not right-of-way.

Public works director means the public works director of the city or his or her authorized representative.

Registration means the application process of a service provider, the approval of the application by the city, and the authorization of the service provider to use any portion of the right-of-way within the city to provide service both within and beyond the city limits.

Repair means the temporary construction work necessary to make the right-of-way or any public improvement therein useable.

Repair and restoration costs means those costs associated with repairing and restoring the public right-of-way because of damage caused by the ROW user and its contractors and/or subcontractors in the right-of-way.

Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, that existed before the commencement of the work.

Right-of-way or *rights-of-way* (herein also *ROW*) means the area on, below or above public streets, alleys, bridges and parkways and the areas immediately adjacent thereto dedicated to public use or in which the city has acquired right-of-way interest in the real property (e.g., dedicated roadway area).

Right-of-way permit means the authorization to excavate for the construction, installation, repair, or maintenance of any type of facility within the right-of-way.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt automobile or pedestrian traffic.

ROW user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers. A ROW user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an agreement pursuant to the Interlocal Cooperation Act (K.S.A. 12-2901 et seq.) with the city regarding the use and occupancy of the city's right-of-way.

Service means a commodity provided to a person by means of a delivery system comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, open video systems, wireless services, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewers.

Service provider means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee, provided that the term "service provider" shall also include persons owning, possessing or having an interest in facilities in the right-of-way that are used by, may be used by or are intended for use by another person, in whole or in part, to provide a service for or without a fee, regardless of whether the actual facility owner provides any service as defined in this section.

Small cell facility means a wireless 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
- (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 USC 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment 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.

Stealth or *stealth technology* means using the least visually intrusive facility by minimizing adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding and generally in the relative area as the requested location a communications facility. This means ensuring that all antenna arrays, cables, and other accessory facilities used for the provision of wireless service or other service incapable of underground placement 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, measured horizontally, from the surface of the tower or structure and shall be painted or screened with materials that are a conforming or complementary color to the tower or structure. Cables shall be contained within the interior of the tower or structure. In light of the ongoing and anticipated development of new technologies likely to change the components of communication facilities of all sorts, the public works director may reasonably determine if communications facility or the components thereof are reasonably designed to meet the stealth guideline. All such determinations shall be made in a competitively neutral, non-discriminatory manner in light of the public health, safety and welfare.

Street means the pavement and sub-grade of a city residential, collector or arterial roadway, excluding curbs, gutters, and portions adjacent to the pavement and sub-grade of a roadway that lie in a right-of-way.

Substantial modification means a proposed modification to an existing wireless support structure or base station that will substantially change the physical dimensions of the wireless support structure or base station under the objective standard for substantial change, established by the FCC pursuant to 47 CFR 1.40001.

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 and the associated site.

Transmission equipment means equipment that facilitates transmission for a wireless service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber optic cable, and regular and backup power supply. The term "transmission equipment" 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.

Wireless support structure means a freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. The term "wireless support structure" shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

(Code 2008, § 13-102; Ord. No. 980, § 1, 6-8-2017)

13-103 Purpose

The purposes of this chapter include, but are not limited to, the following:

- (a) To recognize the city's primary role as chief steward of the right-of-way and its duty to its citizens to recover all or part of the costs of managing the right-of-way and incursions into it;
- (b) To clarify and regulate conditions of occupancy and construction for those ROW users occupying space within the city's right-of-way given the anticipated increased use of the right-of-way by various ROW users throughout this county;
- (c) To recognize the necessity for sound management practices in light of the increased use of the right-of-way and the fact that the right-of-way is a limited resource;
- (d) To treat each ROW user equitably and in a competitively neutral and nondiscriminatory manner with considerations that may be unique to the technologies and situation of each particular ROW user;
- (e) To minimize disruption, visual impact or inconvenience to the public, and to preserve and promote the public health, safety and welfare;
- (f) To balance the needs of all users of the city's rights-of-way, and to make sure that traditional users such as vehicular and pedestrian traffic may continue to operate safely, that the rights of those whose property adjoins or is part of the rights-of-way are respected, and to consider input from property owners adjoining the right-of-way affected by right-of-way users;
- (g) To balance the rights and interests of all who use or derive benefit from the rights-of-way, but not to create rights or privileges for any particular interest's group;
- (h) To comply with all laws, including state and federal legislation;
- (i) To identify the location of users and uses within the right-of-way to ensure that different users not interfere with each other, that construction does not damage uses, and that safe and proper construction techniques are employed in the right-of-way;
- (j) To avoid the problems the city has found whereby users in the right-of-way install facilities without notifying the city and using improper or dangerous construction methods, thereby rendering future construction unsafe or more difficult;
- (k) To recognize that the city is in an older part of the metropolitan area, with numerous uses in the right-of-way, warranting a need for mapping and allocation of the space in the right-of-way; and
- (l) To recognize that the rights of right-of-way users' and service providers' use of

the right-of-way shall in all matters be subordinate to the city's use of the right-of-way.

(Code 2008, § 13-103; Ord. No. 980, § 2, 6-8-2017)

13-104 Policy

- (a) It is the policy of the city to authorize any ROW user to utilize the right-of-way in a competitively neutral, non-discriminatory manner that maximizes the safe and efficient use of the right-of-way, conserves the right-of-way, minimizes the burden on the right-of-way, physically and aesthetically, promotes the public health, safety and welfare, and fully consider the input from adjoining property owners affected by the use of or placement of facilities or equipment in the right-of-way. Any use of the right-of-way by a ROW user shall be subject to the terms and conditions hereof, in addition to other applicable federal, state or local requirements. Registration hereunder does not relieve any person of any other obligation or duty to the city or that the city may from time to time lawfully impose.
- (b) The right granted to the ROW user to use the right-of-way is limited to the use that the ROW user has filed with the city in accordance with this article. These rights are for the exclusive use of the ROW user except where otherwise provided herein, or when authorized by the city.
- (c) This article also is designed to regulate occupancy and excavations in the right-of-way by providing, among other things, for the issuance of permits which grant the authority to utilize and occupy the right-of-way within the city.
- (d) All ROW users shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the city in the reasonable exercise of its police power and are subject to all applicable laws, orders, rules and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the ROW users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the city in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the right-of-way, all other lawful exercise of the city's police power.
- (e) The right of ROW users and service providers to use and occupy the right-of-way shall always be subject and subordinate to the city's reasonable public health, safety and welfare requirements and regulations. Nothing contained within this article is intended to abrogate or limit the city's reasonable exercise of such home rule powers.

(Code 2008, § 13-104; Ord. No. 980, § 3, 6-8-2017)

13-105 Administration

- (a) The public works director is the principal city official for administration of right-of-way permits for work and excavations made in the right-of-way. The public works director may delegate any or all of the duties hereunder.
- (b) The public works director is the principal city official responsible for administration of the registering of a service provider. The public works director may delegate any or all of the duties hereunder.
- (c) The city's public works director, or his or her designee, shall administratively develop infrastructure policies and practices to regulate and govern construction within and the use of the rights-of-way.

(Code 2008, § 13-105)

13-106 Requirements Of Service Provider

- (a) Any service provider must be registered with the city.
- (b) The service provider shall report any changes in its registration information within 30 days.
- (c) No service provider shall be authorized to utilize the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the city.
- (d) The information required for registration includes the following:
 - (1) Identity and legal status of service provider, including related affiliates.
 - (2) Name, address, telephone number, fax number and e-mail address of officer, agent or employee responsible for the accuracy of the registration statement.
 - (3) Name, address, telephone number, fax number and e-mail address of the local representative of the service provider who shall be available at all times to act on behalf of the service provider in the event of an emergency.
 - (4) Proof of any necessary permit, license, certification, grant, registration, franchise agreement, collocation agreement, or any other authorization required by any appropriate governmental entity, including, but not limited to, the city, the FCC or the KCC.
 - (5) Description of the service provider's intended use of the right-of-way.
 - (6) Information sufficient to determine whether the service provider is subject to franchising by state law.

- (7) Information sufficient to determine whether the service provider has applied for and received any certificate of authority required by the KCC.
 - (8) Information sufficient to determine that the service provider has applied for and received any permit or other approvals required by the FCC.
 - (9) Information sufficient to determine that the service provider has registered the location of any of its facilities with Kansas One Call or any other central registry, to the extent applicable.
 - (10) Such other information as may be reasonably required by the city to complete the registration statement.
- (e) Each service provider shall designate a local person familiar with the facilities who will act as a local agent for the service provider and will be responsible for satisfying information requirements of this chapter. The service provider shall present to the city the agent's name, address, telephone number, fax number and email address. The agent shall be the person to whom relocation notices and other such notices shall be sent, and with whom rests the responsibility to facilitate all necessary communications. The service provider shall be responsible for all costs incurred by the city due to the failure to provide such information to the city.
 - (f) Prior to construction, reconstruction, repair, maintenance, or relocation of facilities owned by the service provider in the right-of-way, the service provider shall first obtain the necessary right-of-way permit as provided hereafter.
 - (g) Prior to providing service to the city and its residents, the service provider shall first obtain the necessary franchise agreement, if any, from the city.
 - (h) The service provider shall participate in any joint planning, construction and advance notification of right-of-way work, including attending a pre-application meeting conference prior to submission of an application hereunder, unless waived by the public works director, and coordination and consolidation of street cut work as directed by the public works director. In addition, the service provider shall cooperate with other service providers and the city for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with the public health, safety or welfare, and to minimize traffic and other disruptions.
 - (i) The service provider shall furnish maps showing the location of facilities of the service provider within the city as provided hereafter.
 - (j) The city shall not exercise its authority under this provision unreasonably, to in any way deter competition, discriminate against any service provider, or violate any applicable state, federal law, rule or regulation.

(Code 2008, § 13-106; Ord. No. 980, § 4, 6-8-2017)

13-107 Mapping Requirement Of Service Provider

- (a) The service provider shall keep and maintain accurate records and as-built drawings depicting accurate location of all its facilities constructed, reconstructed or relocated in the right-of-way, and may be required to file the same with the city, provided that the service provider shall not be required to disclose any proprietary information, confidential or related business information to justify the need for additional or upgraded facilities in the course of the application process.
- (b) In any event, within ten days of a request by the city, the service provider will provide to the city information concerning such facilities as may be reasonably requested.
- (c) When available to the service provider, such information will be submitted electronically in an AutoCad® format to the extent compatible with the city's Geographical Information Systems (GIS) and Johnson County Automated Integrated Mapping Systems (AIMS); provided, however, that nothing herein shall be construed to require the service provider to acquire or modify any electronic mapping system.
- (d) Underground facilities shall be differentiated from overhead facilities.
- (e) Such mapping and identification shall be at the sole expense of the service provider.

(Code 2008, § 13-107; Ord. No. 980, § 5, 6-8-2017)

13-108 Service Provider's Right To Sell, Transfer, Lease, Assign, Sublet Or Dispose

Except as provided hereafter, the service provider shall not sell, transfer, lease, assign, sublet or dispose of its facilities, or any portion thereof, that is located in city right-of-way, or any right, title or interest in the same, or the transfer of any rights granted by the city to any person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, without notice to the city. This section shall not apply to the sale of property or equipment in the normal course of business or to the sale or lease of facilities to reseller service providers. No notice to the city shall be required for a transfer in trust, mortgage, or other similar instrument, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by or under common control with the service provider.

(Code 2008, § 13-108)

13-109 Use Of The Right-Of-Way

- (a) The ROW users use of the right-of-way shall in all matters be subordinate to the

city's use or occupation of the right-of-way. The city may reserve sufficient space within the right-of-way for future public improvements. Without limitation of its rights, the city expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the city to the fullest extent permitted by law.

- (b) The ROW user shall coordinate the placement of facilities in a manner that does not interfere with any public improvement and does not compromise the public health, safety or welfare, as reasonably determined by the city. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the city's manual of infrastructure standards available in the office of the public works director. Said standards shall be competitively neutral and neither unreasonable nor discriminatory.
- (c) The ROW user shall consider any request made by the city concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- (d) All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. All such work shall be subject to existing legal and regulatory restrictions, including, but not limited to, all zoning and traffic laws. In addition, the ROW user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the right-of-way or other public lands of the city or any private property.
- (e) All facilities of the ROW user shall be placed so as to minimize interference with the use of right-of-way and public lands or private property. The city, through its public works director, shall have the right to consult and review the location, design and nature of the facility prior to its being installed, and approve the same prior to installation.
- (f) Consistent with the 2008 amendment of this article, all facilities constructed, replaced, or relocated in the rights-of-way hereof shall be placed underground unless otherwise agreed to by the city. Where there are obstructions in the rights-of-way such as trees, shrubs, other utilities, commercial signs, human-made structures, or other like obstruction which makes the cost of such underground burial unreasonable, the ROW user or franchisee may request a waiver of this requirement, in which event the city will not unreasonably withhold consent to such waiver. Whenever reasonably possible, all newly constructed facilities or substantial modifications shall be located underground. The ROW user shall comply with all requirements of the city relating to underground facilities. This requirement may be waived by the public works director at his or her discretion for public health, safety or welfare concerns, or some other good cause under the condition that the exercise of such discretion does not cause

discrimination among ROW users. If this requirement is waived, the facilities shall be located as directed by the public works director, including, but not limited to, requirements regarding location and height. Above-ground facilities shall comply with the city's manual of infrastructure standards and all applicable zoning regulations, and be located in a manner that does not compromise the public health, safety or welfare; above-ground facilities shall utilize reasonable stealth design techniques for facilities incapable of underground placement as described herein, utilizing designs, structures, and finishes aesthetically and architecturally compatible with the environment, or in the instance of collocated facilities consistent with such pole, street light, or other facility upon which said facility is located or placed. No newly constructed above-ground facilities shall be located directly in front of any single-family home (or in front of where a single-family home could be constructed, in the case of a vacant lot), provided that if the public works director deems it necessary or appropriate, such facilities may be located in the front yard, at or along the property line between two adjacent properties. Underground placement of facilities shall comply with all existing city standards as well as the standards contained herein, unless waived in writing by the city in its sole discretion for safety concerns, or some other good cause under the condition that the exercise of such discretion does not cause discrimination among ROW users.

- (g) The ROW user shall not interfere with any private property rights or the facilities of the other ROW users without their permission. If and when the city requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time, except wireless transmission equipment as defined in 47 CFR 1.40001, provided that any such relocations shall be subject to the appeal process contained herein.
- (h) The public works director may assign specific corridors or spaces within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently or, pursuant to current technology, the public works director expects will someday be located within the right-of-way. All right-of-way permits issued by the public works director shall indicate the proper corridor for the ROW user's facilities. Any ROW user whose facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, unless this requirement is waived by public works director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public health, safety or welfare, user service needs, and hardship to the ROW user.
- (i) If, in the preparation and planning of a right-of-way project, the public works director deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the public works director shall contact all appropriate

ROW users for their input on the planning and design of such conduit. If a ROW user desires to construct, maintain or operate facilities along such right-of-way, the public works director may require the ROW user to use such conduit, and to contribute to the expense of such conduit, provided that the ROW user's use of the conduit is reasonable and appropriate under the circumstances.

- (j) All earth, materials, sidewalks, paving, crossings, utilities, other public improvements, or improvements on private property of any kind damaged or removed by the ROW user shall be fully repaired or replaced promptly by the ROW user at its sole expense and to the reasonable satisfaction of the city. Upon determination by the public works director that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within 24 hours of notice from the city, or the public works director may direct the city to make such repair or replacement and bill the ROW user for the city cost. The public works director has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW user to do any necessary additional work.
- (k) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW user's facilities in the right-of-way shall be in accordance with the Manual of Infrastructure Standards and all applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this chapter may be in addition to or stricter than such minimum standards. A ROW user shall not construct or reconstruct any of its facilities located upon, over, under, or within the city right-of-way without first having submitted in writing a description of its planned improvement to the public works director and having received a permit for such improvement. The public works director may require that any drawings, plans and/or specifications submitted be certified by a state registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.
- (l) The ROW user shall cooperate promptly and fully with the city and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the right-of-way, both underground and overhead, when requested by the city or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW user without any expense to the city, its employees, agents, or authorized contractors.
- (m) The city shall have the authority to prohibit the use or occupancy of any specific

portion of the right-of-way by a ROW user due to public health, safety, or welfare considerations.

- (n) ROW users shall contact all public safety agencies before beginning work to advise of any lane or road closures, or any other public safety or traffic issues.
- (o) The maximum height which may be approved for facilities, tower and related transmission equipment in the public right-of-way is 50 feet along an arterial; 40 feet along a collector; and 20 feet along a residential street.
- (p) ROW users shall comply with the provisions of traffic control plan consistent with the city's requirements, as described within the application for permit described herein, and subject to the approval of the city and amendments required thereby for the flow of traffic and the public health, safety or welfare.

(Code 2008, § 13-109; Ord. No. 980, § 6, 6-8-2017)

13-110 Facility Relocation

- (a) The ROW user shall promptly remove, relocate, or adjust any facilities located in the right-of-way as directed by the city for a public improvement or when reasonably required by the city by reason of public health, safety, or welfare. Such removal, relocation, or adjustment shall be performed by the ROW user at the ROW user's expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the city pertaining to such. The ROW user shall proceed with relocations at due diligence upon notice by the city to begin relocation.
- (b) The ROW user shall promptly remove, relocate, or adjust any facilities located in any private easement, as directed by the city, for a public improvement, at city expense, by moving such facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the city to avoid conflict with city construction and improvements, provided that wireless service providers or wireless infrastructure service providers shall be provided advance written notice of 180 days to comply with such relocation or adjustment, unless circumstances beyond the city's control require a shorter notice period. The ROW user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the city, in the future, elect to require the ROW user to again relocate its facilities to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the city.
- (c) As soon as working drawings are available for public improvements which will require the ROW user to relocate its facilities, the city shall provide the ROW user with written notice of relocations and the anticipated bid letting date of the improvement. The ROW user shall respond with any conflicts and a proposed construction schedule within 30 days.

- (d) Following notice by the city in the form of the delivery of final design plans for such public improvements, the ROW user shall remove and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW user. The ROW user shall certify to the city, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the city.
- (e) Any damages suffered by the city, its agents, or its contractors to the extent caused by ROW user's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the ROW user.
- (f) In the event the ROW user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.
- (g) It is the intent of this section for both the city and the ROW user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the city for a public improvement.
- (h) In the event that a ROW user is required to move its facilities for a private benefit, the ROW user shall not bear the cost of the relocation or adjustment to the extent of such private benefit and the ROW user shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.

(Code 2008, § 13-110; Ord. No. 980, § 7, 6-8-2017)

13-111 Protection Of The Public

- (a) It shall be the responsibility of the ROW user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- (b) The city shall not be liable for any damage to or loss of any of the ROW user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the city, except to the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the city.
- (c) The ROW user shall be responsible to the city and its agents, representatives, and authorized contractors for all damages suffered by them, including, but not limited to, delay damages, repair costs, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW user to timely perform any of its obligations under this article to the extent caused by the acts or omissions of the ROW user.
- (d) The city or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing

its public improvements.

- (e) Any ROW user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction, and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- (f) Whenever a ROW user shall excavate the full width of any street, sidewalk, alley, driveway approach, or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.
- (g) Any excavation left open overnight on any arterial or collector type street shall be securely covered. The ROW user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- (h) The public works director, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW user to trim trees upon and overhanging the right-of-way so as to prevent the branches of such trees from coming in contact with the facilities of the ROW user.
- (i) In the event the ROW user severely disturbs or damages the root structure in the right-of-way to the detriment of the health and safety of any tree, the ROW user will be required to remove and replace the tree at the ROW user's cost. Further, in review of the ROW user's plan, public works director, in his or her discretion, may require the ROW user to directionally bore around any tree in the right-of-way.
- (j) Upon the appropriate request of any person having satisfied city procedure and ordinances, the ROW user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW user may require such payment in advance. The ROW user must be given not less than 15 days' written notice from the person detailing the time and location of the moving operations, and not less than 24-hours' advance notice from the person advising of the actual operation. To the extent applicable, the ROW user shall also comply with any requirements of this Code, including, but not limited to, any relevant building codes.
- (k) The public works director may cause to be removed any encroachment in the right-of-way that creates a hazard to public health, safety, or welfare, and the

cost of such removal and restoration of the right-of-way shall be borne by the ROW user.

(Code 2008, § 13-111; Ord. No. 980, § 8, 6-8-2017)

13-112 Right-Of-Way Vacation

- (a) If the city vacates a right-of-way which contains the facilities of the service provider, and if the vacation does not require the relocation of the service provider's facilities, the city may reserve, to and for itself and all service providers having facilities in the vacated right-of-way, an easement for the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.
- (b) If the vacation requires the relocation of facilities, then:
 - (1) If the vacation proceedings are initiated by the service provider, the service provider must pay the relocation costs;
 - (2) If the vacation proceedings are initiated by the city, the service provider must pay the relocation costs unless otherwise agreed to by the city and the service provider; or
 - (3) If the vacation proceedings are initiated by a person other than the service provider or the city, such other person must pay the relocation costs.

(Code 2008, § 13-112)

13-113 Abandoned And Unusable Facilities

- (a) A ROW user owning abandoned facilities in the right-of-way must provide and send to the city the location and nature of any abandoned facilities and either:
 - (1) Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The public works director may allow underground facilities or portions thereof to remain in place if the public works director determines that it is in the best interest of public health, safety, or welfare to do so. At such time, the city may take ownership and responsibility of such vacated facilities left in place;
 - (2) Provide information satisfactory to the city that the ROW user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW user; or
 - (3) Submit to the city a proposal and instruments for transferring ownership of its facilities to the city. If the ROW user proceeds under this section,

the city may, at its option purchase the equipment, require the ROW user, at its own expense, to remove it, or require the ROW user to post a bond in an amount sufficient to reimburse the city for reasonable anticipated costs to be incurred to remove the facilities.

- (b) Facilities of a ROW user who fails to comply with this section, and whose facilities remain unused for two years, shall be deemed to be abandoned after the city has made a good faith effort to contact the ROW user, unless the city receives confirmation that the ROW user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to:

- (1) Abating the nuisance;
 - (2) Taking possession and ownership of the facility and restoring it to a useable function; or
 - (3) Requiring the removal of the facility by the ROW user.

(Code 2008, § 13-113; Ord. No. 980, § 9, 6-8-2017)

13-114 Permit Requirement

- (a) Except as otherwise provided, no ROW user may excavate any right-of-way or conduct any repair, construction, or reconstruction of facilities located within the right-of-way without first having obtained the appropriate right-of-way permit.
- (b) There are two exemptions to this provision:
 - (1) Contractors working on the maintenance, construction, or reconstruction of public improvements.
 - (2) ROW users performing routine service operations which do not require excavation in the right-of-way and do not disrupt traffic for more than four hours, except that such activities or operations on Rainbow Boulevard, Shawnee Mission Parkway, Mission Road, W. 47th Street, or State Line Road shall not be exempt under this provision.
- (c) No person owning or occupying any land abutting on a public right-of-way shall construct, maintain, or permit in or on the portion of the public right-of-way to which such land is adjacent, any fixed structure, material, or object without having obtained the appropriate right-of-way permit.
- (d) A right-of-way permit is ordinarily required for emergency situations. If due to an emergency it is necessary for the ROW user to immediately perform work in the right-of-way, and it is impractical for the ROW user to first get the appropriate permit, the work may be performed, and the required permit shall be obtained as soon as possible during the next city working day.

- (e) No permittee may excavate the right-of-way beyond the date specified in the right-of-way permit unless the permittee:
 - (1) Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and
 - (2) A new right-of-way permit or permit extension is granted.
- (f) Right-of-way permits issued shall be conspicuously displayed by the permittee at all times at the indicated work site and shall be available for inspection by the public works director, other city employees, and the public.
- (g) Prior to the commencement of excavation, the permittee shall identify and locate any buried facilities to be spray painted according to the Uniform Color Code required by Kansas One Call.
- (h) All excavations by the permittee shall have a metal marker inserted into the excavation of the restored pavement, which shall identify the ROW user.
- (i) Before receiving a right-of-way permit, the applicant must show proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the city, the FCC, or the KCC.
- (j) Any ROW user who is found to be working in the public right-of-way without a permit will be directed to stop work until a permit is acquired and properly posted at the work site. The only exception allowed is for emergency repair work as described in this article.
- (k) Any permittee found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the current edition of the city's manual of infrastructure standards.

(Code 2008, § 13-114; Ord. No. 980, § 10, 6-8-2017)

13-115 Permit Applications

- (a) Application for a right-of-way permit shall be submitted to the public works director by either the ROW user or by the person who will do the work and/or excavation in the right-of-way. Before an application may be submitted, the applicant must attend a pre-application conference, unless waived by the public works director.
- (b) Right-of-way applications shall contain and be considered complete only upon receipt of the following:
 - (1) Compliance with verification of registration;

- (2) Submission of a completed permit application form, including a descriptive statement of the proposed facility, all required permit attachments, and scaled drawings, including elevation drawings, showing the location and area of the proposed project and the location of all existing and proposed facilities at such location noting specific colors and materials used and proposed;
- (3) Certificate of liability insurance as required herein;
- (4) Performance and maintenance bond;
- (5) A traffic control plan to be used during construction and during any anticipated future access for maintenance or other work on the facility, consistent with the city's requirements, if excavating, cutting, impeding, or working on a paved surface for vehicular or pedestrian traffic, parking vehicles or equipment or storing materials on a paved surface for vehicular or pedestrian traffic, or when required by the latest edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices;
- (6) Payment of all money due to the city for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the city because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the city, unless the payment of such money is in dispute and timely appealed as provided hereafter;
- (7) For the placement of new communication facilities, including small cell facilities on an existing tower, utility pole or street light, collocation of communication facilities, including small cell facilities, or placement of a new tower or utility pole for the use of communication facilities in the right-of-way: completion of a structural analysis from a licensed professional engineer which describes the facility, tower, utility pole, or street light's structural capacity, including that said facility can safely accommodate all antennas, transmission equipment, and accessory equipment. Said analysis shall be submitted with the application and shall be stamped by a state registered professional engineer. Said report and analysis shall also reflect that the facility or pole is capable of withstanding standard wind loads for applications of the type requested, in compliance with all city codes, nationally recognized street and highway safety codes, and the city's manual of infrastructure standards;
- (8) For above-ground facilities, digital photo simulations of the site providing "before and after" views demonstrating the true visual impact of the proposed facility;
- (9) An engineer's certification that any proposed communication facility on the site complies with all FCC standards regarding provisions and regulations for radio frequency emissions or exposure and anticipated

levels of electromagnetic radiation to be generated by the facility, provided that nothing within this article requires or is intended to hold service providers or ROW users or to exceed the requirements issued or promulgated by the FCC;

- (10) Applicants for communication facilities in the right-of-way shall submit an affidavit affirming that the applicant has provided notice by first class mail, postage prepaid, to the owners of record of all property within 200 feet of the proposed location (hereby considered to be adjoining property). The notice shall provide:
 - a. A description of the proposed facility;
 - b. The location of the proposed facility;
 - c. A plan sheet displaying proposed location and showing the facility improvements;
 - d. The applicant's contact information; and
 - e. A statement that the owner shall have 20 days from the date of the notice to provide the city with input regarding the application;
- (11) Applicants for use, construction, excavation, modification, or conducting repairs in or on the state highway right-of-way also within the city's right-of-way shall first obtain a permit from the state department of transportation prior to submission of an application for permit to use the right-of-way to the city and shall include a copy of such permit with the submission of the application;
- (12) Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the city, the FCC or the KCC;
- (13) For the use of city-owned facilities within the right-of-way, including, but not limited to, poles and streetlights, a copy of the executed agreement with the city and/or special use permit for the use of, attachment to, or collocation in, on or within said pole or streetlight;
- (14) For the use of, attachment to, or collocation in, on or within facilities, poles, towers, or other equipment or devices within the right-of-way owned or operated by other governmental entity, corporate entity, person, public or privately held utility, or other service provider, a copy of the executed agreement with said governmental entity, corporate entity, person, public or privately held utility, or other service provider for the use of, attachment to, or collocation in, on or within such facility, pole, tower, or other equipment or device;
- (15) Information sufficient to determine whether the permittee, ROW user,

service provider, or service is subject to the payment of franchise fees and/or execution of a franchise agreement; and

- (16) Any other requirement that the public works director deems reasonable to protect the health, safety, and welfare of the public.
- (c) All applications for use of the right-of-way by communication systems, wireless support networks, or wireless service providers shall be processed within the timeframes required by state and federal law.
- (1) Applications for a new wireless support structure as defined by state and federal law shall be processed within 150 days of submission of a complete application, including all required submissions.
 - (2) Applications for a substantial modification to an existing wireless support structure or base station or any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by state and federal law shall be processed within 90 days of submission of a complete application including all required submissions.
 - (3) Applications for a small cell network, small cell facility, or eligible facility request as defined by state and federal law shall be processed within 60 days of submission of a complete application including all required submissions.
 - (4) The city shall, within 30 days of receipt of an application for use of the right-of-way by communication systems, wireless support networks, or wireless service providers, including, but not limited to, the use, construction, modification, or installation of small cell facilities, review the application for completeness. An application will be deemed complete if it includes the applicable permit review fees and contains all of the applicable submittal requirements set forth herein, unless waived by the public works director. The determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the determination of completeness or subsequently if new or additional information is required, substantial changes in the proposed use, construction, modification, or installation of wireless support systems or facilities occurs, or the proposed installation or modification is modified by the applicant, as determined by the city, or as required for protection of the public health, safety, or welfare.
 - (5) If the application is incomplete, the city shall notify the applicant within 30 days of receipt of the application that the application is incomplete, identify any and all missing information or documents, and specify the ordinance, article, code provision, or infrastructure standard that requires submission of the document or information.

- (6) The application review period begins to run when the complete application is submitted and shall be tolled if the city determines that the application is incomplete and provides notice as set forth herein. The timeframe for review begins running again when the city receives the applicant's supplemental submission in response to the city's notice of incompleteness. Following a supplemental submission, the city shall have ten days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information and shall be tolled in the case of second or subsequent notices. Except as may be otherwise agreed to by the applicant and the city, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (7) The application review period may also be tolled by mutual agreement of the city and the applicant.
- (d) An application for a small cell network involving no greater than 25 individual small cell facilities of a substantially similar design within the city shall be permitted, upon written request set forth within or prior to the submission of an application for a right-of-way permit, to file a consolidated application and receive a single permit for the use of the right-of-way for the installation, construction, maintenance and repair of a small cell network in lieu of filing separate applications for each small cell facility, provided that the city may require a separate application for any small cell facilities that are not of a substantially similar design. Nothing within this subsection is intended to exempt the applicant from compliance with the remaining provisions of subsection (b) of this section or the other requirements of this chapter.
- (e) If an applicant has submitted an application for a permit for the installation, construction, maintenance, or repair of multiple facilities, that applicant may not submit another application for a permit for the installation, construction, maintenance, or repair of multiple facilities until the first application has been approved or denied. The public works director may waive this provision.
- (f) In the event the applicant modifies the proposed facilities installation or modification description in the initial application after the initial submittal of the application, or as a result of any subsequent submittals, the application as modified will be considered a new application subject to commencement of a new application review period, provided that applicant and the city may, in the alternative, enter into a mutually agreeable tolling agreement allowing the city to request additional submittals and additional time that may be reasonably necessary for review of the modified application.

(Code 2008, § 13-115; Ord. No. 980, § 11, 6-8-2017)

13-116 Liability Insurance, Performance And Maintenance Bond Requirement

- (a) The permittee shall file with the city evidence of liability insurance with an insurance company licensed to do business in the state. The amount will be not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. The insurance will protect the city from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent or wrongful acts or omissions of the permittee. The permittee shall also have coverage for automobile liability in an amount of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in aggregate. The city shall be an additional insured on all policies of permittee, to the extent permitted by law, unless waived in writing by the city. If the permittee is self-insured, it shall provide the city proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts, and shall agree to indemnify and hold the city harmless for any losses associated with permittee's activities in the right-of-way. All contractors actually performing work for any permittee hereunder shall be subject to the same insurance requirements set forth herein.
- (b) The permittee shall at all times during the term of the permit, and for two years thereafter, maintain a performance and maintenance bond in a form approved by the city attorney. The amount of the bond will be \$5,000.00 or the value of the restoration, whichever is greater, for a term consistent with the term of the permit plus two additional years, conditioned upon the permittee's faithful performance of the provisions, terms and conditions conferred by this article. An annual bond in an amount of \$50,000.00 automatically renewed yearly during this period shall satisfy the requirements of this section. In the event the city shall exercise its right to revoke the permit as granted herein, then the city shall be entitled to recover under the terms of the bond the full amount of any loss occasioned.
- (c) A copy of the liability insurance certificate and performance and maintenance bond must be on file with the city clerk.
- (d) No performance and maintenance bond will be required of any governmental entity. For residential property owners requiring work in the right-of-way adjacent to their property, no performance or maintenance bond shall be required, but any contractor or other person doing work on such owner's behalf shall have not less than \$100,000.00 general liability insurance coverage and not less than \$100,000.00 automobile liability insurance, with both such policies having the city as an additional insured.

(Code 2008, § 13-116)

13-117 Right-Of-Way Permit Fees And Costs

- (a) The right-of-way permit fee shall be recommended by the public works director, approved by the governing body and listed in the master fee schedule maintained in the city clerk's office. An application shall not be deemed submitted unless the permit fee is paid. The permit fee shall be subject to all state and federal fee limitations.
- (b) The right-of-way permit fee may include a permit and inspection fee, and an excavation fee.
- (c) Fees paid for a right-of-way permit, which is subsequently revoked by the public works director, are not refundable.
- (d) Except as provided for in an emergency situation, when a ROW user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the permit will be double the amount had the ROW user obtained a permit prior to beginning work.
- (e) The city may also charge and collect any necessary replacement, repair, and restoration costs.
- (f) The city may also charge and collect the cost to the city of any consultants, experts, engineers, or other professionals engaged by the city to assist in connection with any right-of-way permit, provided that the city may not include travel expenses incurred in the review of an application for more than one trip to the city per application, any travel expenses charged to the applicant shall be reasonable and directly related to the application, and consulting fees shall not be established on a contingency-based or results-based arrangement.

(Code 2008, § 13-117; Ord. No. 980, § 12, 6-8-2017)

13-118 Issuance Of Permit

- (a) If the public works director determines that the applicant has satisfied the requirements of this article, the public works director shall issue a right-of-way permit.
- (b) The public works director may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the permittee in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.
- (c) When a right-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bond for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance and maintenance bond for the additional facilities may be required.
- (d) Issued permits are not transferable.

- (e) If work is being done for the ROW user by another person, a subcontractor or otherwise, the person doing the work and the ROW user shall be liable and responsible for all damages, obligations, and warranties herein described.

(Code 2008, § 13-118)

13-119 Permitted Work

- (a) The permittee shall not make any cut, excavation or grading of right-of-way other than excavations necessary for emergency repairs without first securing a right-of-way permit.
- (b) The permittee shall not at any one time open or encumber more of the right-of-way than shall be reasonably necessary to enable the permittee to complete the project in the most expeditious manner.
- (c) The permittee shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavations to those excavations that are necessary for efficient operation.
- (d) The permittee shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.
- (e) The permittee shall notify the city no less than three working days in advance of any construction, reconstruction, repair, location or relocation of facilities which would require any street closure or which reduces traffic flow to less than two lanes of moving traffic for more than four hours. Except in the event of an emergency as reasonably determined by the permittee, no such closure shall take place without notice and prior authorization from the city.
- (f) Non-emergency work on arterial and collector streets may not be accomplished during the hours of 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m., in order to minimize disruption of traffic flow, except upon the express written approval of the city.
- (g) All work performed in the right-of-way or which in any way affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the permittee's expense. Such signage shall be in conformance with the latest edition of the city's Manual of Infrastructure Standards, unless otherwise agreed to by the city.
- (h) The permittee shall identify and locate any underground facilities in conformance with the Kansas Underground Utility Damage Prevention Act Kansas One Call system, and notice shall be provided directly to Water District No. 1, to Kansas City Power and Light (KCPL), county wastewater, and to the public works department with respect to any municipal traffic signal and street light systems, as appropriate.
- (i) The permittee shall be liable for any damages to underground facilities due to

excavation work prior to obtaining location of such facilities, or for any damage to underground facilities that have been properly identified prior to excavation. The permittee shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed underground facilities without the approval of the owner of the facilities.

- (j) Whenever there is an excavation by the permittee, the permittee shall be responsible for providing adequate traffic control to the surrounding area as determined by public works director. The permittee shall perform work on the right-of-way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood. In the event the excavation is not completed in a reasonable period of time, the permittee may be liable for any damages to the city for delay caused by the permittee pursuant to this article, in addition to any other remedies or penalties provided herein or as provided by law or at equity.
- (k) All facilities and other appurtenances laid, constructed, and maintained by the permittee shall be laid, constructed, and maintained in accordance with acceptable engineering practice and in full accordance with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable state statutes, as well as the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties.
- (l) Following completion of permitted work for new construction, the permittee shall keep, maintain and provide to the city accurate records and as-built drawings, drawn to scale and certified to the city as accurately depicting the location of all utility facilities constructed pursuant to the permit. When available to the permittee, maps and drawings provided will be submitted in AUTOCAD.DXF or AUTOCAD.DWG automated formats if available, or in hard copy otherwise. The public works director may waive this requirement. Such information shall be subject in all respects and shall have the benefit of protection as set forth in the section WCC 13-107.
- (m) The city may use the as-built records of the service provider's facilities in connection with public improvements.

(Code 2008, § 13-119; Ord. No. 980, § 13, 6-8-2017)

13-120 Right-Of-Way Repair And Restoration

- (a) The work to be done under the right-of-way permit and the repair and restoration of the right-of-way as required herein must be completed within the dates as specified in the permit. However, in the event of circumstances beyond the control of the permittee or when work was prohibited by unseasonable or unreasonable conditions, the public works director may extend the date for completion of the project upon receipt of a supplementary application for a

permit extension.

- (b) All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the permittee shall be fully repaired or replaced promptly by the permittee at its sole expense and the reasonable satisfaction of the city. The public works director has the authority to inspect the repair or replacement of the damage, and if necessary, to require the permittee to do the additional necessary work in order to restore or repair the right-of-way as closely as possible to its original state. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee and a reasonable time not to exceed 15 days will be provided to allow for the deficiencies to be corrected.
- (c) After any excavation, the permittee shall, at its expense, restore all portions of the right-of-way to the same condition or better condition than it was prior to the excavation thereof.
- (d) If the permittee fails to restore the right-of-way in the manner and to the condition required by the public works director, or fails to satisfactorily and timely complete all restoration the city may, at its option, serve written notice upon the permittee and its surety that, unless within five days after serving of such notice, a satisfactory arrangement can be made for the proper restoration of the right-of-way, the city shall immediately serve notice of failure to comply upon the surety and the permittee, and the surety shall have the right to take over and complete the work, provided that if the surety does not commence performance thereof within ten days from the date of notice, the city may take over the work and prosecute same to completion, by contract or otherwise, at the expense of the permittee, and the permittee and its surety shall be liable to the city for any and all excess cost assumed by the city by reason of such prosecution and completion.
- (e) The permittee responsible for the excavation who leaves any debris in the right-of-way shall be responsible for providing safety protection in accordance with the latest edition of the city's manual of infrastructure standards and any applicable federal or state requirement.
- (f) If an excavation cannot be back-filled immediately and is left unattended, the permittee shall securely and adequately cover the unfilled excavation. The permittee has sole responsibility for maintaining proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.
- (g) In restoring the right-of-way, the permittee guarantees its work and shall maintain it for 24 months following its completion or for the length of the contract entered into or any special use permit issued for a greater period, whichever is greater. During the 24 months, or for the duration of the contract period or the duration of the special use permit referenced above, if longer, the permittee shall, upon notification from the public works director, correct all restoration work

to the extent necessary, using any method as required by the public works director. The work shall be completed within a reasonable time, not to exceed 30 calendar days, of the receipt of notice from the public works (not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable), unless a greater period is required by applicable state or federal law or regulation. In the event the permittee is required to perform new restoration pursuant to the foregoing guarantee, the public works director shall have the authority to extend the guarantee period for such new restoration for up to an additional 24 months from the date of the new restoration, if the public works director determines any overt action by the permittee not to comply with the conditions of the right-of-way permit and any restoration requirements. All determinations and requirements issued by the public works director pursuant to this subsection specifically and this article generally shall be competitively neutral, reasonable and nondiscriminatory.

- (h) The 24-month guarantee or, if applicable greater, period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.
- (i) Payment of an excavation fee shall not relieve the permittee of the obligation to complete the necessary right-of-way restoration.

(Code 2008, § 13-120; Ord. No. 980, § 14, 6-8-2017)

13-121 Cleated Or Flanged Wheels On Pavement Prohibited

It shall be unlawful for any person to drive or operate any vehicle equipped with cleated or flanged wheels upon any of the paved streets or alleys of the city in such a manner as to cause injury or damage to such paved street or alley.

(Code 2008, § 13-121)

13-122 Damage Or Modification To Paving Or Curbs

It shall be unlawful for any person to break, damage, or injure any paving or curb on any right-of-way of the city. It shall further be unlawful to modify or alter any paving, curb, or gutter.

(Code 2008, § 13-122)

13-123 Storage On Right-Of Way

It shall be unlawful for any person to place, leave, or store, or cause to be placed, left, or stored, any implements, dead or disabled automobiles or vehicles, tools, boxes, merchandise, goods, trash, cans, crates, junk, or other property upon any right-of-way except for the purpose of loading or unloading the same.

(Code 2008, § 13-123)

13-124 Obstructing Streets

It shall be unlawful for any person to deposit or cause to be deposited any garbage, trash, or other refuse, including grass, leaves, ice, snow, dirt, or any other foreign substances, onto any streets or gutters of the city, when such deposits obstruct or, in any way, interfere with the free flow of traffic or running water upon streets.

(Code 2008, § 13-124)

13-125 State Highway Right-Of-Way

Any persons making any excavations or modifications or repairs in or on the state highway right-of-way shall first obtain a permit from the state department of transportation prior to submission of an application for permit to use the right-of-way to the city. However, public utilities may make any such excavations or modifications or repairs in the event of an emergency which would prohibit compliance with this article or other legal requirement, but any such public utility must notify the police department before commencing any such cut or excavation, and further must comply with all other requirements contained in the article and all other legal requirements within 72 hours of making any such emergency excavations, modifications, or repairs.

(Code 2008, § 13-125; Ord. No. 980, § 15, 6-8-2017)

13-126 Compliance With Law

All work shall be performed in compliance with all state, federal, and local requirements, including, but not limited to, the Americans with Disabilities Act as amended.

(Code 2008, § 13-126)

13-127 Remedies Not Exclusive

Nothing herein shall limit the city in its exercise of any and all rights it has or may have, at law or at equity, including, but not limited to, any right to seek compensation for damages to any right-of-way that may exceed the amount of any deposit or bond held by or for the benefit of the city.

(Code 2008, § 13-127)

13-128 Joint Applications

- (a) Applicants may apply jointly for permits to excavate the right-of-way at the same time and place and are encouraged to jointly apply for collocation and implementation of small cell facilities or small cell networks utilizing existing

facilities used, owned, leased, or operated by other permittees.

- (b) Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay.
- (c) Joint applicants shall be jointly and severally liable for any and all obligations and duties described in this Code.

(Code 2008, § 13-128; Ord. No. 980, § 16, 6-8-2017)

13-129 Supplementary Applications

- (a) A right-of-way permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that which is specified in the permit must be excavated must do the following prior to the commencement of work in that greater area:
 - (1) Make application for a permit extension and pay any additional fees required thereby; and
 - (2) Receive a new right-of-way permit or permit extension.
- (b) A right-of-way permit shall be valid only for the dates specified in the permit. No permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the city prior to the permit end date.

(Code 2008, § 13-129)

13-130 Other Obligations

- (a) Obtaining a right-of-way permit under this chapter shall not relieve the permittee of its duty to obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the city, the FCC or the KCC, and to pay any fees required by any other city, county, state, or federal rules, laws, or regulations. A permittee shall perform all work in full accordance with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the state, and the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties. A permittee shall perform all work in conformance

with all applicable codes and established rules and regulations and shall be responsible for all work done in the right-of-way pursuant to its permit, regardless of by whom the work is done.

- (b) Except in cases of an emergency or with approval of the public works director, no right-of-way work may be done when conditions are unreasonable for such work.
- (c) A permittee shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with when the project is complete.

(Code 2008, § 13-130)

13-131 Denial Of Permit

- (a) The public works director may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The public works director, at his or her discretion, may consider all relevant factors, including, but not limited to:
 - (1) The extent to which the right-of-way space where the permit is sought is available;
 - (2) The competing demands for the particular space in the right-of-way;
 - (3) The availability of other portions of the right-of-way or in other right-of-way for the facilities of the applicant;
 - (4) The applicability of any ordinance or other regulations, including city zoning regulations, that affect location of or other standards for facilities in the right-of-way;
 - (5) The degree of compliance of the applicant with the terms and conditions of its franchise, this article, and other applicable ordinances and regulations;
 - (6) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
 - (7) The balancing of costs of disruption to the public and damage to the right-of-way against the benefits to that part of the public served by the construction in the right-of-way;
 - (8) Whether the applicant maintains a current registration with the city;
 - (9) Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interfere with an

exhibition, celebration, festival, or any other event. In exercising this discretion, the public works director shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way;

- (10) Whether the application complies with the city's manual of infrastructure standards;
 - (11) The adverse impact of the facilities or the facilities' proposed location on any reasonable public interest and in light of public health, safety or welfare.
- (b) Notwithstanding the above provisions, the public works director may in his or her discretion issue a right-of-way permit in any case where the permit is necessary to:
- (1) Prevent substantial economic hardship to a user of the applicant's service;
 - (2) Allow such user to materially improve the service provided by the applicant.
- (c) The public works director shall not issue a right-of-way permit for encroachments in the right-of-way for private purposes that create a safety hazard, would be deemed a nuisance, or endanger the public health, safety, or welfare.
- (d) Denial of a right-of-way permit for wireless communications antenna, tower, small cell network or facility, wireless facility, or related facilities or equipment shall, in accordance with federal and state law, be made in writing and supported by substantial evidence contained in a written record issued contemporaneously with the determination.

(Code 2008, § 13-131; Ord. No. 980, § 17, 6-8-2017)

13-132 Revocation Of Permit

- (a) Permittees hold right-of-way permits issued pursuant to this chapter as a privilege and not as a right. The city reserves its right, as provided herein, to revoke any right-of-way permit, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the right-of-way permit. A substantial breach shall include, but not be limited to, the following:
- (1) The violation of any material provision of the right-of-way permit;
 - (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
 - (3) Any material misrepresentation of any fact in the permit application or

- any activity conducted pursuant to said permit;
- (4) The failure to maintain the required bond or insurance;
 - (5) The failure to complete the work in a timely manner;
 - (6) The failure to correct a condition indicated on an order issued pursuant to this chapter;
 - (7) Repeated traffic control violations; or
 - (8) Failure to repair facilities or property damaged in the right-of-way or on any public or private property.
- (b) If the public works director determines that the permittee has committed a substantial breach of any law or condition placed on the right-of-way permit, the public works director shall make a written demand upon the permittee to remedy such violation. The demand shall state that the continued violation may be cause for revocation of the permit, or legal action if applicable. Further, a substantial breach, as stated in subsection (a) of this section, will allow the public works director, at his or her discretion, to place additional or revised conditions on the right-of-way permit, specifically related to the manner in which the breach is cured by the permittee. Within five calendar days of receiving notification of the breach, permittee shall contact the public works director with a plan, acceptable to the public works director, for correction of the breach. Permittee's failure to contact the public works director, permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit.
- (c) If a right-of-way permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Code 2008, § 13-132)

13-133 Work Requirements And Inspections

- (a) Any excavation, back filling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with the city's infrastructure policies and practices as promulgated by the public works director.
- (b) The permittee shall employ a testing laboratory as approved by the public works director, which shall certify the proper backfilling on any street cut. The permittee shall pay all costs associated with such testing. This provision may be waived with the permission of the public works director.
- (c) The permittee shall notify the office of the public works director upon completion

of the authorized work permit.

- (d) The permittee will notify the public works director to schedule an inspection at the start of backfilling. Upon completion of all right-of-way restoration activities, the permittee will schedule a closeout inspection.
- (e) When any corrective actions required have been completed and inspected to the public works director's satisfaction, the two-year maintenance period will begin.
- (f) In addition to the required scheduled inspections, the public works director may choose to inspect the ongoing permitted work in the right-of-way at any time to ensure that all requirements of the approved permit are being met by the permittee.
- (g) At the time of any inspection, the public works director may order the immediate cessation of any work which poses a threat to the life, health, safety, or well-being of the public. The public works director may issue a citation to the permittee for any work which does not conform to the applicable standards, conditions, code or terms of the permit. The citation shall state that failure to correct the violation will be cause for revocation of the permit.

(Code 2008, § 13-133)

13-134 Appeals Process

- (a) Whenever a person shall deem themselves aggrieved by any decision or action taken by the public works director, the person may file an appeal to the governing body within ten calendar days of the date of notice of such decision or action, provided that this section shall not apply to any person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019(h)(6).
- (b) The persons shall be afforded a hearing on the matter before the governing body within 30 days of filing the appeal, unless the parties agree to an extension of time.
- (c) In cases of applicability or interpretation of the rules, the governing body may revoke such decision or action taken by the public works director.
- (d) In cases where compliance with such decision or action taken by the public works director would cause undue hardship, the governing body may extend the time limit of such decision or action, or may grant exceptions to, or waive the requirements of the specific provisions of rules. The governing body shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way. Pending a decision of the governing body, the order of the public works director shall be stayed, unless the public works director determines that such action will pose a threat to public safety or the

integrity of the public infrastructure.

- (e) If a person still deems himself or herself aggrieved after the appeal to the governing body, such person shall have 30 days after the effective date of the governing body's final decision to institute an action in the district court of the county.

(Code 2008, § 13-134; Ord. No. 980, § 18, 6-8-2017)

13-135 Indemnification

- (a) A ROW user shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent the same are caused by any act or failure to act of the ROW user, any agent, officer, director, or their respective officers, agents, employees, directors or representatives, while installing repairing or maintaining facilities in a public right-of-way. Nothing herein shall be deemed to prevent the city, or any agent thereof from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the ROW user from its duty to defend against liability or its duty to pay and judgment entered against the city, or its agents.
- (b) If a ROW user and the city are found jointly liable or subject to principles of comparative fault by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state or federal law. This section is solely for the benefit of the city and ROW user and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(Code 2008, § 13-135)

13-136 Force Majeure

Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other circumstances beyond the ROW user's or the city's control.

(Code 2008, § 13-136)

13-137 Federal, State And City Jurisdiction

This chapter shall be construed in a manner consistent with all applicable federal, state,

and local laws, regulations, and policies. Notwithstanding any other provisions of this chapter to the contrary, the construction, operation and maintenance of the ROW user's facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, the ROW user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the city, now or hereafter having jurisdiction. The ROW user's rights are subject to the police powers of the city to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The ROW user shall comply with all applicable laws and ordinances enacted pursuant to that power. Finally, failure of the ROW user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this chapter.

(Code 2008, § 13-137)

13-138 (Reserved)

13-139 City's Failure To Enforce

The city's failure to enforce or remedy any noncompliance of the terms and conditions of this chapter or of any permit granted hereunder shall not constitute a waiver of the city's rights nor a waiver of any person's obligation as herein provided.

(Code 2008, § 13-139)

13-140 Penalties

- (a) Any person or entity violating any provision of this chapter is guilty of a public offense, and upon conviction thereof shall be fined a sum of not less than \$200.00 nor more than \$500.00. Every day that this chapter is violated shall constitute a separate offense.
- (b) The violation of any provision of this chapter is hereby deemed to be grounds for revocation of the permit and registration to operate with the city.
- (c) The city shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this chapter. In addition to any other remedies, the city attorney may institute an injunction, mandamus or other appropriate action or proceeding to prevent violation of this chapter.

(Code 2008, § 13-140)

13-141 Reservation Of Rights

- (a) In addition to any rights specifically reserved to the city by this chapter, the city

reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this chapter. The city shall have the right to waive any provision of this chapter or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the city determines as follows:

- (1) That it is in the public interest to do so; and
 - (2) That the enforcement of such provision will impose an undue hardship on the person. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the city. Further, the city hereby reserves unto itself the right to intervene in any suit, action or proceeding involving the provisions herein.
- (b) Notwithstanding anything to the contrary set forth herein, the provisions of this chapter shall not infringe upon the rights of any person pursuant to any applicable state or federal statutes, including, but not limited to, the right to occupy the right-of-way.

(Code 2008, § 13-141)

13-142 Interpretation

The provisions of this chapter shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, or welfare.

(Code 2008, § 13-142; Ord. No. 980, § 19, 6-8-2017)

CHAPTER 14 TRAFFIC

ARTICLE 1 STANDARD TRAFFIC ORDINANCE

ARTICLE 2 LOCAL TRAFFIC REGULATIONS

ARTICLE 3 PARADE REGULATIONS

ARTICLE 4 IMPOUNDMENT OF MOTOR VEHICLES

ARTICLE 1 STANDARD TRAFFIC ORDINANCE

14-101 Incorporating Standard Traffic Ordinance

14-102 Speed Limitations, Restrictions

14-103 Exhibition Of Speed Or Acceleration Defined

14-104 Traffic Infractions And Traffic Offenses

14-105 Penalty For Scheduled Fines And Penalties Generally

14-101 Incorporating Standard Traffic Ordinance

There is hereby incorporated for the purpose of regulating traffic within the corporate limits of the city that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," 2023 edition, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. 12-3009 through 12-3012, inclusive, as amended. No fewer than three copies of said standard ordinance shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Westwood, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

(Code 2008, § 14-101; Ord. No. 878, § 1; Ord. No. 877, § 1; Ord. No. 899, § 1; Ord. No. 911, § 1; Ord. No. 916, § 1; Ord. No. 928, § 1; Ord. No. 937, § 1; Ord. No. 953, § 1; Ord. No. 961, § 1, 8-13-2015; Ord. No. 972, § 1, 8-11-2016; Ord. No. 982, § 1, 7-13-2017; Ord. No. 992, § 1, 9-13-2018; Ord. No. 1002, § 1, 9-12-2019; Ord. No. 1031, § 1, 10-13-2022; Ord. No. 1036, § 1, 8-10-2023)

14-102 Speed Limitations, Restrictions

The governing body has determined prior to the enactment of L. 1974, ch. 33, and/or where required, based upon the determination of the state secretary of transportation, and/or has undertaken and caused to be conducted an engineering and traffic investigation and based upon said investigation has determined, that the speed limits permitted under state law and section 33 of the Standard Traffic Ordinance for Kansas Cities other than reasonable and safe under the conditions found to exist upon said street, and does re-state, and/or determine and declare that the reasonable and safe speed limits within the city (except when a special hazard exists that requires lower

speed for compliance with section 32 of the Standard Traffic Ordinance for Kansas Cities) are the limits specified in this section, or established as hereinafter authorized, and shall be maximum lawful speeds, and no person shall drive a vehicle at a speed greater than or in excess of such maximum limits:

- (a) Thirty miles per hour upon the following streets: 47th Street and State Line Road.
- (b) Thirty-five miles per hour upon the following streets: Rainbow Boulevard and Shawnee Mission Parkway. The secretary of transportation having determined that the speed limits as provided by law upon Rainbow Boulevard within the city limits, and upon Shawnee Mission Parkway within the city, which are connecting links in the state highway system, are greater than is reasonable or safe under the conditions found to exist and has determined and declared a reasonable and safe speed limit thereon to be 35 miles per hour, and has caused to be erected appropriate signs giving notice thereof, the speed limit on said streets for the distance designated is hereby set at 35 miles per hour. Said streets being connecting limits in the state highway system, the secretary of transportation has approved said speed limit in writing for said streets.
- (c) Twenty miles per hour between the hours of 7:30 a.m. and 4:30 p.m. of any day school is in session upon 50th Street from Rainbow Boulevard to Norwood Street and from the north property line of the address at 4914 Belinder Avenue to the southernmost intersection of W. 50th Terrace.
- (d) Thirty miles per hour upon Mission Road except that said speed limit shall be 20 miles per hour between the hours of 7:30 a.m. to 8:30 a.m., 10:30 a.m. to 11:30 a.m., and 3:00 p.m. to 4:00 p.m. of any day the St. Agnes School is in session on Mission Road from 53rd Street to the northerly line of 51st Street, and 20 miles per hour between the hours of 7:30 a.m. to 8:30 a.m. and 3:00 p.m. to 4:00 p.m. of any day Shawnee Mission Christian School is in session on Mission Road from the northerly line of 49th Terrace to the northerly line of 48th Terrace.
- (e) Twenty-five miles per hour in any other business district or residential district. The maximum speed limit established by or pursuant to this subsection shall be in force and effect regardless of whether signs are posted giving notice thereof and notwithstanding any signs giving notice of maximum speed limits in excess thereof, and any sign giving notice of a maximum speed limit in excess of the limits established by or pursuant to this paragraph shall not be of any force or effect.

The chief of police is hereby directed to erect appropriate signs giving notice of such speed along said streets.

(Code 2008, § 14-102; Ord. No. 878, § 2)

14-103 Exhibition Of Speed Or Acceleration Defined

Section 37 of the Standard Traffic Ordinance is supplemented by adding to said section 37 the following subsection (a):

- (a) "Exhibition of speed or acceleration" is defined to include, but is not limited to, those acts which cause or create unnecessary rapid acceleration, unnecessary tire squeal, skid, smoke, or slide upon acceleration or stopping including the casting of tread, gravel, dirt, or other road surface materials from the tires; acts that simulate a temporary race; or acts that cause the vehicle to unnecessarily turn abruptly, sway or lose traction with the road surface.

(Code 2008, § 14-103; Ord. No. 878, § 3)

14-104 Traffic Infractions And Traffic Offenses

- (a) An ordinance traffic infraction is a violation of any section of this chapter that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118 and amendments thereto.
- (b) All traffic violations which are included within this chapter, and which are not ordinance traffic infractions, as defined in subsection (a) of this section, shall be considered traffic offenses.

(Code 2008, § 14-104; Ord. No. 878, § 4; Ord. No. 1030, § 2, 8-11-2022)

14-105 Penalty For Scheduled Fines And Penalties Generally

The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than \$1.00 nor more than \$500.00. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offenses for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed \$500.00.

(Code 2008, § 14-105; Ord. No. 878, § 5)

ARTICLE 2 LOCAL TRAFFIC REGULATIONS

[14-201 Traffic Control Devices And Markings](#)

[14-202 Parking Or Stopping Prohibited](#)

[14-203 Unlawful Left Turns](#)

[14-204 Truck Travel Prohibited](#)

[14-205 Parking On Private Property By The Public](#)

[14-206 Park Or Parking Defined](#)

[14-207 Parking Stalls](#)

[14-208 Parking Of Disabled Vehicle](#)

[14-209 Parking Violation; Traffic Citation Issued](#)

[14-210 Failure To Appear In Response To Traffic Citation](#)

[14-211 Evidence Of Violation; Prima Facie Presumption](#)
[14-212 Separate Offense For Period Of Illegal Parking](#)
[14-213 Parking On Private Property Without Consent](#)
[14-214 Authority To Remove Vehicles](#)
[14-215 Authority To Remove Vehicles; Assessment Of Costs](#)
[14-216 Parking Recreational Vehicle](#)
[14-217 Main Trafficway And Trafficway Connector Designation](#)

14-201 Traffic Control Devices And Markings

The Standard Traffic Ordinance as adopted is hereby modified by adding thereto the following:

The governing body may, by resolution, establish and fix the location of such traffic control devices as may be deemed necessary to guide and warn traffic under the provisions of this chapter, other traffic ordinances and the state laws. The city shall place and maintain such traffic control signs, signals and devices when and as may be required by the authority of the governing body to make effective the provisions of this chapter and other ordinances for the regulation of traffic.

(Code 2008, § 14-201)

14-202 Parking Or Stopping Prohibited

No person shall stop, stand, or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in any of the following places:

- (a) Shawnee Mission Parkway;
- (b) Rainbow Boulevard within the city;
- (c) The west side of State Line Road from the north city limits to the south city limits at all times;
- (d) The east side of Belinder Avenue at any time and also on the west side of Belinder Avenue between the hours of 2:00 a.m. and 9:00 a.m. and the west side of Belinder Avenue from 47th Avenue to 49th Terrace between the hours of 4:00 p.m. and 6:00 p.m. and the west side of Belinder Avenue from 49th Terrace to the southernmost 50th Terrace intersection between the hours of 2:00 p.m. and 6:00 p.m.;
- (e) The east side of Mission Road from the north city limits being 47th Street to the south city limits being 53rd Street, at all times;
- (f) The south side of 48th Terrace between Rainbow Boulevard west to Adams Street;

- (g) Both sides of 47th Place from Rainbow Boulevard to State Line Road, at all times;
- (h) North side of 49th Street from Rainbow Boulevard west to Adams Street, at all times;
- (i) Within 100 feet west of the intersection of 50th Street and Belinder Avenue, within 100 feet east of the intersection of 50th Street and Belinder Avenue, within 100 feet north of the intersection of 50th Street and Belinder Avenue, and within 100 feet south of the intersection of 50th Street and Belinder Avenue;
- (j) The west side of Adams Street between 49th Terrace and 50th Street, at all times;
- (k) The west side of Booth Street between 49th Terrace and 50th Street, at all times;
- (l) The south side of 47th Terrace from Rainbow Boulevard to State Line Road, at all times;
- (m) The north side of 48th Street from Rainbow Boulevard to State Line Road, at all times;
- (n) The north side of W. 48th Street, from the west pavement edge of Rainbow Boulevard west 250 feet to the west side of the rear service drive behind Westwood Village, at all times;
- (o) The south side of W. 48th Street, from 85 feet west of the Rainbow Boulevard pavement edge west to Booth Street, between the hours of 6:00 a.m. to 5:00 p.m., Monday through Friday;
- (p) The south side of W. 48th Street, from 85 feet west of the west pavement edge of Rainbow Boulevard east to Rainbow Boulevard, at all times;
- (q) The south side of 47th Terrace from Rainbow Boulevard to State Line Road, at all times;
- (r) The north side of 48th Street from Rainbow Boulevard to State Line Road, at all times;
- (s) The north side of 50th Street from Rainbow Boulevard to Belinder Avenue, at all times;
- (t) The south side of 50th Street from the west boundary of 2511 West 50th Street to Rainbow Boulevard, at all times and the south side of 50th Street from a point 100 feet east of Belinder Ave. to the west boundary of 2511 W. 50th Street between the hours of 7:00 a.m. to 9:00 a.m. and 2:00 p.m. to 6:00 p.m.;
- (u) On the southeast side of West 51st Street from 2331 West 51st Street to Rainbow Boulevard from 7:00 a.m. to 6:00 p.m., and on the northeast side of West 51st Street from the westernmost point of the Westwood View School property line east to the driveway of the Westwood Christian Church from 8:00 a.m. to 4:00 p.m.;

- (v) The west side of Belinder Avenue south from its intersection with West 47th Street 100 feet, at all times;
- (w) Within 100 feet of Belinder on West 49th Terrace from a point 100 feet east and west of Belinder Avenue on both sides of the street at all times;
- (x) Reserved;
- (y) Reserved;
- (z) Reserved;
- (aa) On any street, public road or highway within the city for more than two hours between the hours of 12:01 a.m. and 6:00 a.m.;
- (ab) On a sidewalk;
- (ac) On a crosswalk;
- (ad) Within 15 feet of a fire hydrant;
- (ae) Blocking any driveway, emergency exit, fire lane, pedestrian walking lane or on the grass or other unpaved surface of any property or on any public curb;
- (af) On any loading zone while not actually engaged in loading or unloading property or passenger;
- (ag) Within 30 feet of a stop sign or traffic signal;
- (ah) At any other place where official signs prohibit parking;
- (ai) Notwithstanding the above, the city, through its designated personnel, shall have the authority to grant a parking permit to park a vehicle in contravention of the above restrictions for a period not to exceed 365 days, upon a showing of the applicant's necessity, and upon a determination that public safety will not be adversely affected by the granting of such permit. The permit shall state the person to whom it is issued, the location where parking is to be permitted, the vehicle to be parked, any conditions thereon in the public interest, and the duration of the permit.

(Code 1993, § 14-105; Code 2008, § 14-202; Ord. No. 551; Ord. No. 582; Ord. No. 603; Ord. No. 611; Ord. No. 620; Ord. No. 629; Ord. No. 638; Ord. No. 642; Ord. No. 683; Ord. No. 689; Ord. No. 697; Ord. No. 828; Ord. No. 842; Ord. No. 845; Ord. No. 933; Ord. No. 934; Ord. No. 975, § 1, 10-13-2016; Ord. No. 1030, § 1, 8-11-2022)

14-203 Unlawful Left Turns

It shall be unlawful for any vehicle to make left turns as follows:

- (a) For the driver of any vehicle proceeding in a westerly direction on 47th Street Terrace or 48th Street to turn left onto Rainbow Boulevard between the hours of

7:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m. within the limits of the city.

- (b) For the driver of any vehicle proceeding in an easterly direction on 47th Street Terrace, 48th Street, 48th Street Terrace, 49th Street, to turn left onto Rainbow Boulevard between the hours of 7:00 a.m. and 9:00 a.m. and the hours of 4:00 p.m. and 6:00 p.m. within the limits of the city.
- (c) It shall be unlawful for any vehicle proceeding in a westerly direction out of the parking lot at 4715 Rainbow Boulevard, Westwood, Kansas, to turn south onto Rainbow Boulevard across the center line of Rainbow Boulevard.

(Code 1993, § 14-106; Code 2008, § 14-204; Ord. No. 773)

14-204 Truck Travel Prohibited

Truck travel shall be restricted as follows:

- (a) Truck shall not be allowed to enter upon any streets of the city, except the following named streets: Rainbow Boulevard, Shawnee Mission Parkway, and 47th Street, where truck traffic is allowed; provided, however, that, at the time of any alleged violations of these regulations, there must be posted upon the streets of the city upon which trucks are prohibited, signs designating such regulations to be in effect. Trucks carrying goods, merchandise, and other articles to or from any house or premises abutting upon any street upon which trucks are prohibited, and which house or premises do not abut a street upon which trucks are permitted, shall be allowed to enter thereon at the cross street nearest to the house or premises in the direction in which the vehicles are moving and deliver or receive such goods, merchandise, or other articles, but such vehicles shall not proceed on the street farther than to the nearest cross street thereafter.
- (b) No person shall operate any truck within any alley or alleyway in the city.
- (c) The term "truck," as used in this section, means any vehicle designed or maintained primarily for the transportation of property and having a load limit in excess of one ton, or any vehicle other than those constructed for the purpose of carrying passengers which has a load limit in excess of one ton.
- (d) The term "truck," as used in this section, shall not apply to: vehicles engaged by the city in the repair or construction of streets and/or public infrastructure located within the city or engaged by the city or an entity located within the city in trash and garbage pickup; emergency vehicles; official vehicles owned and operated by the city or any other government entity provided their presence in the city are for the benefit of the city or a resident or an entity located within the city; or such repair or construction vehicles as are necessary to repair or construct utilities or other infrastructure within the right-of-way in the city.

(Code 1993, § 14-109; Code 2008, § 14-205; Ord. No. 880, § 1)

14-205 Parking On Private Property By The Public

- (a) No person shall park or leave a vehicle unattended or attended for a period of time longer than that designated or at a time when parking is prohibited on private property used by the public for the purpose of vehicular traffic by permission of the owner. The owner or operator of such private property shall have the authority, subject to the approval of the chief of police, to designate by appropriate signs and markings the parking time limit, the areas in which parking is permitted, parking spaces, and times when parking of vehicles is prohibited.
- (b) The owner or operator of such property used by the public is authorized to erect suitable signs upon approval of the chief of police, which shall be placed on such property advising the public of the limits and conditions of the parking regulations. A sign shall be erected with the following words legibly painted thereon:

"Traffic Regulation of the City of Westwood, Kansas, enforced on this property.
No Parking to (or as posted)"

(Code 1993, § 14-111; Code 2008, § 14-206; Ord. No. 603, §§ 1, 2)

14-206 Park Or Parking Defined

The term "park" or "parking," as used in this article, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(Code 1993, § 14-112; Code 2008, § 14-207; Ord. No. 603, § 3)

14-207 Parking Stalls

When parking stalls or spaces are marked or designated on the pavement or curb, vehicles shall be parked or stopped within such stalls or spaces in the direction of the flow of traffic or at the angle indicated by the markings and within the limit lines so marked.

(Code 1993, § 14-113; Code 2008, § 14-208; Ord. No. 603, § 4)

14-208 Parking Of Disabled Vehicle

No person, firm, or corporation shall park or store any dead, damaged or disabled vehicle of any kind, or parts of the same, or any junk vehicles of any kind upon private property used by the public without the permission of both the owner or operator of such

public property and the chief of police.

(Code 1993, § 14-114; Code 2008, § 14-209; Ord. No. 603, § 6)

14-209 Parking Violation; Traffic Citation Issued

Whenever any motor vehicle without driver is found parked, standing or stopped in violation of this article, the officer finding such vehicle shall take its registration number and may take any other information, including information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a traffic citation.

(Code 1993, § 14-115; Code 2008, § 14-210; Ord. No. 603, § 7)

14-210 Failure To Appear In Response To Traffic Citation

If a violator of restrictions on stopping, standing or parking does not appear in response to a traffic citation affixed to such motor vehicle within a period of ten days, the clerk of the court shall send to the owner of the motor vehicle to which the traffic citation was affixed a letter informing him or her of the violation and warning him or her that in the event such letter is disregarded for a period of ten days, a warrant of arrest may be issued.

(Code 1993, § 14-116; Code 2008, § 14-211; Ord. No. 603, § 8)

14-211 Evidence Of Violation; Prima Facie Presumption

In any prosecution charging a violation of any law or regulation governing the stopping, standing or parking of a vehicle, proof that the particular vehicle described in the complaint was in violation of any such law or regulation, together with proof that the defendant named in the complaint was at the time of the violation the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(Code 1993, § 14-117; Code 2008, § 14-212; Ord. No. 603, § 9)

14-212 Separate Offense For Period Of Illegal Parking

Each maximum period of time applying to the location in which a vehicle is illegally parked shall constitute a separate and distinct offense and it shall be the duty of the police officer to place a violation ticket on such vehicle for each such violation. In the event that there is no fixed period of time applying to the offense, then each 24-hour period shall constitute the time for a separate and distinct offense.

(Code 1993, § 14-118; Code 2008, § 14-213; Ord. No. 603, § 10)

14-213 Parking On Private Property Without Consent

It shall be unlawful for anyone to park or station any vehicle on private property without the consent, expressed or implied, of the owner of the property, or anyone holding under him or her.

(Code 1993, § 14-119; Code 2008, § 14-214; Ord. No. 603, § 11)

14-214 Authority To Remove Vehicles

- (a) Whenever any police officer finds a vehicle in violation of this article, such officer is hereby authorized to move such vehicle upon notice, or require the driver or person in charge of the vehicle to move the same from the property.
- (b) Any police officer is hereby authorized to remove or cause to be removed any unattended vehicle left standing upon any private property which under such circumstances would obstruct the normal movement of the property or the normal use of the property.
- (c) Any police officer is hereby authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon public property when:
 - (1) Report has been made that such vehicle has been stolen or taken without the consent of the owner;
 - (2) Persons in charge of such vehicle are unable to provide for its custody or removal;
 - (3) The motor vehicle is in violation of the stopping, standing or parking sections of this article and the owner of record has been provided with appropriate notice as required;
 - (4) Removal of such vehicle is necessary in the interest of the public safety because of fire, flood, storm, or other emergency reason.

(Code 1993, § 14-120; Code 2008, § 14-215; Ord. No. 603, §§ 12—14)

14-215 Authority To Remove Vehicles; Assessment Of Costs

All costs, charges, of removing the vehicle from the private property to the nearest garage or other place of safety shall be assessed against the owner of the motor vehicle.

(Code 1993, § 14-121; Code 2008, § 14-216; Ord. No. 603, § 15)

14-216 Parking Recreational Vehicle

- (a) For purposes of this section, the certain words "travel trailer" and "recreational vehicle" shall be interpreted or defined as any portable structure mounted on wheels or on a motorized chassis, including converted buses, and which is normally used as sleeping quarters and shelter while traveling, but not as a dwelling.
- (b) No travel trailer or recreational vehicle shall be used for permanent or semi-permanent residential purposes, within the city, other than when the vehicle is permitted to park as provided for in subsection (c) of this section.
- (c) No person shall park a travel trailer or recreational vehicle in any residential area of the city on any lot, improved or unimproved, except in an enclosed structure, for more than 24 hours; provided, however, upon proper application and approval by the chief of police, a vehicle may be parked for a period not to exceed a total of 14 days within the calendar year that the permit was granted.
- (d) No travel trailer or recreational vehicle may be stored on any street, alley, lot, improved or unimproved, within the city; provided, however, any such vehicle owned by a member of a family may store the vehicle in an enclosed structure.

(Code 1993, § 14-122; Code 2008, § 14-217; Ord. No. 618, § 1-4)

14-217 Main Trafficway And Trafficway Connector Designation

It is hereby authorized, ordered and directed, under the authority of the Act, that the streets hereinafter set forth located within the limits of the city are hereby designated and established as main trafficways or trafficway connectors, as provided below:

<i>Main Trafficways</i>	<i>Trafficway Connectors</i>
West 47th Street	West 51st Terrace
West 47th Place	West 51st Street
48th Street	West 50th Place
48th Terrace	West 49th Place
49th Street	West 47th Terrace
49th Terrace	Norwood Road
50th Street	Fairway Road
50th Terrace	Belinder Court
Mission Road	Booth Avenue
Belinder Avenue	
Adams Street Rainbow	

Boulevard Booth Street	
State Line Road	
Shawnee Mission Parkway	

(Ord. No. 996, § 1, 11-8-2018)

ARTICLE 3 PARADE REGULATIONS

[14-301 Definitions](#)

[14-302 Permit Required](#)

[14-303 Procedure](#)

[14-304 Standards For Issuance](#)

[14-305 Application For Parade: Decision By The Chief Of Police](#)

[14-306 Appeal Procedure](#)

[14-307 Alternative Permit](#)

[14-308 Notice To City And Other Officials](#)

[14-309 Contents Of Permit](#)

[14-310 Duties Of Permittee](#)

[14-311 Public Conduct During Parades](#)

[14-312 Revocation Of Permit](#)

14-301 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Parade means any parade, march, ceremony, show, exhibition, pageant, walk-a-thon, organized run, or procession of any kind, or any similar display, in or upon any street, park or other public place in the city.

Parade permit means a permit as required by this article.

(Code 1970; Code 2008, § 14-301)

14-302 Permit Required

No person shall engage in, participate in, aid, form or start any parade, unless a parade permit shall have been obtained from the city chief of police.

(a) This article shall not apply to:

(1) Funeral processions;

(2) Students going to and from school classes or participating in educational activities, provided that such conduct in under the immediate direction and supervision of the proper school authorities;

- (3) A governmental agency acting within the scope of its functions.

(Code 1970; Code 2008, § 14-302)

14-303 Procedure

A person seeking issuance of a parade permit shall file an application with the chief of police on forms provided by such officer.

- (a) An application for a parade permit shall be filed with the chief of police not less than ten days before the date on which it is proposed to conduct the parade.
- (b) The application for a parade permit shall set forth the following information:
 - (1) The name, address and telephone number of the person seeking to conduct such parade;
 - (2) If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization, and of the authorized and responsible head of such organization;
 - (3) The name, address and telephone number of the person who will be the parade chairperson and who will be responsible for its conduct;
 - (4) The date the parade is to be conducted;
 - (5) The route to be traveled, the starting point and the termination point;
 - (6) The approximate number of persons, animals and vehicles that will constitute such parade; the type of animals and description of the vehicles;
 - (7) The hours when such parade will start and terminate;
 - (8) A statement as to whether the parade will occupy all or only a portion of the width of the streets to be traversed;
 - (9) The location by streets of any assembly areas for such parade;
 - (10) The time at which units of the parade will begin to assemble at any such assembly area or areas;
 - (11) The interval of space to be maintained between units of such parade;
 - (12) The applicant's plan for the collection, removal and disposal of all trash, debris and litter caused by parade participants or observers so that the parade route is returned to its condition prior to the parade;
 - (13) The number and locations of sanitary facilities provided for parade participants and observers;

- (14) If the parade is designed to be held by, and on behalf of or for any person other than the applicant, the applicant for such permit shall file with the chief of police a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his or her behalf;
 - (15) Any additional information which the chief of police shall find reasonably necessary to a fair determination as to whether a permit should be issued.
- (c) The chief of police, where good cause is shown therefor, shall have the authority to consider any application hereunder which is filed less than 240 hours before the date such parade is proposed to be conducted.
 - (d) There shall be paid at the time of filing the application for a parade, a permit fee, the amount of which shall be adopted from time to time by resolution of the governing body and listed in the city's master fee schedule.
 - (e) At the time of filing, the applicant shall submit a cost or damage deposit of \$100.00 per each 500 persons expected to attend the parade. The deposit shall be applied toward any city cost or expenses arising from cleanup costs, other costs, or damage caused by parade participants or observers. Any amount submitted as a damage deposit that exceeds the city's actual costs and expenses arising from damage caused by parade participants or observers cleanup costs or other costs shall be returned to the applicant within 30 days of the parade date. A minimum deposit of \$100.00 shall be required in all cases.
 - (f) Although parades may cross Shawnee Mission Parkway or Rainbow Boulevard, no parade shall proceed on either of these streets, unless the event is sufficiently short in duration or small in size that it will not impede the access of emergency vehicles or otherwise impair the public health, safety, and welfare, as reasonably determined by the chief of police.
 - (g) For each arterial intersection a parade passes through, the applicant shall pay an additional fee equal to the hourly overtime pay of two uniformed police officers for each hour of the parade's duration. The applicant shall pay an estimate of this fee in advance of the permit's issuance, and the applicant shall estimate the duration of the parade. If the parade is shorter than estimated, any excess fee shall be returned, and if the parade is longer than estimated, the applicant shall pay any additional fee within three days of the parade. For purposes of this section, the following are to be considered arterial intersections: 50th Street and Rainbow Boulevard, 47th Place and State Line Road, 47th Street and Rainbow Boulevard, 47th Street and Mission Road, Shawnee Mission Parkway and Rainbow Boulevard, and 50th Street and Belinder Avenue.
 - (h) An additional fee shall also be imposed for any parade at a rate equal to the

hourly overtime charge of one uniformed police officer for every two non-arterial street intersections through which the parade passes for each hour of the parade's duration. The applicant shall pay an estimate of this fee in advance of the permits' issuance, and the applicant shall estimate the duration of the parade. If the parade is shorter than estimated, any excess fee shall be returned, and if the parade is longer than estimated, the applicant shall pay any additional fee owed within three days of the parade.

(Code 2008, § 14-303; Ord. No. 765, § 2)

14-304 Standards For Issuance

The chief of police shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, he or she finds that:

- (a) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route;
- (b) The conduct of such parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the city other than to be occupied by the proposed line of march and areas contiguous thereto;
- (c) The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas; and
- (d) The conduct of such parade will not interfere with the movement of firefighting equipment en route to a fire.

(Code 1983; Code 2008, § 14-304)

14-305 Application For Parade: Decision By The Chief Of Police

The chief of police shall act upon the application for a parade within reasonable time after the filing thereof.

(Code 1970; Code 2008, § 14-305)

14-306 Appeal Procedure

Any person aggrieved shall have the right to appeal the denial of a parade permit to the governing body. The appeal shall be taken within ten days after notice.

(Code 1970; Code 2008, § 14-306)

14-307 Alternative Permit

The chief of police, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time or over a route different from that named by the applicant. An applicant desiring to accept an alternate permit shall within ten days after notice of the action of the chief of police, file a written notice of acceptance with the chief of police. An alternate parade permit shall conform to the requirements, and shall have the effect of a parade permit under this article.

(Code 1970; Code 2008, § 14-307)

14-308 Notice To City And Other Officials

Immediately upon the issuance of a parade permit the chief of police shall send a copy thereof to the following:

- (a) The city administrator;
- (b) City clerk;
- (c) Director of public works;
- (d) Reserved.
- (e) Fire chief.

(Code 1970; Code 2008, § 14-308)

14-309 Contents Of Permit

Each parade permit shall state the following information:

- (a) Starting time;
- (b) Minimum speed;
- (c) Maximum speed;
- (d) Maximum interval of space to be maintained between the units of the parade;
- (e) The portions of the streets to be traversed that may be occupied by the parade;
- (f) The maximum length of the parade in miles or fractions thereof;
- (g) Such other information as the chief of police shall find necessary to the enforcement of this article.

(Code 1970; Code 2008, § 14-309)

14-310 Duties Of Permittee

- (a) A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances.
- (b) The parade chairperson or other person heading or leading such activity shall carry the parade permit upon his or her person during the conduct of the parade.

(Code 1970; Code 2008, § 14-310)

14-311 Public Conduct During Parades

The following rules of public conduct shall be observed during parades:

- (a) No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or parade assembly or with any person, vehicle or animal participating or used in a parade.
- (b) No driver of a vehicle, streetcar or trackless trolley shall drive between the vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.
- (c) The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a highway or part thereof constituting a part of the route of a parade. The chief of police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on an un-posted street in violation of this article.

(Code 1970; Code 2008, § 14-311)

14-312 Revocation Of Permit

The chief of police shall have the authority to revoke a parade permit issued hereunder upon application of the standards for issuance as herein set forth.

(Code 1970; Code 2008, § 14-312)

ARTICLE 4 IMPOUNDMENT OF MOTOR VEHICLES

[14-401 Definitions](#)

[14-402 Impounding Vehicles](#)

[14-403 Impounding Vehicles; Police Authority To Determine Storage](#)

[14-404 Notice Of Impoundment; Storage Of Vehicle](#)

[14-405 Impoundment After Request To Leave Motor Vehicle](#)

[14-406 Release Of Motor Vehicle From Impoundment](#)

[14-407 Hearing](#)

[14-408 Charges Constitute A Lien](#)

[14-409 Satisfaction Of Lien; Notice Of Public Sale](#)

[14-410 Redemption](#)

[14-411 Sale Proceeds](#)

[14-412 Statutory Procedures](#)

[14-413 Implementation Of Article](#)

[14-414 Reimbursement For Discharged Liens](#)

14-401 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Highway means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. Where the word "highway" or the word "street" is used in this article, it means street, avenue, boulevard, thoroughfare, alley, and other public way for vehicular travel by whatever name, unless the context clearly indicates otherwise.

Motor vehicle means every vehicle or tractor trailer combination that is self-propelled by which any person or property is or may be transported or drawn upon a highway except vehicles used exclusively upon stationary rails or tracks.

Owner or occupant means a party having fee simple title in the real property, or a party having a leasehold interest in the real property, or a party who is the beneficiary of a private easement for the purpose of egress or ingress to or from said real property.

(Code 1983; Code 2008, § 14-401)

14-402 Impounding Vehicles

The police department may cause to be impounded:

- (a) Any motor vehicle unlawfully parked on a highway in violation of any provision of a city ordinance which prohibits the parking of vehicles at the place where or time when the impounded motor vehicle is found.
- (b) Any motor vehicle that has been abandoned and left on a highway or other property open to use by the public for a period in excess of 48 hours pursuant to K.S.A. 8-1102.
- (c) Any motor vehicle which:
 - (1) Is subject to removal pursuant to K.S.A. 8-1570 or 8-1102; or
 - (2) Is subject to seizure and forfeiture under the laws of the state; or
 - (3) Is subject to being held for use as evidence in a criminal trial.
- (d) Any motor vehicle, the continued presence of which, because of the physical

location or condition of the motor vehicle, poses a danger to the public safety or to the motor vehicle.

- (e) Any motor vehicle which has been abandoned or parked on any real property, other than public property or property open to use by the public, may be moved and disposed of in accordance with the terms of this article by the police department upon the request of the owner or occupant of such real property. The real property referred to herein shall not be owned or leased by the person who abandons or parks said vehicle or by the owner or leasee of such vehicle. The city or any person, partnership, corporation or their agent conducting a business enterprise for the purpose of towing vehicles which removes such vehicle from the real property at the request of the police department shall have a possessory lien on such vehicle for the cost incurred in removing, towing and storing such vehicle. For purposes of this article, common areas shall be construed not to mean public property or property open to the public.

(Code 1983; Code 2008, § 14-402)

14-403 Impounding Vehicles; Police Authority To Determine Storage

The police department may authorize storage of such impounded motor vehicles at any location, public or private, which is zoned for the storage of motor vehicles.

(Code 1983; Code 2008, § 14-403)

14-404 Notice Of Impoundment; Storage Of Vehicle

- (a) *When owner present.* When the police department intends to impound a motor vehicle pursuant to WCC 14-402 and the owner of the motor vehicle is then present, the police department shall, before the motor vehicle is removed, provide the owner with a notice, in the form prescribed by the police department that the motor vehicle is being impounded, that towing and storage charges will be assessed against the impounded motor vehicle, that the owner may claim and regain possession of the impounded motor vehicle at the location to which it is being removed for storage without prepayment of towing and storage charges and that the owner may request a hearing as to the propriety of the impoundment and as to the amount of and the owner's liability for the towing and storage charges. The notice shall also state the location where the impounded motor vehicle will be stored and the place where the owner may make his or her request for the hearing. The notice shall also state, in prominent language, that failure by the owner to request a hearing within five days after receipt of the notice may act as a waiver of his or her right to a hearing and that this may result in the placing of a lien against the motor vehicle for the towing and storage charges without further notice to the owner; and that the motor vehicle be sold at public auction to the highest bidder for cash after 15 days from the date of the mailing of the notice. The owner of the impounded motor vehicle

shall sign the notice as an acknowledgment that he or she has received a copy of the notice and a copy of the notice shall be provided to the owner.

- (b) *When owner not present.* When the police department impounds and remove a motor vehicle pursuant to subsection (a) of this section and the owner of the motor vehicle is not present at the time of the impoundment, the police department shall, if such motor vehicle has displayed thereon a registration plate issued by the division of vehicles and has been registered with said division, mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. The notice shall be in the form prescribed by the police department, containing the same information as required by subsection (a) of this section. The police department shall use reasonable diligence in determining the title owner, or if from a non-title state, the registered owner, of the vehicle, and shall inquire by mail of the office of the register of deeds of the county in which the title shows the owner resides, if registered in this state, as to whether there are any lienholders of record. If the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed to be a resident of the state whose whereabouts are unknown and service shall be made on the secretary of state as provided in K.S.A. 8-401. If the owner does not reside in the state, as appears from the motor vehicle registration and the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed a nonresident of the state and service shall be made on the secretary of state as provided in K.S.A. 8-401.
- (c) *Failure or refusal to sign notice.* If any person required by this section to sign a notice of impoundment willfully fails or refuses to do so, or if such person cannot be found, the police department shall note this fact on the face of the notice, which shall constitute prima facie evidence of delivery or service of notice as required by this section.

(Code 1983; Code 2008, § 14-404)

14-405 Impoundment After Request To Leave Motor Vehicle

In all cases wherein the owner or operator of a motor vehicle which is on a public street has requested that the motor vehicle be left unattended at that location, in lieu of impoundment of the motor vehicle pursuant to WCC 14-402, the police department may honor the request for a period of time not exceeding 24 hours, after which time the motor vehicle shall either be removed from the location by the owner or operator or be impounded by the police department pursuant to WCC 14-404. The police department shall be immune from liability for any damage, loss or destruction of the motor vehicle occasioned by its being left unattended pursuant to the request of the owner or operator

thereof, in lieu of impoundment. Nothing in this section shall be construed to limit the authority of the police department to order the removal of a motor vehicle by its owner or operator or to impound a motor vehicle pursuant to WCC 14-404 at any time whenever in his judgment the presence of the unattended motor vehicle constitutes a danger to the public safety.

(Code 1983; Code 2008, § 14-405)

14-406 Release Of Motor Vehicle From Impoundment

- (a) *Generally.* Unless the vehicle is impounded pursuant to WCC 14-402(b), the owner of an impounded motor vehicle may secure the release of the motor vehicle from impoundment upon requesting such release and presenting proof of ownership satisfactory to the custodian of the place where the motor vehicle is stored. If the custodian is satisfied that the person making the request is the owner or his or her authorized agent, he or she shall release the motor vehicle to the owner or his or her agent. Nothing in the preceding sentence shall preclude the owner of the impounded motor vehicle or his or her agent from paying any towing and storage charges that may be assessed against the motor vehicle, but neither the police department nor the custodian of the storage space may require payment of any towing or storage charges as a condition precedent to such release. At the same time as the owner or his or her agent requests release of the impounded motor vehicle, and if such request is made with 40 days after the owner receives a copy of the notice of impoundment, the police department shall provide him or her an opportunity to make a request for a hearing on the propriety of the impoundment and on the amount and his or her liability for the towing and storage charges occasioned by the impoundment, provided that if the owner or his or her agent requests release of the impounded motor vehicle more than 40 days after the owner receives a copy of the notice of impoundment, no hearing may be requested on the impoundment or on the towing and storage charges and the owner shall be conclusively presumed to have consented to the impoundment and to the amount of and his or her liability for the towing and storage charges.
- (b) *Security for payment of charges.* If the ownership of the impounded motor vehicle is evidenced by a title certificate issued by the state department of highway safety and motor vehicles, the owner or his or her agent may secure the release of the motor vehicle from impoundment without the payment of any towing or storage charges or the deposit of any security for the payment thereof. If the ownership of the impounded motor vehicle is evidenced by a foreign title instrument, or if the jurisdiction in which title is recorded is not evidence from the document establishing ownership, the owner or his or her agent, before the custodian of the place where the motor vehicle is stored authorizes release of the motor vehicle from impoundment, shall deposit with the custodian cash in the amount of the towing and storage charges to the date of the request. If the owner or his or her agent refuses to provide the cash deposit, the custodian

shall not authorize release of the impounded motor vehicle but if the request is timely made, a date shall be set for the hearing on the impoundment and charges.

(Code 1983; Code 2008, § 14-406)

14-407 Hearing

(a) If the owner of an impounded motor vehicle or his agent timely requests the release of the motor vehicle from impoundment and a hearing on the impoundment and charges, as provided in WCC 14-406, a date shall be set, not more than five days after the date of request, for the hearing. The city shall provide a hearing examiner, who is an attorney licensed to practice law in the state, to conduct the hearings required by this section. At the hearing, the owner, his or her agent, or his or her attorney shall be afforded an opportunity to present, by oral testimony or documentary evidence, his or her objections to:

(1) The impoundment of the motor vehicle; and

(2)

a. The amount of the towing and storage charges; and

b. His or her liability for the payment thereof.

(b) If the owner or his or her agent requested the hearing more than five days but not more than 40 days after the owner received a copy of the notice of impoundment, the owner, his or her agent or his or her attorney shall be required at the hearing, as a condition precedent to the presentation of any objections by the owner, to show good cause for the delay in making the request more than five days after the owner received a copy of the notice of impoundment. If good cause cannot be shown, the hearing officer shall dismiss the hearing and make the finding stated in subsection (b)(2) of this section; otherwise, the hearing examiner shall proceed to hear the owner's objections. At the conclusion of the hearing on the owner's objections, the hearing examiner shall render his or her decision if the hearing examiner:

(1) Finds that the impoundment was improper, he or she shall:

a. Find that the owner is not liable for any towing or storage charges occasioned by the impoundment and

b. Determine whether and to what extent the city shall bear the expense of the towing and storage charges; or

(2) Finds that the impoundment was proper, he or she shall establish:

a. The amount of the towing and storage charges to be assessed

against the impounded motor vehicle; and

- b. The extent of the liability of the owner for payment of the towing and storage charges so established. The decision of the hearing examiner shall be final, and a copy of the decision shall be furnished to the owner of the impounded motor vehicle, to the custodian of the place where the motor vehicle is stored and to the city attorney.

- (c) In the event that the impoundment was pursuant to K.S.A. 8-1102(b), the owner or occupant of the real property upon which the abandoned vehicle was located shall not be assessed the costs of towing and storage of the vehicle. Further, nothing within this article shall be construed to modify or effect the validity of the possessory lien of the person removing such vehicle from the real property established by K.S.A. 8-1102(b).

(Code 1983; Code 2008, § 14-407)

14-408 Charges Constitute A Lien

The towing and storage charges occasioned by the impoundment of a motor vehicle pursuant to WCC 14-402 shall be and constitute a lien upon the impounded motor vehicle, except as provided in this section. If the hearing examiner finds pursuant to WCC 14-407 that the impoundment was improper and if he or she determines that the city shall bear part or all of the towing and storage charges, the lien created by this section shall be discharged. If the hearing examiner finds pursuant to WCC 14-407 that the impoundment was proper but that the towing and storage charges should be in an amount less than the amount of the lien, the lien created by this section shall be discharged to the extent that it exceeds the amount established by the hearing examiner. The holder of a lien created by this section may perfect such lien in any manner provided by law, but he may not retain possession of the motor vehicle when it has been released pursuant to WCC 14-406(a). In the event that the impounded motor vehicle is released from impoundment and the owner or his or her agent has provided security for payment of charges as required by WCC 14-406(b), the lien created by this section shall also be a lien against the security so provided, subject to being wholly or partially discharged as provided in this section.

(Code 1983; Code 2008, § 14-408)

14-409 Satisfaction Of Lien; Notice Of Public Sale

The holder of a lien against a motor vehicle created by WCC 14-408, to the extent that such lien has not been discharged as provided in WCC 14-408 or otherwise satisfied, may enforce such lien in any manner provided by law after 60 days from the date the motor vehicle is impounded by the police department. If the owner of the motor vehicle

or his or her agent has provided security for the payment of the lien as provided in WCC 14-406(b), the lien shall first be satisfied out of the security so provided and, if any portion of the lien remains unsatisfied and undischarged, may then be enforced in any manner provided by law. If the motor vehicle against which the lien is created pursuant to WCC 14-408 is still under impoundment 60 days from the date it is impounded by the police department and the owner has not requested release of the motor vehicle from impoundment nor paid the towing and storage charges that are the basis for the lien, the motor vehicle shall be sold at public sale to the highest and best bidder for cash to satisfy the lien. Notice of the sale shall be given in accordance with K.S.A. 8-1102. Publication, required by K.S.A. 8-1102, may be made before the termination of the 60-day period for a sale thereafter.

(Code 1983; Code 2008, § 14-409)

14-410 Redemption

If the city is to conduct the sale:

- (a) Any holder of a recorded lien or retained title on a motor vehicle to be sold by the city under the provisions of WCC 14-409 may claim and take possession thereof, upon payment of accrued charges and estimated costs of publication of the notice of sale to the police department and the deposit with the police department of sufficient assurance by surety bond or otherwise, approved by the city attorney, that the motor vehicle will be forthcoming for public sale thereof or upon claim of the rightful owner prior to the sale. The police department shall, within three days, make a report to the city treasurer and deliver the charges and costs so paid to the city treasurer, taking a receipt therefor and filing it, together with a duplicate copy of the report to the city treasurer, with the records in his office. The funds shall be held in a trust account until final disposition of the motor vehicle. Not less than five days before the date for sale of the motor vehicle, the police department shall notify the lienholder or retained titleholder of the time and place for the sale, and the lienholder or retained titleholder shall deliver such motor vehicle to the police department at or before 12:00 noon of the day before the sale. At the sale, the amount paid shall be credited on the bid of the lienholder or retained titleholder. If the lienholder or retained titleholder is the successful bidder for the motor vehicle, the police department shall report this fact to the city treasurer and then the funds previously paid by the lienholder or retained titleholder shall be relieved of the trust previously impressed and become the same as other funds received by the city for storage and costs of impounded motor vehicles. If the motor vehicle is sold for a higher bid to any person other than the lienholder or retained titleholder, the police department shall report this fact to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him or her out of the trust account.
- (b) If the rightful owner of the motor vehicle claims the same before the sale by

payment of the accrued charges, the police department shall immediately notify the lienholder or retained titleholder in possession of the motor vehicle and he or she shall return the same to the police department within 12 hours. The police department shall report this redemption by the rightful owner to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him or her out of the trust account.

(Code 1983; Code 2008, § 14-410)

14-411 Sale Proceeds

The proceeds of a public sale held pursuant to WCC 14-409 whether such sale was conducted by the city or by any other person, after payment of the towing and storage charges and costs and expenses incident to the sale, shall be deposited with the city treasurer, if the owner of the motor vehicle is absent from the sale, for credit to the trust account. The funds deposited in the trust account pursuant to this section shall remain in the account subject to the order of the person legally entitled thereto, but if no claim is made for these funds within a period of one year after the sale, the funds shall become the property of the city, be released from the trust account and be paid into the general fund as miscellaneous revenues.

(Code 1983; Code 2008, § 14-411)

14-412 Statutory Procedures

Nothing in this article shall be construed to augment, diminish, supersede or otherwise interfere with any statutory procedure established by the legislature for the collection of unpaid towing and storage charges. The procedures in this article are supplementary and cumulative to any statutory procedures.

(Code 1983; Code 2008, § 14-412)

14-413 Implementation Of Article

The police department and city treasurer are authorized to make rules for the implementation and administration of this article.

(Code 1983; Code 2008, § 14-413)

14-414 Reimbursement For Discharged Liens

If a lien created by WCC 14-408 and held by a private wrecker or towing firm is discharged by WCC 14-408 pursuant to a determination by a hearing examiner that an impoundment was improper and that the city shall bear part or all of the towing and storage charges, the city shall pay to the firm the amount determined by the hearing examiner. No payment shall be made until it is authorized by the city attorney.

(Code 1983; Code 2008, § 14-414)

CHAPTER 15 SURFACE WATER MANAGEMENT

ARTICLE 1 SURFACE WATER MANAGEMENT IN GENERAL

ARTICLE 2 ILLICIT DISCHARGE

ARTICLE 3 SEDIMENT AND EROSION CONTROL

ARTICLE 4 POST CONSTRUCTION STORMWATER QUALITY TREATMENT

ARTICLE 5 STORMWATER UTILITY (RESERVED)

ARTICLE 1 SURFACE WATER MANAGEMENT IN GENERAL

15-101 Definitions

15-102 Interpretations

15-103 Savings Clause

15-101 Definitions

- (a) The following abbreviations, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

APWA means the Kansas City Metropolitan Chapter of the American Public Works Association and/or the American Public Works Association.

BMP means best management practice.

CPESC, INC. means Certified Professional in Erosion and Sediment Control, Inc.

EPA means the Environmental Protection Agency.

FEMA means the Federal Emergency Management Agency.

HHW means household hazardous waste.

KDHE means the Kansas Department of Health and Environment.

LDP means land disturbance permit.

MARC means the Mid-America Regional Council.

MS4 means municipal separate storm sewer system.

NPDES means the National Pollutant Discharge Elimination System.

PST means petroleum storage tank.

SWPPP means stormwater pollution prevention plan.

- (b) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Applicant means any person who makes application for an approved plan and a permit as required by this chapter.

Approved plan means a set of representational drawings or other documents that have been approved by the city as complying with the provisions of this chapter submitted by an applicant (either as an independent submittal or a part of another development application) required by this Code as a prerequisite to obtaining a building or land disturbance permit and that contain the information and specifications required by the city to minimize stormwater runoff.

As-built plan means a record drawing or plan prepared and certified by a licensed professional engineer or land surveyor that represents the actual dimensions, contours, elevations, etc., of a completed structure, facility, or constructed feature.

Best management practice (BMP) means the stormwater management practice used to prevent or control the discharge of pollutants, including sediment, and minimize runoff, both directly and indirectly, to stormwater, receiving waters, or stormwater drainage systems, waters of the U.S. or water bodies found in the city. BMPs may include structural or nonstructural solutions, a schedule of activities, prohibition of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, or other management practices and programs. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. Except where in conflict with federal, state, or local law, the term "BMP" shall refer to the document propounded by the Mid-America Regional Council and Kansas City Metropolitan Chapter of the American Public Works Association known as the Manual of Best Management Practices for Stormwater Quality.

Channel means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

City design standards refers to the most current version of the APWA standards, as amended, including, but not limited to, sections 2100, 5100, and 5600, except those provisions inconsistent with federal, state, or local law. In the event of an inconsistency, federal, state, or local law shall take precedence over the city design standards.

Construction means constructing, clearing, grading, or excavations that result in soil disturbance. The term "construction" includes structure demolition. The term "construction" does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, emergency construction activities required to immediately protect public health and safety, interior remodeling with no outside exposure of construction material or construction waste to the city's stormwater drainage system or other public waters, mechanical permit work, or sign permit work.

Construction site operator for the purpose of the land disturbance permit and in the context of stormwater associated with construction activity, means any person associated with a construction project that meets either of the following two criteria:

- (1) The person has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
- (2) The person has day-to-day operational control of those activities at a project which is necessary to ensure compliance with a SWPPP or erosion and sediment control plan for the site or other permit conditions (e.g., the person is authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).

Detention means the temporary storage of stormwater runoff in a stormwater management practice with the goals of controlling peak discharge rates and/or providing gravity settling of pollutants.

Detention basin means any man-made area or structure that serves as detention storage, including dry bottom basin; any detention basin or facility designed to permit no permanent impoundment of water; and wet bottom basin, any detention basin or facility designed to permit permanent impoundment of water in addition to detention storage, also called a "retention basin."

Detention facility means a detention basin or alternative structure designed for the purpose of detention storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

Detention storage means the temporary detaining or storage of stormwater under predetermined or controlled conditions in or on dry bottom basins, wet bottom basins, roofs of buildings or structures also used for other purposes. Paved or surfaced areas also used for other purposes, and underground structures or pipes where the surface is used for other purposes.

Developed property means that which has been altered from its natural state by the addition of any improvements such as a building, structure, impervious surface, change of grade, or landscaping, property other than undisturbed property.

Developer means any person proposing to or engaged in development or construction.

Development means any activity, change in land use, or improvement on any parcel of land, including any subdivision, that alters the surface of the land that increases the imperviousness of or creates additional impervious surfaces, including, but not limited to, pavement, buildings, structures, and recreational playing fields. The term "development" does not include:

- (1) Construction of any buildings, structures, and/or appurtenant service roads, drives, and walks on a site having previously provided stormwater control as part of a larger development;
- (2) Improvements on any site having a gross land area less than one acre in size, regardless of land use;
- (3) Remodeling, repair, replacement, and improvements to any structure or facility and appurtenances that do not cause an increased area of impervious surfaces on the site in excess of ten percent of that previously existing;
- (4) Construction of any one new single-family or duplex dwelling unit, irrespective of the site area, on which the same may be situated;
- (5) Agricultural uses.

Development application means any application required by this Code as a prerequisite to initiation of development.

Director means the director of the city's public works department or the director's designee.

Discharge means the rate of outflow of water from a drainage area or a component of a stormwater drainage system.

Drainage area means the geographical area contributing stormwater runoff to a point under consideration (i.e., a watershed, tributary area, or catchment area).

Easement means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

Erosion means the process by which the ground surface is worn away by the

action of the wind, water, ice, gravity, or artificial means, and/or land disturbance activities.

Erosion and sediment control plan means a plan for the control of soil erosion and sediment resulting from a land disturbance activity, in compliance with the city's design standards.

Floodplain means the floodway and floodway fringe as identified by the Federal Flood Insurance Program of FEMA, or such other designation of the floodplain as is subsequently adopted by the city, and representing the regulated 100-year water surface and corresponding elevations.

Harmful means that amount of chlorine which can be detected, or of any pollutant that would cause harm to any plant or animal life at any point in the storm drainage system, municipal separate storm sewer system or water body.

Hotspot means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

Impervious area means the total number of square feet of hard surface area on a given property that either prevents or retards the entry of water into the soil matrix, or causes water to run off the surface in greater quantities or at an increased rate of flow, than it would enter under conditions similar to those on undeveloped land. The term "impervious area" includes, but is not limited to, roofs, roof extensions, driveways, pavement and athletic courts.

Impervious cover means those surfaces that cannot effectively infiltrate rainfall.

Infiltration means the process of percolating stormwater into the subsoil.

Infiltration facility means any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above or below grade.

Land disturbance means any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

Land disturbance permit (LDP) means the local permit required by the city for any land disturbance occurring in a given area.

Landowner means that legal or beneficial owner of land, including those holding

the right to purchase or lease the land, or any other person holding proprietary rights on the land.

Landscape architect means an individual who is duly licensed by the state board of technical professions, pursuant to K.S.A. 74-7001 et seq., to practice landscape architecture.

Licensed land surveyor means an individual who is duly licensed by the state board of technical professions, pursuant to K.S.A. 74-7001 et seq., to practice surveying.

Maintenance agreement means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

Maximum extent practicable means the use of those best management practices, which, based on sound engineering and hydro-geological principals, will, to the greatest degree possible and given all relevant considerations, including technology, climate, and site conditions, reduce pollutants in stormwater runoff and minimize the amount of stormwater runoff from a site during and after construction.

Municipal separate storm sewer system (MS4) or public storm sewers means the publicly maintained stormwater drainage system within this city, including all appurtenances and ancillary structures thereto, any conveyance or system of conveyances for stormwater, including road drainage systems, streets, catch basins, detention basins, curbs, gutters, ditches, man-made, channels, or storm drains, as well as any system that meets the definition of a municipal separate storm sewer system or MS4 as defined by the Environmental Protection Agency in 40 CFR 122.26, or amendments thereto.

Nonpoint source pollution means pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Non-stormwater discharge or runoff means any discharge to the municipal separate storm sewer system that is not composed entirely of Stormwater, including surface water flow, that is resulting from residential, commercial, and industrial activities.

NPDES stormwater discharge permit means a National Pollutant Discharge Elimination System permit issued under authority delegated pursuant to 33 USC 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-

wide basis.

Off-site facility means a stormwater management measure located outside the subject property boundary described in the permit application for land development activity.

On-site facility means a stormwater management measure located within the subject property boundary described in the permit application for land development activity.

Perennial vegetation means grass or other appropriate natural growing vegetation that provides substantial land cover, erosion protection and soil stability and that is capable of sustained and healthy growth over multiple years under the constraints of shade, temperature, and moisture that will be prevalent on the site. For the purposes of this chapter, annual grasses that do not regenerate after winter, ornamental plants or shrubs that do not offer effective erosion and sediment protection, and plants that are not suitable for the expected growing conditions on the site shall not be considered perennial vegetation.

Permit holder means the person that is issued a permit by the city.

Pollution or pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to, hazardous waste; industrial waste; paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from construction; asphalt based materials; concrete and/or cement; and noxious or offensive matter of any kind. The term "pollution" or "pollutant" means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes, but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. The term "pollution" or "pollutant" shall include those items defined as "pollutants" in section 502(6) of the Federal Clean Water Act, or any amendments thereto, (33 USC 1362(6)), "pesticides," as defined by K.S.A. 2-2438a and any amendments thereto, and

"insecticides," "fungicides," "herbicides," "rodenticides," "nematocides," "defoliants," "plant regulators," or "desiccants," as defined by K.S.A. 2-2202 and any amendments thereto. The term "pollution" or "pollutant" shall not include uncontaminated stormwater, potable water or reclaimed water generated by a lawfully permitted water treatment facility. The term "pollution" or "pollutant" also shall not include any substance identified in this definition, if through compliance with the best management practices available, the discharge of such substance has been reduced or eliminated to the maximum extent practicable. In an enforcement action, the burden shall be on the person who is the subject of such action to establish the reduction or elimination of the discharge to the maximum extent practicable through compliance with the best management practices available.

Professional engineer means an engineer duly licensed by the state board of technical professions, pursuant to K.S.A. 74-7001 et seq., to practice engineering.

Qualified erosion control specialist means a professional engineer licensed in the state or a landscape architect licensed in the state who has received a minimum of eight hours classroom instruction in sediment and erosion control taught by a qualified professional in erosion and sediment control or an individual possessing certification as a certified professional in erosion and sediment control, certified by CPESC, Inc. or equivalent qualifications approved in writing by the director as part of an approved stormwater pollution prevention plan or erosion and sediment control plan.

Recharge means the replenishment of underground water reserves.

Sediment means any solid material, organic, or inorganic, that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, ice or gravity as result of soil erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity.

Site means any lot or parcel of land or a series of lots or parcels of land adjoining or contiguous or joined together under common ownership on which land disturbance activity is undertaken.

Stop work order means an order issued which requires that all construction activity on a site be stopped.

Stormwater or stormwater runoff means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater drainage system means surface water and storm sewers and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to, pipes; culverts; bridges; open improved channels; street gutters; inlets pumping stations; enclosed storm sewers; outfall sewers; surface drains; street; curb and alley improvements associated with storm or surface water improvements; natural and human made wetlands; channels; ditches; rivers; streams; floodplains; water bodies; detention and retention facilities; and other flood control facilities and works for the collection; conveyance; pumping; infiltration; treating; controlling; managing and disposing of stormwater.

Stormwater pollution prevention plan (SWPPP) means a plan for the control of pollutants, pollution or soil erosion and sediment resulting from or during a land disturbance activity, complying with the city design standards and may include, without being limited to, the drawings, specifications, construction documents, schedules, inspection reports, copies of permits or other related documents upon which stormwater water quality treatment best management practices to be used on a site are set forth.

Upstream tributary area means the acreage that discharges runoff to any area of a construction site where a land disturbance activity is taking place. As used herein, the term "construction site" shall mean that area described within the land disturbance permit.

Water body means all surface watercourses and water bodies, including all natural and man-made waterways and definite channels and depressions in the earth that may carry stormwater or hold water, even though such waterways may only carry water during rains and storms and may not carry stormwater at and during all times and seasons and including all areas defined at 40 CFR 122.2, and amendments thereto.

Water quality storm means the storm event that produces less than or equal to 90 percent stormwater runoff volume of all 24-hour storms on an annual basis. In the Kansas City metropolitan area this is the 1.37 inch storm.

Water quality volume (WQ_v) means the storage needed to capture and treat 90 percent of the average annual stormwater runoff volume. Numerically (WQ_v) will vary as a function of long-term rainfall statistical data.

Watershed studies means all studies, public or private, that examine a drainage area to determine stormwater surface elevations and/or the condition of streamways or water bodies.

Wetland means an area that is inundated or saturated by surface water or

ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

(Code 2008, § 15-101)

15-102 Interpretations

In their interpretation and application, the provisions of this article are hereby adopted as the minimum requirements for the promotion of the public health, safety, and general welfare. Whenever the requirements of this article are at variance with the requirements of any lawfully-adopted statute, ordinance, resolution, regulation, rule, or other provision of law, the most restrictive, or that imposing the higher standard, shall govern.

(Code 2008, § 15-403)

15-103 Savings Clause

Neither the adoption of the ordinance from which this chapter is derived nor the future repeal or amendment of any section or part or portion thereof shall in any manner affect the prosecution for violation of this chapter, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under this chapter or any ordinance, nor be construed as affecting any of the provisions of this code or ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to this Code or any ordinance, and all rights and obligations thereunder shall continue in full force and effect.

(Code 2008, § 15-420)

ARTICLE 2 ILLICIT DISCHARGE

[15-201 Purpose And Findings](#)

[15-202 \(Reserved\)](#)

[15-203 Definitions](#)

[15-204 General Prohibition](#)

[15-205 Specific Prohibitions And Duties](#)

[15-206 Exceptions To Prohibited Acts](#)

[15-207 Inspection And Detection Program](#)

[15-208 Release Reporting And Cleanup](#)

[15-209 Enforcement; Designation Of Officer; Abatement; Right Of Entry; Penalty](#)

15-201 Purpose And Findings

- (a) The purpose of this article shall be to prevent the discharge of pollutants from land and activities within the city into the municipal separate storm sewer system (MS4) and/or into surface waters.

- (b) The governing body of the city hereby finds that pollutants are discharged into surface waters, both through inappropriate non-stormwater discharges into the MS4 or the surface waters directly, and through the wash off and transport of pollutants found on the land and built surfaces by stormwater during rainfall events.
- (c) Further, the governing body of the city hereby finds that such discharge of pollutants may lead to increased risks of disease and harm to individuals, particularly children, who come into contact with the water; may degrade the quality of such water for human uses, such as drinking, irrigation, recreation, and industry; and may damage the natural ecosystems of rivers, streams, lakes and wetlands, leading to a decline in the diversity and abundance of plants and animals.
- (d) Further, the governing body of the city hereby finds that this article will promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.
- (e) Further, the governing body of the city hereby finds that such discharges are inconsistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES), and other federal and state requirements for water quality and environmental preservation.
- (f) Further, the governing body of the city hereby finds that a reasonable establishment of restrictions and regulations on activities within the city is necessary to eliminate or minimize such discharges of pollutants, to protect the health and safety of citizens, to preserve economic and ecological value of existing water resources within the city and within downstream communities, and to comply with the provisions of the city's responsibilities under the Clean Water Act and the NPDES program.

(Code 2008, § 15-201; Ord. No. 869, § 3)

15-202 (Reserved)

15-203 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Car means any passenger car (as defined in K.S.A. 8-1445 as amended), passenger van, van, pickup truck, motorcycle, recreational vehicle, truck, tractor trailer, conveyance, motor home, or vehicle, including, but not limited to, any device defined as a motor vehicle in K.S.A. 8-2401 as amended.

Clean Water Act means the federal Water Pollution Control Act (33 USC 1251 et seq.), and any subsequent amendments thereto.

Discharge means the addition or introduction, directly or indirectly, of any pollutant, stormwater, or any other substance into the MS4 or surface waters.

Domestic sewage means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, retail and commercial establishments, factories, and institutions, that is free from industrial waste.

Extremely hazardous substance means any substance listed in the appendices to 40 CFR part 355, Emergency Planning and Notification.

Fertilizer means a substance or compound that contains a plant nutrient element in a form available to plants and is used primarily for its plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

Hazardous household waste (HHW) means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR 261.4(b)(1), would be classified as a hazardous waste under 40 CFR part 261 or K.A.R 28-29-23b.

Hazardous substance means any substance listed in Table 302.4 of 40 CFR part 302.

Hazardous waste means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR part 261.

Industrial waste means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

NPDES means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under sections 307, 402, 318 and 405 of the Federal Clean Water Act.

NPDES permit means a permit issued by United States Environmental Protection Agency (EPA) or the state that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Oil means any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

Petroleum product means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle, boat or aircraft, including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and diesel fuel.

Property owner means the named property owner as indicated by the records of the county office of records and tax administration;

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 and/or surface waters.

Sanitary sewer means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant and to which stormwater, surface water, and groundwater are not intentionally admitted.

Septic tank waste means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

Sewage means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant for treatment.

Surface waters means any body of water classified as "surface waters" by the state, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, cavern streams, alluvial aquifers associated with these surface waters, lakes, man-made reservoirs, oxbow lakes, ponds, and wetlands, as well as any other body of water classified by the federal government as a "water of the United States."

Waste means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial mining, community and agricultural activities. The term "waste" does not include solid or dissolved materials in domestic sewage or irrigation return flows or solid or dissolved materials or industrial discharges which are point sources subject to permits under the state. The federal definition of solid waste is found at 40 CFR 257.2.

Water quality standard means the law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an anti-

degradation statement.

(Code 2008, § 15-203; Ord. No. 869, § 5)

15-204 General Prohibition

- (a) No person shall release or cause to be released into the MS4, or into any surface waters within the city, any discharge that is not composed entirely of stormwater that is free of pollutants, except as allowed elsewhere herein.
- (b) Notwithstanding any other provisions of this article, any discharge shall be prohibited by this article if the discharge in question has been determined by the director to be a source of a pollutant to the MS4 or to surface waters, written notice of such determination has been provided to the property owner or person responsible for such discharges, and the discharge has occurred more than ten days beyond such notice.

(Code 2008, § 15-204; Ord. No. 869, § 6)

15-205 Specific Prohibitions And Duties

The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition herein, but are provided to address specific discharges that are frequently found or are known to occur:

- (a) No person shall release or allow to be released any of the following substances into the MS4:
 - (1) Any new or used petroleum product or oil;
 - (2) Any industrial waste;
 - (3) Any hazardous substance or hazardous waste, including household hazardous waste;
 - (4) Any domestic sewage or septic tank waste, grease trap or grease interceptor waste, holding tank waste, or grit trap waste;
 - (5) Any garbage, rubbish or other waste;
 - (6) Any new or used paints, including latex-based paints, oil-based paints, stains, varnish, and primers, as well as cleaning solvents and other associated products;
 - (7) Any yard wastes which have been moved or gathered by a person;
 - (8) Any wastewater that contains soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial motor vehicle wash facility; from any vehicle washing, cleaning, or maintenance at any new or used

motor vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment;

- (9) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or any surfactant based cleaner;
- (10) Any wastewater from commercial floor, rug, or carpet cleaning;
- (11) Any wastewater from the washdown or other cleaning of pavement that contains any soap, detergent solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all such materials have been previously removed;
- (12) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;
- (13) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
- (14) Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area or any pet wastes generally;
- (15) Any filter backwash from a swimming pool or fountain, except that nothing in this article shall be construed as to require the alteration of the filter discharge plumbing of an existing swimming pool, fountain or spa if such plumbing was compliant with applicable state, federal, and local regulations at the time of construction;
- (16) Any swimming pool, fountain or spa water containing a harmful level of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the water or during cleaning of the facility;
- (17) Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or surface waters;
- (18) Any contaminated runoff from a vehicle wrecking or storage yard;
- (19) Any substance or material that will damage, block, or clog the MS4;
- (20) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state;

- (21) Any other discharge that causes or contributes to causing the city to violate a state water quality standard, any city NPDES stormwater permit or authorization, or any state-issued discharge permit for discharges from its MS4.
- (b) No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures, except as allowed for in conformance with this Code.
- (c) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4. No property owner shall allow such a connection to continue in use on his or her property.
- (d) No person shall use pesticides, herbicides, or fertilizers except in accordance with manufacturer recommendations. Pesticides, herbicides, and fertilizers shall be stored, transported, and disposed of in a manner to prevent release to the MS4.
- (e) No person shall tamper with, destroy, vandalize, or render inoperable any BMPs which have been installed for the purpose of eliminating or minimizing pollutant discharges, nor shall any person fail to install or fail to properly maintain any BMPs which have been required by the city or by other local, state, or federal jurisdictions.

(Code 2008, § 15-205; Ord. No. 869, § 7)

15-206 Exceptions To Prohibited Acts

- (a) Unless identified by the city or KDHE as a significant source of pollutants to surface water, the following non-stormwater discharges are deemed acceptable and not a violation of this article:
 - (1) Water line flushing;
 - (2) Diverted stream flow;
 - (3) Rising groundwater;
 - (4) Uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewers;
 - (5) Uncontaminated pumped groundwater;
 - (6) Contaminated groundwater if authorized by KDHE and approved by the city;
 - (7) Discharges from potable water sources;

- (8) Foundation drains;
 - (9) Air conditioning condensate;
 - (10) Irrigation waters;
 - (11) Springs;
 - (12) Water from crawl space pumps;
 - (13) Footing drains;
 - (14) Individual residential car washing;
 - (15) Flows from riparian habitats and wetlands;
 - (16) De-chlorinated swimming pool discharges excluding filter backwash;
 - (17) Street wash waters (excluding street sweepings which have been removed from the street);
 - (18) Discharges or flows from emergency firefighting activities;
 - (19) Heat pump discharge waters (residential only);
 - (20) Treated wastewater or other discharges meeting requirements of an NPDES permit;
 - (21) Periodic and temporary application of substances by the city to the rights-of-way of the city for traffic safety or to protect the health, safety, and welfare of the citizens, as prescribed by the director of public works; and
 - (22) Other discharges determined not to be a significant source of pollutants to waters of the state, a public health hazard or a nuisance.
- (b) Discharges specified in writing by the director as being necessary to protect public health and safety.

(Code 2008, § 15-206; Ord. No. 869, § 8)

15-207 Inspection And Detection Program

The director is authorized to develop and implement a plan to actively detect and eliminate prohibited discharges and connections to the MS4 or surface waters within the city. Such plan may include, but is not limited to, periodic and random inspections of facilities and businesses, particularly those most associated with potentially prohibited discharges; visual surveys of exterior practices; inspection, sampling and analyses of discharges from outfalls of the MS4, particularly during dry weather periods; manhole and pipe inspections to trace discharges through the system to point of origin; education on pollution prevention; and receipt of complaints and information from the public regarding known or suspected discharges.

(Code 2008, § 15-207; Ord. No. 869, § 9)

15-208 Release Reporting And Cleanup

- (a) Any person responsible for the release of any prohibited material that may flow, leach, enter, or otherwise be introduced into the MS4 or surface waters shall take all necessary steps to ensure the containment and cleanup of such release.
- (b) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
- (c) In the event of a release of nonhazardous materials, said person shall notify the director in person or by phone or email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the director within three business days of the phone notice.

(Code 2008, § 15-208; Ord. No. 869, § 10)

15-209 Enforcement; Designation Of Officer; Abatement; Right Of Entry; Penalty

The director or his or her appointed representative shall be designated as the public officer charged with the administration and enforcement of this article. The public officer shall authorize the investigation of violations of the article. If it is determined that a violation of this article exists, then the officer shall declare such condition a nuisance and is authorized to pursue abatement and enforcement procedures as specified in this Code. Further, any violation of this article shall constitute an ordinance violation offense and shall also be subject to the penalties set forth in WCC 1-116 in addition to, and not in lieu of, any and all remedies and penalties available to the city. Each day during which any act violative of this article takes place shall constitute a separate violation of this article.

(Code 2008, § 15-209; Ord. No. 869, § 11)

ARTICLE 3 SEDIMENT AND EROSION CONTROL

[15-301 \(Reserved\)](#)

[15-302 Purpose](#)

[15-303 Definitions](#)

[15-304 Land Disturbance Activity](#)

[15-305 Land Disturbance Permit](#)

[15-306 Land Disturbance Permit Inspections](#)

[15-307 For Land Disturbances Of Less Than One Acre](#)

[15-308 Fees](#)

[15-309 Additional Persons Responsible For Compliance](#)

[15-310 Compliance And Use](#)

[15-311 Enforcement Of Code Provisions](#)

[15-312 \(Reserved\)](#)

[15-313 Savings Clause](#)

15-301 (Reserved)

15-302 Purpose

- (a) The Congress of the United States has amended the Clean Water Act of 1972 to reduce pollutants discharged into the waters of the United States by extending National Pollutant Discharge Elimination System (hereinafter, NPDES) requirements to regulate stormwater and urban runoff discharge from land disturbance and construction activities, into the city's stormwater drainage systems.
- (b) The city is subject to the NPDES requirements of federal law as an operator of a small municipal separate storm sewer system, and the city is therefore obligated by federal law to develop, implement, and enforce minimum erosion and sediment control standards in compliance with the city's state water pollution control general MS4 permit.
- (c) The purpose of this article is to implement and provide for enforcement of a program to regulate land disturbance and construction activities related to grading and to control erosion and sediment resulting from these activities.

(Code 2008, § 15-302)

15-303 Definitions

As used in this article, unless from the context a different meaning is intended, or this Code directs that a different definition is to be applied to a provision, the terms or phrases used herein shall have those meanings and definitions as set forth in WCC 15-101 et seq.

(Code 2008, § 15-303)

15-304 Land Disturbance Activity

- (a) No person shall authorize or maintain a land disturbance activity or construction site that fails to comply with the city design standards and the requirements of this article.
- (b) No person shall authorize or maintain a land disturbance activity or a site of construction that fails to provide and implement erosion and sediment control best management practices to the maximum extent practicable to prevent the discharge of sediment, construction materials, concrete truck washout, fuel or other pollutants beyond the project construction limits, adjacent staging, storage

or parking areas and/or property boundaries or into the city's stormwater drainage system, rights-of-way, drainage easements, alleys, or other property of the city.

- (c) No person shall authorize or maintain a land disturbance activity or site of construction without a land disturbance permit (LDP) and/or a site-specific erosion and sediment control plan approved by the director prior to any construction or land disturbance activity as required by this article.
- (d) No person shall fail to immediately take all action necessary to completely abate any violation of this article, including, but not limited to, the establishment or restoration of erosion and sediment control BMPs as required by this article and remedial action to clean and/or remove sediment and other pollutants in violation of this chapter.

(Code 2008, § 15-304)

15-305 Land Disturbance Permit

The issuance and approval of a land disturbance permit is subject to and contingent upon compliance with this article and all other city permits, this Code, other city regulations and other requirements specific to the development during the duration of the land disturbance, and such land disturbance permit may be revoked or withdrawn upon a failure to comply with this article. The failure to comply with the requirements stated in this article shall be unlawful and shall constitute a violation of this article. No person shall authorize or maintain a land disturbance activity without first obtaining any land disturbance permit required by this article. The landowner of the land upon which a land disturbance activity takes place, shall be the person responsible for obtaining any required land disturbance permit except for work conducted in the right-of-way or utility easements. The person or construction site operator conducting land disturbance activities in the right-of-way or in a utility easement shall be responsible for obtaining any required land disturbance permit.

- (a) A land disturbance permit is required as necessary to permit the city to meet its permit requirements under the National Pollutant Discharge Elimination System permit or as required by law, or for the following land disturbance activities (specific requirements may vary pursuant to the city design standards):
 - (1) The cumulative disturbance of an area greater than or equal to one acre;
or
 - (2) The disturbance of any part of a larger common plan of development or sale that; when completed; will disturb a cumulative area of greater than or equal to one acre.
- (b) A land disturbance permit is not required for the following:

- (1) Work to correct or remedy emergencies, including situations that pose an immediate danger to life or property;
 - (2) Landscaping or home gardening;
 - (3) Re-establishment of lawn areas; or
 - (4) Agricultural uses with the exception that if the director determines that erosion and sediment controls are needed then the following standards or permits may be required to be implemented and maintained:
 - a. United States Department of Agriculture Natural Resources Conservation Service Erosion and Sediment Control Standards; or
 - b. Land disturbance permit may be required.
- (c) A land disturbance permit application shall include, but is not limited to, the following minimum submittal requirements:
 - (1) A site-specific erosion and sediment control plan that complies with this article and the city design standards;
 - (2) A site-specific grading plan that complies with this article, this Code, the city design standards, and other applicable city policies and administrative statements;
 - (3) A stormwater pollution prevention plan (SWPPP) that complies with this article and the city design standards. The SWPPP must be in compliance with the KDHE general permit for NPDES stormwater runoff from construction activities;
 - (4) Contact information for the applicant, construction site operator, project owner, qualified erosion control specialist, and inspector;
 - (5) Area to be disturbed;
 - (6) Duration of land disturbance;
 - (7) Security as required by this article;
 - (8) Permit fee as authorized by this article.
- (d) The construction site operators required to be identified in the application shall be trained in erosion and sediment control practices, shall maintain a copy of the SWPPP on the project site and shall comply with all the requirements of the LDP.
- (e) The land disturbance activity described in the land disturbance permit application shall be commenced within the time limits defined on the application. The land disturbance activity described and authorized in the land

disturbance permit application shall adhere to the schedule defined in the land disturbance permit application or be subject to additional fees defined in this article.

- (f) The land disturbance permit application, erosion and sediment control plans and all other LDP requirements shall be prepared under the supervision of and sealed by a professional engineer or landscape architect licensed in the state who has received a minimum of eight hours classroom instruction in sediment and erosion control taught by a qualified erosion control specialist.
- (g) A qualified erosion control specialist shall be authorized by the permit holder of the land disturbance permit and identified on the land disturbance application as the person responsible to manage and ensure that all work is in compliance with the SWPPP and all requirements of the land disturbance permit approved by the city.
- (h) A land disturbance permit not being required for a site does not exempt a site from following the basic erosion control practices defined in the city design standards.
- (i) If the land disturbance activity threatens or impedes the ability of the city to meet its own permit requirements under the NPDES stormwater discharge permit the director may require any person to obtain a land disturbance permit in full compliance with this article.
- (j) Every permit shall expire based on the time limits defined in the application.
- (k) No person required by this article to obtain a land disturbance permit shall authorize or maintain a land disturbance activity or a site of construction, which is not maintained at all times, in compliance with the site-specific erosion and sediment control plan approved by the director.
- (l) No person shall permit, authorize or maintain a land disturbance activity or a construction activity until all erosion and sediment control measures identified in this article have been installed, inspected, and approved in accordance with this article.
- (m) No person required by this article to obtain a land disturbance permit shall fail to obtain a satisfactory final inspection and city approval of the full site restoration in compliance with all requirements of this article, prior to the expiration of the land disturbance permit.

(Code 2008, § 15-305)

15-306 Land Disturbance Permit Inspections

- (a) *Maintenance of control measures.* All required erosion and sediment control measures shall be maintained in good order and in compliance with the erosion and sediment control plan at all times.

- (b) *Routine inspection.* It shall be the duty of the permit holder to provide routine inspections of the construction site and maintain effective erosion and sediment control measures. Routine inspections shall be performed once per week, more frequently if required on the plan, and within 24 hours following each rainfall event of half an inch or more within any 24-hour period. A log shall be kept of these inspections by the qualified erosion control specialist as a part of the SWPPP. Any deficiencies shall be noted in a report of the inspection and include the action taken to correct the deficiency.
- (c) The LDP application shall designate the qualified erosion control specialist who shall provide the routine inspections required by this section and/or designate a qualified inspector. The designation shall be made, in writing, to the director at the time the land disturbance permit application is submitted for approval. The qualified erosion control specialist and or their assigned inspector that performs the routine inspections shall maintain a copy of the most current erosion and sediment control plan at the construction site at all times. The inspection shall be done under the supervision of the qualified erosion control specialist. The written reports shall be submitted by the qualified erosion control specialist to city as required by and in compliance with the city design standards. The city shall not be designated as an inspector.
- (d) *Initial inspection.* The permit holder shall notify the director when initial erosion and sediment control measures are installed in accordance with the erosion and sediment control plan. No land disturbance activities shall begin prior to written approval by the director of the certification, by the qualified erosion control specialist, that all pre-construction erosion and sediment control measures are correctly installed per the approved plan.
- (e) A land disturbance permit shall not be closed until a final inspection and approval of the site stabilization is issued by the city. No final certificate of occupancy shall be issued until a site is stabilized, restored and the land disturbance permit's requirements have been satisfied and the permit closed. A site shall be considered stabilized and restored when perennial vegetation, pavement, buildings or structures using permanent materials, cover 70 percent of the upstream tributary area found within the area defined by the land disturbance permit and as required by the director. All portions of the site using perennial vegetation for ground stabilization shall be homogeneously covered with at least a 70 percent vegetation density. Restoration includes the removal of all non-permanent erosion and sediment control devices for the site. Final certification of the restoration and stabilization of the site shall Be submitted for approval to the director by the qualified erosion control specialist.
- (f) A land disturbance permit acknowledges and conveys to the director the right to enter upon property described in the land disturbance permit, as necessary to enforce and carryout the provisions of this article.

(Code 2008, § 15-306)

15-307 For Land Disturbances Of Less Than One Acre

- (a) Land disturbances less than one acre that are not covered by an LDP and require a building permit or work in the right-of-way permit will require an erosion and sediment control plan to be submitted in compliance with the city design standards.
- (b) Franchised and/or public utilities shall obtain a general land disturbance permit for land disturbances of less than one acre in-lieu of obtaining individual project land disturbance permit. The general land disturbance permits for franchised and public utilities will be renewed annually and shall include the effective erosion control standards and construction methods that are to be implemented on the utility's projects, conforming to the city design standards. The fee and performance surety for a general land disturbance permit will be as shown in the latest schedule of fees established administratively by the city.

(Code 2008, § 15-307)

15-308 Fees

- (a) Prior to the issuance of land disturbance permit each applicant shall pay to the city a fee as established by the governing body. Fees paid for a land disturbance permit, which is subsequently revoked by the director, are not refundable. A person operating in compliance with the regulations of this article shall not be charged a permit fee when obtaining a land disturbance permit for construction or re-construction of city owned and financed capital improvement projects.
- (b) Any person who permits, authorizes, or maintains a land disturbance activity without first obtaining a valid land disturbance permit required by this article, shall pay additional permit fees as indicated in the master fee schedule established administratively by the city.
- (c) The applicant shall establish and maintain throughout the permit period an escrow account, issue a letter of credit, or a surety bond in the city's name, as a sufficient surety for the city to requirements of this article. The director may determine that a specific type of surety instrument is required of an applicant based on the project proposed and past performance of the applicant. The amount of the required surety shall be as defined in the master fee schedule established administratively by the city. The amount of the letter of credit or escrow account may be reduced with the approval, in writing, of the director by amending the letter of credit or escrow account.

(Code 2008, § 15-308)

15-309 Additional Persons Responsible For Compliance

The person responsible for compliance with this article shall include, jointly and severally:

- (a) The landowner and/or occupant of the property upon which a land disturbance or construction activity takes place. When a land disturbance permit and/or site development permit is issued, the landowner is responsible for land disturbance activities from permit issuance to closure, unless the city approves a transfer of responsibility to a new landowner when land is sold;
- (b) The person who submits or to whom a land disturbance permit is issued that relates to the property upon which a land disturbance activity or construction activity takes place;
- (c) The person who submits, or requests a waiver of, the site specific erosion and sediment control plan that relates to the property upon which a land disturbance activity or construction activity takes place;
- (d) Any person who engages in, permits, manages, or participates in a land disturbance activity or construction activity;
- (e) Construction site operators.

(Code 2008, § 15-309)

15-310 Compliance And Use

- (a) The property described in a land disturbance permit shall be maintained at all times in compliance with all provisions of this Code, state and federal laws, city design standards, applicable laws or regulations, and the conditions or requirements for approval of a site plan, plat, or special use permit, including required drainage, grade or elevation plans. The property described in a land disturbance permit shall be maintained at all times in compliance with the provisions of any application, plans or specifications upon which such permit was issued.
- (b) The approval of the erosion and sediment control plan and the stormwater pollution prevention plan (SWPPP) is contingent upon compliance with the requirements stated in this article, and shall comply with the city design standards to the maximum extent practicable in order to prevent the escape of sediment and other pollutants from the site.
- (c) The failure to comply with the requirements stated in this article shall be unlawful and shall constitute a violation of this article.

(Code 2008, § 15-310)

15-311 Enforcement Of Code Provisions

- (a) Any person that fails to provide and implement erosion and sediment control best management practices to the maximum extent practicable as required by this article, shall be ordered by the director to take remedial action on said land to prevent the occurrence or recurrence of a violation of this article. Remedial action shall include, but not be limited to, conformance to the requirements of this article. When failed or absent erosion control has resulted in mud, silt, gravel, dust or other debris entering into the public rights-of-way, drainage easements, alleys, or other property of the city, the remedial action required also shall include the restoration of the area disturbed to a neat and presentable condition and removal of any debris or other pollutants.
- (b) Whenever the director finds a violation of this article, the director shall order the landowner of the land upon which a land disturbance activity takes place, the construction site operator, and/or the permit holder to take action within three days after service of such order to comply with the provisions of this article. The order may direct the removal of any dirt, debris or mud that has been deposited in the rights-of-way, drainage easements, alleys, or other properties owned by the city, within four hours after service of such notice. Notice may be given in person, by posting at the site, by telephone call, or by email contacts as provided in the land disturbance permit application.
- (c) In addition to the enforcement provisions of this Code, the director may issue a stop work order if the director determines that work authorized by a land disturbance permit is in violation of this article or the erosion and sediment control plan, including required drainage, grade or elevation plans, or not in compliance with the provisions of the application, plans or specifications, or conditions upon which a permit was issued, including, but not limited to, the following:
 - (1) Applicant fails to submit reports in accordance with the city design standards;
 - (2) Inspection by the director reveals the site defined by the land disturbance permit is not in substantial compliance with the erosion and sediment control plan, as determined by the director;
 - (3) Failure to comply with a written order from the director to bring the site into compliance with the land disturbance permit, correct a violation of this article, or restore a disturbed area within the time limits defined by the director; or
 - (4) Applicant fails to pay any fee.
- (d) In the event a stop work order is issued by the director, the director shall order and direct the landowner of the property, or the landowner's agent, or any party in possession of such property described in the land disturbance permit

application, or the construction site operator performing the work, or any work authorized by a city permit in the development to immediately suspend work within the area defined in the land disturbance permit.

- (e) Such stop work order shall be in writing, shall state the conditions under which the work may be resumed, and may be served upon a person to whom it is directed either by personal delivery, or by posting the area defined by the land disturbance permit and/or mailing a copy of the same to the address identified within the land disturbance permit application for the permit holder, landowner, and/or any party in possession of such property. In the event the director issues a written stop work order, all persons shall cease all work on the development site, except work necessary to remedy the cause of the suspension.
- (f) It shall be unlawful for a land disturbance permit applicant, construction site operator, party in possession of property subject to a stop work order, or landowner subject to a stop work order, to allow, consent, or permit any person to perform work described within the land disturbance permit or any other work requiring a city permit, upon property subject to a stop work order.
- (g) Upon written notice by the director as required herein for a stop work order, the director may revoke the land disturbance permit if the applicant fails or refuses to remedy the cause of the suspension set forth in a stop work order.
- (h) In the event the land disturbance permit is revoked by the director, no person shall permit or continue any work described in the land disturbance permit without first obtaining a new land disturbance permit and paying a new permit fee as required by this article.

(Code 2008, § 15-311)

15-312 (Reserved)

15-313 Savings Clause

Neither the adoption of the ordinance from which this article is derived, nor the future repeal or amendment of any section or part or portion thereof, shall in any manner affect the prosecution for violation of this article, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under any provision of this Code, nor be construed as affecting any of the provisions of this Code relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any provision of this Code, and all rights and obligations thereunder shall continue in full force and effect.

(Code 2008, § 15-313)

ARTICLE 4 POST CONSTRUCTION STORMWATER QUALITY TREATMENT

[15-401 \(Reserved\)](#)
[15-402 Purpose And Intent](#)
[15-403 \(Reserved\)](#)
[15-404 Relationship To Other Laws](#)
[15-405 Disclaimer Of Liability](#)
[15-406 Applicability](#)
[15-407 Technical Specifications And Design Criteria](#)
[15-408 Submittal Of Studies, Plans, And Specifications](#)
[15-409 Certification Of Studies, Plans, And Specifications](#)
[15-410 Stormwater Management Permit Required](#)
[15-411 Dedicated Tracts And Easements](#)
[15-412 Issuance Of Permit](#)
[15-413 Repairs During Maintenance Period](#)
[15-414 Notice Of Acceptance](#)
[15-415 As-Built Plans](#)
[15-416 Facility Maintenance](#)
[15-417 Annual Certification](#)
[15-418 Disturbance Of Constructed Facilities](#)

15-401 (Reserved)

15-402 Purpose And Intent

- (a) The Congress of the United States has amended the Clean Water Act of 1972 to reduce pollutants discharged into the waters of the United States by extending National Pollutant Discharge Elimination System (hereinafter "NPDES") requirements to regulate stormwater and urban runoff discharge from land disturbance and construction activities, into the city's stormwater drainage systems.
- (b) The city is subject to the NPDES requirements of federal law as an operator of a small municipal separate storm sewer system (MS4), and the city is therefore obligated by federal law to develop, implement, and enforce minimum post-construction stormwater quality treatment standards in compliance with the city's state water pollution control general MS4 permit.
- (c) The purpose of this article shall be to establish post-construction minimum stormwater management requirements and controls on any new development or redevelopment projects that disturb greater than or equal to one acre. This article also will establish requirements for long-term maintenance of structural controls within the city for drainages into the municipal separate storm sewer system (MS4) and/or into surface waters. This article seeks to meet this purpose through the following objectives:
 - (1) Minimize increases in stormwater runoff from any development in order to reduce non-point source pollution, siltation, and streambank erosion

and maintain the integrity of stream channels;

- (2) Minimize increases in non-point source pollution caused by stormwater runoff from development which would otherwise degrade local water quality, particularly if receiving water bodies are classified as impaired on the current version of the 303d listing of impaired waters in the state as identified by the Kansas Department of Health and Environment (KDHE); and
- (3) Reduce stormwater runoff rates, soil erosion, and non-point source pollution, wherever possible, through stormwater quality best management practices (BMPs) and to ensure that these BMPs are properly maintained and pose no threat to public safety.

(d) Within this article, the term "stormwater quality facility" shall mean BMPs that are implemented or constructed in order to comply with this article.

(Code 2008, § 15-402)

15-403 (Reserved)

15-404 Relationship To Other Laws

This article shall not be construed as abating any action now pending under, or by virtue of, prior existing regulations; or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue; or as affecting the liability of any person; or as vacating or annulling any rights obtained by any person by lawful action of the city, except as shall be expressly provided for in this article.

(Code 2008, § 15-404)

15-405 Disclaimer Of Liability

The requirements set forth in this article establish minimum requirements, which must be implemented with good engineering practice and workmanship. Use of these requirements shall not constitute a representation, guarantee or warranty of any kind by the city, or its officers and employees, of the adequacy or safety of any post-construction stormwater quality facility or use of land, nor shall the acceptance of a preliminary or final stormwater quality facility or the issuance of any city permit imply that the land uses permitted will be free from adverse impacts to stormwater quality. This article, therefore, shall not create liability on the part of the city or any officer or employee with respect to any legislative or administrative decision lawfully made hereunder.

(Code 2008, § 15-405)

15-406 Applicability

The provisions of this article shall extend and apply to all land within the corporate limits of the city, with the following conditions:

- (a) The provisions of this article shall apply to all activities that meet the definition of "development" as that term is defined in WCC 15-101 et seq., and disturb an area equal to or greater than one acre in area, and shall also include projects of less than one acre that are part of a larger common plan of development or sale.
- (b) Notwithstanding any other requirements of this article, this article shall not apply, unless superseded by state or federal regulation, to properties on which a preliminary plat has been approved by the planning commission prior to February 14, 2008, and a final plat containing a portion of that plat has been recorded in the county office of records and tax administration prior to February 14, 2009. If public improvement or stormwater management permits are not obtained for all parts of the development within two years of the final plat approval, all requirements of this article shall apply to all subsequent construction permits, and plats and plans shall be revised accordingly.
- (c) The provisions of this article shall apply to city administered street construction as directed by the governing body at the completion of preliminary plans and studies for these projects.

(Code 2008, § 15-406)

15-407 Technical Specifications And Design Criteria

- (a) Unless specifically stated and amended by a formal written policy statement issued by the director, all stormwater quality facilities required or constructed within the city shall be designed and constructed in accordance with the latest edition of the city design standards. In addition, there may be a reduced treatment requirement than is otherwise indicated on all developments that have a gross site area of less than five acres and are otherwise subject to this article. The city design standards is hereby incorporated by reference into this article.
- (b) If hydrologic or topographic conditions warrant greater control than provided by the minimum control requirements set forth in the city design standards, the director may impose additional requirements deemed necessary to control the pollutants in stormwater runoff. It shall be unlawful for any person to fail to comply with any additional requirements imposed by the director as necessary to control the pollutants.

(Code 2008, § 15-407)

15-408 Submittal Of Studies, Plans, And Specifications

In accordance with the design criteria and this article, the applicant shall submit all

preliminary and final studies, plans, and specifications prior to receiving a stormwater management permit.

(Code 2008, § 15-408)

15-409 Certification Of Studies, Plans, And Specifications

Prior to commencing construction of a stormwater quality facility, a professional engineer shall submit a certification stating that the final stormwater management studies, construction plans, and specifications for constructing required stormwater quality facilities are in conformance with the standards, requirements, and specifications of this article. The certifying professional engineer shall demonstrate conformance to the qualifications enumerated in the city design standards. Certification shall be submitted prior to issuing a stormwater management permit for improvements required by this article. If the director finds that a proposed stormwater quality facility will not conform to accepted standards, the director shall issue a written notice of disapproval.

(Code 2008, § 15-409)

15-410 Stormwater Management Permit Required

- (a) A stormwater management permit shall be required for the construction of all stormwater quality facilities within the city. Upon acceptance of the final stormwater management plan, construction plans, and specifications, and payment of a fee to be set administratively by the city, the applicant shall submit a copy of the contractor's bid proposal identifying the total construction cost of the stormwater quality facility to the director, who shall review the proposal and determine the amount required for performance and maintenance sureties. An application for the stormwater management permit for facilities required by this article shall be submitted to the director with written documentation of the performance and maintenance surety.
- (b) The applicant shall post a performance and maintenance bond, cash escrow paid to an approved escrow agent, or letter of credit from a bank in the amount of 125 percent of the total construction cost of the facility. The surety shall contain forfeiture provisions for failure to complete work specified in the stormwater management plan. The performance and maintenance escrow shall be released in full, after a three-year period following notice of acceptance of the stormwater quality facility. Provisions for a partial pro rata release of the performance security based on issuance of a notice of acceptance for the completed stormwater quality facility may be done at the discretion of the director. However, the remaining amount of the surety shall at no time be less than 50 percent of the actual construction cost of the stormwater quality facility and shall be maintained until released by the director following the three-year maintenance period.

- (c) Whenever necessary, the city may engage professionals necessary to administer the requirements of this enactment and the city's other stormwater ordinances and regulations. The city may, in its reasonable discretion, include the costs of such professionals as part of the requirements of a stormwater management permit or other permits or requirements of the city, and such costs may be required to be paid by an applicant.

(Code 2008, § 15-410)

15-411 Dedicated Tracts And Easements

All stormwater quality facilities shall be located in a separate tract dedicated for this purpose. If the stormwater quality facility serves lands from only one lot and is located on the lot served, the facility may alternatively be located in an easement dedicated for this purpose. In all cases, the tract or easement shall include provisions for access from public right-of-way to the stormwater quality facility by landowners legally responsible for the facility and/or the director for periodic inspection and maintenance of the treatment facility. All tract and easement uses and restrictions shall be binding on future landowners on which the stormwater quality facility is located, and all easements or tracts shall be recorded by the applicant in the land records.

(Code 2008, § 15-411)

15-412 Issuance Of Permit

Upon acceptance of the applicant's assurances of performance and maintenance as provided in this article and after all easements have been dedicated, accepted, and recorded, the director may issue a stormwater management permit for facilities required by this article. The permit shall set forth the terms and conditions of the approved stormwater management plan.

(Code 2008, § 15-412)

15-413 Repairs During Maintenance Period

During the three-year maintenance period following the date of completion and acceptance by the director of the work embraced by this article, the permit holder shall make all needed repairs arising out of defective workmanship or materials which, in the judgment of the director or the certifying professional engineer, become necessary during the maintenance period. If within ten days after the mailing of a written notice, the permit holder shall neglect to make or undertake with due diligence to make these repairs, the city is hereby authorized to make such repairs at the permit holder's expense; provided, however, that in case of an emergency where, in the judgment of the director, a delay would cause serious loss, hazard, or damage, such repairs may be made without prior notice being sent to the permit holder, and the permit holder shall pay the cost thereof.

(Code 2008, § 15-413)

15-414 Notice Of Acceptance

- (a) The permit holder shall notify the director before beginning construction of any stormwater quality facility. The permit holder shall keep the director advised as to the progress of the work and any changes in the schedule.
- (b) Following completion of construction activities for the stormwater quality facility, the director will issue a notice of acceptance only upon submission of as-built plans, as indicated herein, and written certification by a qualified professional engineer that the stormwater quality facility has been installed in accordance with the approved plan and other applicable provisions of this article.

(Code 2008, § 15-414)

15-415 As-Built Plans

Prior to the director issuing a written notice of acceptance, the permit holder shall submit an as-built or corrected plan showing in detail all construction changes from the approved plans and specifications, and furnish certification by a qualified professional engineer to the director that the materials and construction of the stormwater quality facility fully comply with the construction plans and specifications and the provisions and intent of this article, and that the facility is fully functional.

(Code 2008, § 15-415)

15-416 Facility Maintenance

(a) Maintenance agreement.

- (1) Prior to the issuance of a stormwater management permit for property for which a stormwater quality facility is required, the landowner shall execute an inspection and maintenance agreement binding on all subsequent landowners of land served by a stormwater quality facility. Such agreement shall provide for access to the facility at reasonable times for regular or occasional inspections by the director to ensure that the facility is maintained in proper working condition to meet design standards.
- (2) The agreement shall be recorded by the applicant and/or landowner in the land records of the county.
- (3) The agreement shall also provide that if, after notice by the director to correct a violation requiring maintenance work, satisfactory corrections are not made by the landowners within a reasonable period of time (30 days maximum), the city may perform all necessary work to place the

facility in proper working condition. The landowner of the lands served by the facility, excluding public right-of-way, shall be assessed the cost of the work, including administrative costs, materials, personnel, and any penalties. Costs shall be proportioned to each landowner based on a ratio of the area of land owned to the total area of land assessed. This assessment may be accomplished by placing a special assessment on the property, which may be placed on the tax bill and collected in the same manner as ordinary taxes.

(b) Maintenance responsibility.

- (1) The landowner of the property on which the stormwater quality facility has been constructed pursuant to this article, or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures, and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.
- (2) A maintenance schedule shall be developed for any stormwater quality facility and shall state the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be printed on the approved stormwater management plan, incorporated into the maintenance agreement, and shall be followed by subsequent responsible parties.
- (3) Annual inspections of stormwater quality facilities shall be an integral part of the maintenance plan and schedule and shall be conducted annually by a qualified professional engineer.

(Code 2008, § 15-416)

15-417 Annual Certification

On or before October 1 of each year, the person responsible for maintaining each stormwater quality facility shall furnish certification by a qualified professional engineer, as defined in the city design standards, to the director that the facility is working properly and that the scope and timing of the prescribed maintenance is being completed.

(Code 2008, § 15-417)

15-418 Disturbance Of Constructed Facilities

It shall be unlawful for any person to obstruct, damage, or materially interfere with the use or operation of a post-construction stormwater quality facility required by this article,

unless such facility is fully restored and repaired, and such restoration or repairs have been certified in writing to the director by a qualified professional engineer, within 48 hours of the obstruction, damage, or interference.

(Code 2008, § 15-418)

ARTICLE 5 STORMWATER UTILITY (RESERVED)

CHAPTER 16 ZONING

ARTICLE 1 PURPOSE, RESPONSIBILITIES, AND PROCEDURES

ARTICLE 2 DEFINITIONS

ARTICLE 3 GENERAL REGULATIONS

ARTICLE 4 RESIDENTIAL ZONING DISTRICTS

ARTICLE 5 COMMERCIAL ZONING DISTRICTS

ARTICLE 6 PLANNED ZONING DISTRICTS

ARTICLE 7 COMMERCIAL OVERLAY DISTRICTS

ARTICLE 8 SPECIAL USE PERMITS

ARTICLE 9 SIGNS

ARTICLE 10 COMMUNICATION FACILITIES FOR WIRELESS SERVICES

ARTICLE 1 PURPOSE, RESPONSIBILITIES, AND PROCEDURES

DIVISION 1.1 ZONING ORDINANCE

DIVISION 1.2 ZONING DISTRICT MAP

DIVISION 1.3 GENERAL PROVISIONS

DIVISION 1.4 PLANNING COMMISSION

DIVISION 1.5 PLANS, PLATS, AND LOT SPLITS

DIVISION 1.6 APPLICATIONS AND PROCEDURES

DIVISION 1.7 (RESERVED)

DIVISION 1.8 BOARD OF ZONING APPEALS

DIVISION 1.1 ZONING ORDINANCE

1.1.1 (Reserved)

1.1.2 Title

1.1.3 (Reserved)

1.1.1 (Reserved)

1.1.2 Title

The ordinance codified in this chapter is officially titled "The Zoning Ordinance of the City of Westwood, Kansas," and shall be known as the "zoning ordinance" or, herein, "this chapter." The official map designating the various regulating districts shall be titled "The City of Westwood Zoning Map," and shall be known as the "zoning map."

(Code 2008, ch. 16, § 1.1.2; Ord. No. 1024, § 1(1.1.2), 2-10-2022)

1.1.3 (Reserved)

DIVISION 1.2 ZONING DISTRICT MAP

1.2.1 District Map Incorporated

1.2.2 Zoning District Use Regulations

1.2.3 Zoning District Map Interpretation

1.2.4 Zoning District Map

1.2.1 District Map Incorporated

There is hereby adopted and herein incorporated by reference the city zoning map, which shall be the official map defining the boundaries of zones and showing the district boundaries and classification of such districts. Said map shall be marked "Official Map with Copies Thereof as Incorporated by the Westwood City Code," with modification date. Said map shall be filed with the city clerk and open for public use at all reasonable business hours. The map, and all subsequent amendments to the map, shall also be on file at the office of the city clerk and made available to the public.

(Code 2008, ch. 16, § 1.2.1)

1.2.2 Zoning District Use Regulations

Except as hereinafter provided, no building or premises shall be used for any purpose other than as permitted in the zoning district in which said building or premises is located. No lot area shall be so diminished or reduced that the yards or open spaces shall be smaller than prescribed herein, nor shall the lot area for any family dwelling or residence be reduced in any manner except in conformity to area regulations hereby established for the district in which such building is located.

(Code 2008, ch. 16, § 1.2.2)

1.2.3 Zoning District Map Interpretation

The map entitled "Official Zoning District Map of Westwood, Kansas," certified as such by the city clerk, is hereby declared to be the proper zoning for said districts. For purposes of interpretation of district boundaries as shown on the zoning map, the following rules shall apply:

- A. Boundaries indicated as following approximately the centerline of streets, highways, or alleys shall be construed to follow such centerlines.
- B. Boundaries indicated as following approximately lot lines shall be construed as following such lot lines.
- C. Boundaries indicated as following approximately corporate limits shall be construed as following such corporate limits.
- D. Boundaries indicated as parallel to or extensions of features indicated in this section shall be construed as such. Distances not specifically indicated on the official zoning district map shall be determined by using the scale of the map.
- E. Boundaries indicated as following the boundary limits of the city shall be construed as following such boundaries.

- F. Where physical or cultural features existing on the ground are at variance with those shown on the official regulating map, or in other circumstances not covered by this section, the governing body shall have authority to interpret the district boundaries.

(Code 2008, ch. 16, § 1.2.3)

1.2.4 Zoning District Map

The boundaries of such zoning districts are shown upon the city's zoning map on file in the office of the city clerk, and made a part of this chapter. Said map and all of the notations, references, and other features shown thereon shall be incorporated into this chapter as if such notations, references, and features set forth on said map are all fully described herein.

(Code 2008, ch. 16, § 1.2.4)

DIVISION 1.3 GENERAL PROVISIONS

[1.3.1 Enforcement](#)

[1.3.2 Procedure](#)

[1.3.3 \(Reserved\)](#)

[1.3.4 Jurisdiction](#)

[1.3.5 Vesting Of Development Rights](#)

[1.3.6 Building Permit Process](#)

[1.3.7 Penalty](#)

1.3.1 Enforcement

The building official shall enforce the provisions of this chapter.

(Code 2008, ch. 16, § 1.3.1)

1.3.2 Procedure

The governing body may adopt additional rules of procedure governing the administration of this chapter.

(Code 2008, ch. 16, § 1.3.2)

1.3.3 (Reserved)

1.3.4 Jurisdiction

These regulations govern the development and use of all land and structures within the corporate limits of the city and any extraterritorial jurisdiction defined by ordinance and as now or hereafter fixed, said territory being indicated on the zoning map as is on file

at city hall. This map and its boundaries shall be incorporated and made part of this chapter.

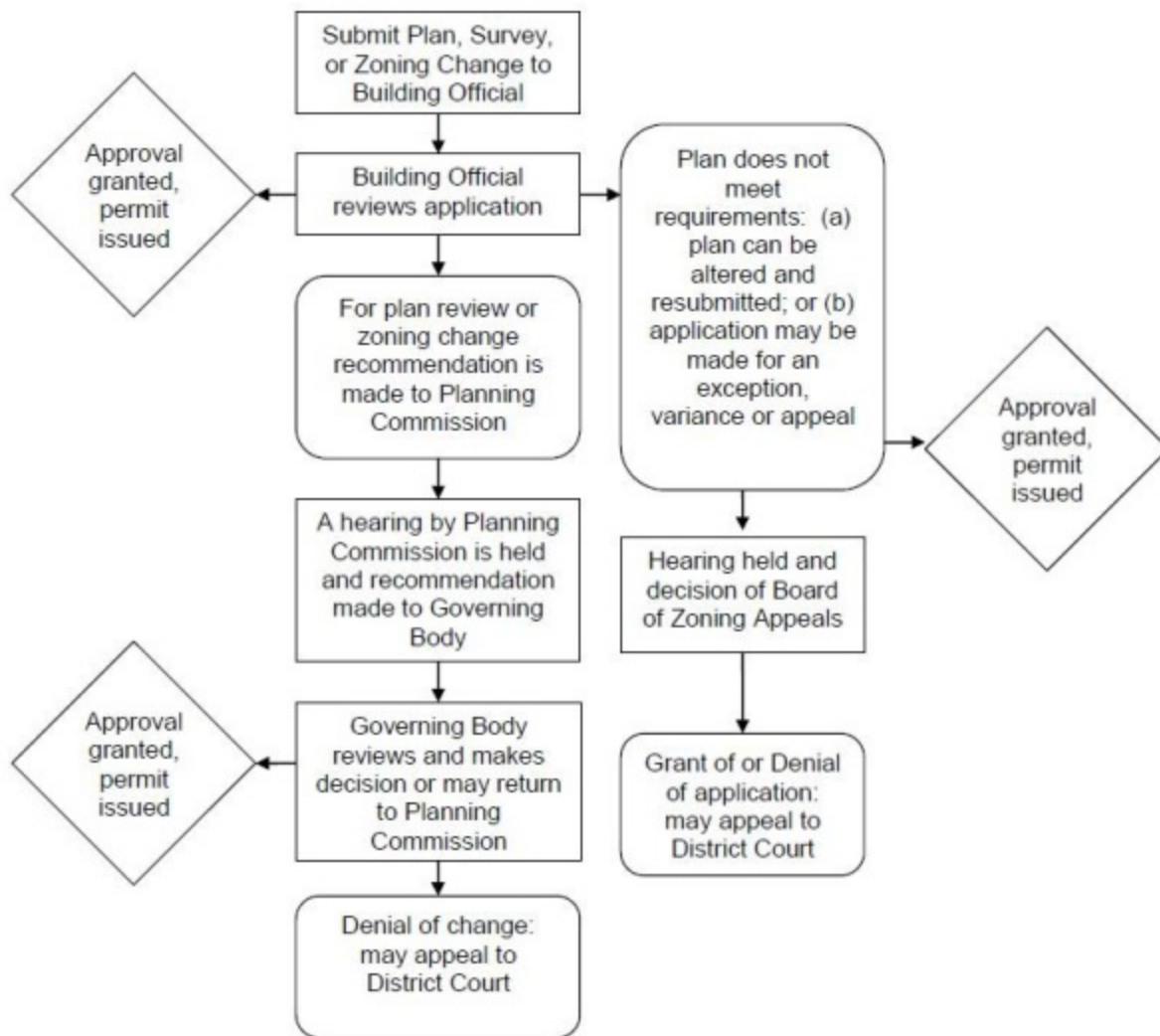
(Code 2008, ch. 16, § 1.3.4)

1.3.5 Vesting Of Development Rights

- A. For the purpose of single-family residential developments, 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 five years of recording of the plat, the development rights in such shall expire at that time.
- B. For all purposes other than single-family developments, the right to use land for a particular purpose shall vest after the issuance of all permits required for such use by the city, county, and/or state and construction has begun and substantial amounts of work have been completed lawfully under a validly issued permit.

(Code 2008, ch. 16, § 1.3.5; Ord. No. 1024, § 3, 2-10-2022)

1.3.6 Building Permit Process



1.3.7 Penalty

It shall be unlawful for any party to violate the provisions of this chapter, and any violation thereof shall be punishable by a fine not to exceed \$500.00, or by imprisonment for not more than six months, or by both, for each offense. Each day's violation shall constitute a separate offense. Nothing in this section shall be construed as to affect any other remedy the city may have to abate such violation, or any other remedy or authority at law or equity.

(Code 2008, ch. 16, § 1.3.7; Ord. No. 1024, § 4, 2-10-2022)

DIVISION 1.4 PLANNING COMMISSION

[1.4.1 Commission Created](#)

[1.4.2 Commission Membership And Appointment](#)

[1.4.3 Planning Commission Bylaws](#)

[1.4.4 Comprehensive Plan Adoption And Amendment](#)

[1.4.5 Review Of The Comprehensive Plan](#)

[1.4.6 Recommendations As To Zoning Regulations](#)

1.4.1 Commission Created

A planning commission for the city is hereby created.

(Code 2008, ch. 16, § 1.4.1)

1.4.2 Commission Membership And Appointment

The planning commission shall consist of nine members. All nine members shall be appointed by the mayor, with the consent of the governing body. The members of the planning commission shall be appointed for a term of three years each. Appointments made to fill current vacancies shall be for the balance of the unexpired term only. Members of the planning commission shall serve without compensation for their services. Members of the planning commission may be removed for cause as provided by law.

(Code 2008, ch. 16, § 1.4.2; Ord. No. 1024, § 5(1.4.2), 2-10-2022)

1.4.3 Planning Commission Bylaws

The planning commission shall adopt bylaws for the transaction of business and hearing procedures. Except as otherwise provided in this Code, and unless otherwise provided by law, action shall be taken by the planning commission by a favorable vote of a majority of the members present. A quorum consisting of a majority of the voting members of the planning commission shall be necessary for the planning commission to conduct any business.

(Code 2008, ch. 16, § 1.4.3)

1.4.4 Comprehensive Plan Adoption And Amendment

- A. The planning commission is hereby authorized to make or cause to be made a comprehensive plan for the development of the city.
- B. The planning commission may recommend adopting and amending the comprehensive plan as a whole by a single resolution or by successive resolutions. Such resolutions shall identify specifically any written presentations, maps, plats, charts, or other materials made a part of such plan. In the preparation of such plan, the planning commission shall make or cause to be made comprehensive surveys and studies of past and present conditions and trends relating to land use, population and building intensity, public facilities, transportation and transportation facilities, economic conditions, and natural resources, and may include any other element deemed necessary to the comprehensive plan. Such a proposed plan shall show the commission's

recommendations for the development or redevelopment of the city, including the following:

1. The general location, extent, and relationship of the use of land for agriculture, residence, business, industry, recreation, education, public buildings and other community facilities, major utility facilities, both public and private, and any other use deemed necessary;
2. The population, building intensity standards, restrictions, and the application of the same;
3. Public facilities, including transportation facilities of all types, whether publicly or privately owned, which relate to the transportation of persons or goods; and
4. Public improvement, based upon a determination of relative urgency.

(Code 2008, ch. 16, § 1.4.5; Ord. No. 1024, § 5(1.4.4), 2-10-2022)

1.4.5 Review Of The Comprehensive Plan

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

(Code 2008, ch. 16, § 1.4.6; Ord. No. 1024, § 5(1.4.5.), 2-10-2022)

1.4.6 Recommendations As To Zoning Regulations

The planning commission shall recommend the boundaries of city zones and districts to the governing body as required by K.S.A. 12-753 et seq., as amended.

(Code 2008, ch. 16, § 1.4.7; Ord. No. 1024, § 5(1.4.6), 2-10-2022)

DIVISION 1.5 PLANS, PLATS, AND LOT SPLITS

[1.5.1 Procedures](#)

[1.5.2 Subdivision Provisions](#)

[1.5.3 Additional Requirements](#)

1.5.1 Procedures

A. Plats shall be required on any land in the city for which the following is proposed:

1. The subdivision or merger of tracts into new lots, blocks, tracts or parcels;

2. The establishment of any street, alley, right-of-way, park, or other property intended for public use.
- B. Such plat shall accurately describe the subdivision, lots, tracts, or parcels of land, giving the location and dimensions thereof, and the location and dimensions of all streets, alleys, parks, or other properties intended to be dedicated to public use or for the use of purchasers or owners of lots, blocks, tracts, or parcels of land fronting thereon or adjacent thereto.
 - C. All plats shall be verified by the owners thereof. All such plats shall be submitted to the planning commission.
 - D. The planning commission shall determine if the plat conforms to the provisions of the zoning ordinance. If such determination is not made within 60 days after the first meeting of such commission following the date of the submission of the plat to the city clerk, such plat shall be deemed to have been approved, and a certificate shall be issued by the city clerk upon demand. If the planning commission finds that the plat does not conform to the requirements of the zoning ordinance, the planning commission shall notify the owners of such fact. If the planning commission finds that the plat conforms to the requirements of such regulations, the commission's seal and approval shall be affixed thereto.
 - E. The governing body shall accept or refuse the dedication of land for public purposes within 30 days after the first meeting of the governing body following the date of the submission of the plat to the city clerk. The governing body may defer action for an additional 30 days for the purpose of allowing for modifications to comply with the requirements established by the governing body. No additional filing fees shall be assessed during that period. If the governing body defers or refuses such dedication, it shall advise the planning commission of the reasons therefor.
 - F. The city may establish a scale of reasonable fees to be paid to the city by the applicant for approval for each plat filed. The register of deeds shall not file any plat until such plat shall bear the approval hereinbefore provided.
 - G. The register of deeds shall not file any plat until such plat shall bear the approval hereinbefore provided and any land dedicated for public purposes shall have been accepted by the governing body.
 - H. Any lot already platted as of the effective date of the ordinance from which this division is derived may be divided into not more than two lots or tracts without having to replat the original lot, provided that the resulting lots or tracts shall not again be divided without replatting, subject to the following conditions and procedures:
 1. Each resulting lot or tract must have the minimum frontage required within the zoning district.

2. A certificate of survey for each resulting lot or tract, including the certificate by a registered engineer or surveyor that the details contained on the survey are correct, shall be submitted to the city clerk and shall contain the following information:
 - a. The dimension and location of each of the lots or tracts, including a metes and bounds description of each lot or tract on the plat;
 - b. The location and character of all proposed and existing public utility lines and easements, including sewers (storm and sanitary), water, gas, and power lines;
 - c. Building setback lines with dimensions;
 - d. The location of proposed or existing streets and driveways providing access to said lots or tracts; and
 - e. A physical property survey, including topography with contour intervals of not more than two feet and including the location of water courses, ravines, existing significant trees, permanent structures, and proposed drainage structures.
3. Any building or structures existing on the lot or tract at the time of the lot or tract split must remain in compliance with other ordinances of the city after the lot or tract split has been completed.
4. All costs resulting from an application for a lot or tract split shall be paid by the applicant.
5. All applications will be referred to the planning commission for a recommendation to the governing body.
6. Conveyances by an adjacent property owner of a tract less than 15 feet in width is exempt from the approval process, provided that both tracts remain large enough to be built upon lawfully, and, if the tracts are in a residentially zoned area, each tract must remain in the same frontage size category, provided that the resulting lots or tracts shall not be divided without replatting.
- I. No lot can be platted or replatted as an R-1(A), R-1(B), or R-1(E) residential category lot.
- J. Plats approved by the governing body shall be filed with the county within 30 days of approval by the governing body. Failure to file is a violation of this Code. No building permit shall be issued before filing is complete.

(Code 2008, ch. 16, § 1.5.1; Ord. No. 1024, § 6, 2-10-2022)

1.5.2 Subdivision Provisions

The following policies shall be used in the design and review of all re-platting within the jurisdiction of this chapter:

- A. All new subdivisions shall be designed so as to facilitate the most advantageous development of the entire neighboring area by protecting and enhancing the stability, character, and environment of the area.
- B. All subdivisions shall be consistent with adopted public plans, such as the city comprehensive plan.
- C. All residential subdivisions shall provide specialized open space as defined in the chapter, which encourages frequent use, attention, and the presence of people through placement and design. Where possible, the natural terrain, drainage, and vegetation of a site shall be preserved.
- D. Streets and development sites shall be designed to protect and preserve stands of significant trees from high ground or water.
- E. Bike paths and pedestrian paths shall be designed to connect with similar planned or existing local and/or regional facilities as shown on official plans and maps of the city, neighboring municipalities, or the county. Streets, pedestrian paths, and bike paths shall contribute to a system of fully connected and interesting routes to all destinations. Their design should encourage pedestrian and bicycle use by being small and spatially defined by buildings, trees, and lighting and by discouraging high speed traffic.
- F. All streets shall be paved to current city standards.
- G. All residential streets may have sidewalks on at least one side, and culs-de-sac may have a sidewalk around their entire perimeter.
- H. Curbs and gutters shall front all lots and shall be built to current city standards.
- I. Sidewalks shall be concrete or similar material and ADA compliant.
- J. All new subdivisions shall be subject to site plan review.
- K. These regulations may provide for the payment of a fee in lieu of dedication of land and may provide that, in lieu of the completion of any work or improvements prior to the final approval of the plat, the governing body may accept a corporate surety bond, cashier's check, escrow account, letter of credit, or other like security in an amount to be fixed by the governing body and conditioned upon completion of the work or improvements within a specified period, in accordance with these regulations, and the governing body may enforce such bond by all legal or equitable remedies.

(Code 2008, ch. 16, § 1.5.2; Ord. No. 1024, § 7, 2-10-2022)

1.5.3 Additional Requirements

A. Dedication of right-of-way for abutting streets.

1. Whenever a proposed plat or subdivision abuts a public street, or a proposed public street as indicated on the plat or the zoning map, and adequate right-of-way does not exist for such street or proposed street in accordance with the standards set forth by the city or such other right-of-way requirements established by a transportation corridor study, traffic analysis, preliminary engineering study or area plan accepted and/or approved by the city, the subdivider shall dedicate to the city, without charge, such right-of-way as is necessary to provide conformity with such standards up to a total of one-half of the indicated right-of-way requirements. New rights-of-way shall have a width of not less than 50 feet.
2. If the street alignment shown in a transportation corridor study, traffic analysis, preliminary engineering study or area plan requires a dedication of more than one-half of the indicated total right-of-way requirements for a particular property, the subdivider shall be required to dedicate the additional right-of-way only if the transportation corridor study, traffic analysis, preliminary engineering study or area plan was the subject of a public hearing with notice to the abutting property owners prior to its acceptance and approval by the city council.
3. However, such dedication requirements shall not apply to thoroughfares unless such dedication can be shown to be reasonably related to the development of the proposed plat or subdivision and the cost of such dedication can be shown to be roughly proportional to the traffic impact of the proposed development. Such dedication shall be shown on the preliminary and final plat.

B. Dedication of green space. The city may require reasonable dedication of green space.

C. Construction of required public improvements. The subdivider shall be required to construct certain public improvements within the subdivision as hereinafter provided. Such improvements shall not be installed prior to proper recording of the final plat by the city. All improvements installed by the developer shall comply with the specifications and standards of the city as set forth in this chapter or elsewhere in the city's ordinances.

D. Required improvements; streets.

1. The subdivider shall be responsible for the installation of all streets, including curbs and gutters, within the boundaries of the subdivision. No grading or other construction shall take place within a street right-of-way until the construction plans have been approved by the city engineer. All street construction shall conform to the specifications of the city and compliance therewith shall be confirmed by the city engineer prior to

release of any surety required hereinafter.

2. The subdivider shall perform whatever grading is necessary so that the subdivision grades are compatible with those depicted for any adjacent existing collector or thoroughfare street in street plans available from the city. Preliminary street plans shall be approved by the city and will be kept on file in the office of the city.

E. *Required improvements; sidewalks.* Within the boundaries of a subdivision, sidewalks shall be installed by the subdivider as required by the city. Sidewalks shall be located in the platted street right-of-way, abutting the property line or in any pedestrian easements.

F. *Required improvements; stormwater and drainage.*

1. The subdivider shall install culverts, storm sewers, rip-rap slopes, stabilized ditches, stormwater retention and/or detention facilities, including, but not limited to, providing for any necessary off-site improvements, and other improvements necessary to adequately handle stormwater. A stormwater study may be required to ensure improvements adequately handle anticipated stormwater runoff resulting from the development.
2. All improvements shall comply with the minimum standards of the city and shall be approved by the city engineer prior to construction. Where developments are determined by the city engineer to be in close proximity to unimproved stream channels, an engineering study may be required to determine the stability of the stream banks. The study shall evaluate the likelihood that normal stream bank slippage failure and erosion will endanger structures proposed as a part of the development or the yards of residential lots. Such studies may analyze the impact of full upstream development and include a complete identification and analysis of the soil profile and underlying bedrock upon which the development is to take place. Based on this analysis, engineering plans shall be submitted showing the structural measures to be used to stabilize those banks which are determined to be unstable. The study shall be submitted concurrent with the application for final plat approval and shall be reviewed and approved by the city engineer prior to recording the plat. Storm drainage easements may be required where necessary to allow on-going maintenance of the stream channel and any stabilization measures.

G. *Required improvements; underground utilities.*

1. Except as otherwise provided in this section, all utilities shall be installed underground within designated easements by the subdivider or utility company prior to the issuance of a certificate of occupancy. For purposes

of this section, the term "utilities" shall include, but not be limited to, all pipes, poles, wires, connections, conductors, switchers, line transformers and insulators which supply natural gas, electricity, sewage or water, or which may be used for communications transmission.

2. The subdivider, developer or owner of any such area or portion thereof shall make the necessary arrangements for the installation of underground utilities. Such arrangements shall be made with the utility company. A letter from the utility company confirming that such underground insulation as required by this section has been completed shall be submitted to the building official at the time that a certificate of occupancy is requested. A certificate of occupancy shall not be granted absent such confirmation.
3. The provisions of this section shall not apply to any of the following uses:
 - a. All electrical power lines rated at or above "feeder" line class. For purposes hereof, a "feeder" line is defined as that portion of an electrical circuit which provides power from a power substation and which has a rated capacity of 3,000 KVA or more.
 - b. All telecable lines rated at or above "trunk" line class. For purposes hereof, the term "trunk" line means that portion of a telecable systems line that is 0.750 inches in diameter.
 - c. Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from such existing overhead lines that are within a subdivision previously approved in accordance and in conformance with existing regulations.
 - d. Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from such existing overhead lines that serve properties adjacent to but not within areas being subdivided.
 - e. Any communication line which would otherwise be required by this section to be underground that uses an overhead pole or structure exempted by this section.
 - f. Radio and television antennas.
 - g. Structures on corner lots, in streets and alleys, and on easements adjacent thereto, and in cases where electrical and communication wires cross a street or other district boundary from an area where overhead wires are not prohibited, may be connected to said overhead wires.
 - h. Overhead lines attached to the exterior surface of a building by means of a bracket or other fixture and extending from one

location of the building to another location of the building or to an adjacent building without crossing a property line.

- i. Poles used exclusively for street or area lighting or for traffic control facilities.
- j. Service terminals, transformers, regulators, meters or other on and above-ground appurtenance normally used with and as a part of an underground distribution system.

- 4. Nothing in this section will prevent the replacement of poles, overhead wires, and associated overhead structures on these lines when necessary for the purpose of maintaining the line or upgrading the capacity thereof, or in the case of single-phase lines, the addition of the necessary facilities to three-phasing of the line.

H. *Required improvements; sanitary sewers and other utilities.* The subdivider shall be responsible for the proper installation of all utilities and sanitary sewers and connection to approved treatment facilities, water supply approved by the state board of health, natural gas, electricity and telephone services. Such utility shall be installed according to the specifications and minimum standards of the controlling utility company or public agency except as otherwise provided by this division.

I. *Required improvements; street signs.*

- 1. The subdivider shall be responsible for paying the cost of fabrication and installation of street name signs as determined by the public works department at all street intersections within the subdivision.
- 2. Such signs shall follow the street names designated on the approved final plat.
- 3. Signs on public property shall be installed by the city.
- 4. Signs on private property shall be installed by the developer.
- 5. Payment for all signage fabrication and installation charges for work performed by the city shall be made in full prior to approval of construction plans for each phase of development.

J. *Required improvements; street lighting.* Street lighting shall be installed by the subdivider as required by the city.

K. *Improvement bonds.*

- 1. The proper installation of streets, curbs and gutters, sidewalks, storm drainage facilities, pedestrian walkways, streetlights, right-of-way and lot grading and other required improvements shall be guaranteed by the

subdivider or his agent by furnishing surety in the form of a performance and maintenance bond.

2. Said bond shall be to the favor of the city and shall be furnished at the time construction plans are submitted for approval. The amount of the bond shall be for the full cost of the improvements and shall remain in effect for two years from the date of completion and acceptance by the city. Said bond shall be properly executed prior to any grading or construction and shall be released upon written approval of the city engineer.
3. A building permit shall not be issued for a lot or tract in a subdivision which abuts a street for which a bond has not been furnished.

L. Funds for improvement of abutting thoroughfares and collectors.

1. In the event any development or subdivision shall necessitate modification to or improvement of any other public infrastructure in the city, the subdivider may be required to pay for some or all of such modification, including, but not limited to, all engineering, planning, legal, design, or construction costs of such modification or improvement. Examples of such improvements may include, but shall not be limited to, paying for enhancements to nearby or adjacent sanitary sewers, stormwater drainage, or street facilities.
2. All such modifications shall be reasonably proportionate to the imprint of the subdivision or development upon the other public infrastructures. If the amount of work required herein will cost, in the professional opinion of the city engineer, \$50,000.00 or more, the subdivider shall deposit with the city funds equal to the estimated costs of the improvements, either in cash or an irrevocable letter of credit from a financial institution acceptable to the city, such funds to be collectible no later than two years from the date of issuance.

(Code 2008, ch. 16, § 1.5.3; Ord. No. 1024, § 8, 2-10-2022)

DIVISION 1.6 APPLICATIONS AND PROCEDURES

[1.6.1 Who May Apply](#)

[1.6.2 Application Fees](#)

[1.6.3 Application; Proof Of Ownership And/Or Authorization Of Agent](#)

[1.6.4 Preapplication Conference](#)

[1.6.5 Submission Of Technical Studies](#)

[1.6.6 When An Application Is Deemed Complete](#)

[1.6.7 Application Submission Deadlines](#)

[1.6.8 Public Hearing Notices](#)

[1.6.9 Notice To Surrounding Property Owners](#)

[1.6.10 Posting Of Signs For Rezoning Requests And Initial Special Use Permits](#)
[1.6.11 Public Hearing Process](#)
[1.6.12 Continuances Of Applications](#)
[1.6.13 Consideration Of Text Amendments, Rezoning Requests, And Special Use Permits; Process](#)
[1.6.14 Protest Petition Procedures](#)
[1.6.15 Consideration Of Appeals](#)
[1.6.16 Consideration Of Variances](#)
[1.6.17 Criteria For Considering Applications](#)
[1.6.18 Rezoning Applications; Submission Requirements](#)
[1.6.19 Special Use Permit Applications; Submission Requirements](#)
[1.6.20 Site Plan Approval](#)
[1.6.21 Site Plan Approval Criteria](#)
[1.6.22 Site Plans And Final Development Plans; Contents And Submission Requirements](#)
[1.6.23 Preliminary Development Plan; Submission Requirements](#)
[1.6.24 Consideration Of Preliminary Development Plans](#)
[1.6.25 Substantial Changes](#)
[1.6.26 Consideration Of Final Development Plans](#)
[1.6.27 Abandonment Of Final Development Plan](#)
[1.6.28 Conditional Approvals](#)
[1.6.29 Written Findings](#)
[1.6.30 Final Decision When Ordinance Required](#)
[1.6.31 Revocation Of Special Use Permits](#)
[1.6.32 Appeals Of Final Decisions](#)

1.6.1 Who May Apply

- A. Application for a zoning text amendment may be filed only by the governing body or planning commission.
- B. An application for rezoning to a conventional zoning district may be filed by the governing body, the planning commission, the landowner, or the landowner's agent.
- C. An application for an appeal to the board of zoning appeals may be filed by any person aggrieved, or by any officer of the city or any governmental agency or body affected by any decision of an official administering the provisions of this chapter.
- D. All other applications provided for in this chapter may only be filed by the landowner or the landowner's agent.
- E. All applications shall be made on forms prescribed by the city and available by the city clerk.

(Code 2008, ch. 16, § 1.6.1; Ord. No. 960, § 1(1.6.1), 7-9-2015)

1.6.2 Application Fees

Fees for all applications provided for in this chapter shall be established by the governing body by resolution.

(Code 2008, ch. 16, § 1.6.2; Ord. No. 960, § 1(1.6.2), 7-9-2015)

1.6.3 Application; 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 such form as is acceptable to the city clerk, and shall be submitted at the time of filing the application.

(Code 2008, ch. 16, § 1.6.3; Ord. No. 960, § 1(1.6.3), 7-9-2015)

1.6.4 Preapplication Conference

A preapplication conference with city staff may, at the discretion of the mayor or building official, be required prior to submission of any application for a rezoning request, special use permit, preliminary development plan or site plan. The purpose of this conference shall be to: acquaint the applicant with the procedural requirements of this title; provide for an exchange of information regarding the proposed development plan and applicable elements of this title, the city's 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 staff input into the general design of the project. Specific requirements and provisions related to the proposed development, building, and standards for communication facilities for wireless services are contained within article 10 of this chapter.

(Code 2008, ch. 16, § 1.6.4; Ord. No. 960, § 1(1.6.4), 7-9-2015; Ord. No. 984, § 1, 9-21-2017; Ord. No. 1024, § 9, 2-10-2022)

1.6.5 Submission Of Technical Studies

- A. City staff may require applicants for rezoning requests, special use permits, preliminary development plans, site plans or plats to submit such technical studies as may be necessary to enable the planning commission or governing

body to evaluate the application. The determination of the need and requirement for technical studies shall be made in a reasonable and nondiscriminatory manner. Technical studies reasonably required for applications for communication facilities or applications for special use permits for communication facilities for wireless services shall be subject to the applicable provisions of state and federal law and regulations. Examples of technical studies that may be required shall include, but not be limited to, traffic studies, engineering studies, geologic or hydro-geologic studies, flood studies, environmental impact assessments, noise studies, market studies, or economic impact reports. The persons or firms preparing the studies shall be subject to the approval of city staff. The costs of all studies shall be borne by the applicant. Any decision of city staff to require any such study or to disapprove the persons or firms selected by the applicant to perform the study may be appealed to the planning commission. The decision of the planning commission on any such appeal shall be final, subject to the applicable provisions of state and federal law and regulations.

- B. Notwithstanding the fact that city staff did not require submission of any technical studies in support of the application, either the planning commission or the governing body may require the submission of such studies prior to taking action on the application. In such case, the persons or firms selected to perform the studies shall be subject to the approval of the entity requesting that the studies be performed. Any decision of the planning commission or the governing body to require that studies be performed or to disapprove the persons or firms selected by the applicant to perform the studies shall be final.

(Code 2008, ch. 16, § 1.6.5; Ord. No. 960, § 1(1.6.5), 7-9-2015; Ord. No. 984, § 2, 9-21-2017; Ord. No. 1024, § 10, 2-10-2022)

1.6.6 When An Application Is 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 this chapter, provided that requirements and provisions related to applications for and the definitions, proposed development, and building standards for communication facilities for wireless services contained within article 10 of this chapter.

(Code 2008, ch. 16, § 1.6.6; Ord. No. 960, § 1(1.6.6), 7-9-2015; Ord. No. 984, § 3, 9-21-2017)

1.6.7 Application Submission Deadlines

The building official 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 such 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 planning commission chairperson, nonagenda items may be brought before the planning commission for consideration, provided that the planning commission in its sole discretion may refuse to hear nonagenda items. The planning commission may consider items not on the agenda if a majority of the commission members vote approval to do so.

(Code 2008, ch. 16, § 1.6.7; Ord. No. 960, § 1(1.6.7), 7-9-2015)

1.6.8 Public Hearing 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 days prior to the date set for hearing. The publication notice shall fix the time and place for the public hearing. When the hearing is for consideration of changes in the text of this chapter, or a general revision of the boundaries of zoning districts, the notice shall contain a statement regarding the proposed changes in this chapter 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 a general location description and/or general street location.

(Code 2008, ch. 16, § 1.6.8; Ord. No. 960, § 1(1.6.8), 7-9-2015)

1.6.9 Notice To Surrounding Property Owners

Unless otherwise specifically provided in this chapter, whenever notice to surrounding property owners is required for consideration of an application, such notice shall be given as follows: notices shall be mailed at least 20 days prior to the hearing, thus notifying such property owner of the opportunity to be heard. Notice shall be mailed to all owners of record of land within 200 feet of the property subject to the application. Such mailed notice shall be given by first class mail and shall be in letter form stating the time and place of the hearing, a general description of the proposal, a general street location of the property subject to the proposed change, and a statement explaining that the public may be heard at the public hearing. In cases of applications for which protest petitions may be submitted, the notice shall also contain a statement explaining that property owners required to be notified by this section shall have the opportunity to submit a protest petition, in conformance with this chapter, to be filed with the office of the city clerk within 14 days after the conclusion of the public hearing. Mailed notices shall be addressed to the owners of the property, as provided by the applicable county department, and not to mere occupants thereof. When the notice has been properly addressed and deposited in the mail, failure to receive mailed notice shall not invalidate any action taken on the application.

(Code 2008, ch. 16, § 1.6.9; Ord. No. 960, § 1(1.6.9), 7-9-2015)

1.6.10 Posting Of Signs For Rezoning Requests And Initial Special Use Permits

In the case of rezoning requests and initial special use permits, 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 the 20 days immediately preceding the date of the public hearing. The sign shall be firmly affixed and attached to a wood or metal backing or frame and placed so as to face each of the streets abutting thereto 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. The applicant shall file an affidavit with the city clerk 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.

(Code 2008, ch. 16, § 1.6.10; Ord. No. 960, § 1(1.6.10), 7-9-2015)

1.6.11 Public Hearing Process

When 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.
- 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 and the planning commission has taken action on the application. No additional notices shall be required once the public hearing is opened.

(Code 2008, ch. 16, § 1.6.11; Ord. No. 960, § 1(1.6.11), 7-9-2015)

1.6.12 Continuances Of Applications

- 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. 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 for good cause shown. The record shall indicate the reason such continuance was made and any stipulations or conditions placed upon the continuance. 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. The planning commission or board of zoning appeals shall not continue an application for more than six months from the published public hearing date.

(Code 2008, ch. 16, § 1.6.12; Ord. No. 960, § 1(1.6.12), 7-9-2015)

1.6.13 Consideration Of Text Amendments, Rezoning Requests, And Special Use Permits; Process

- A. *Public hearing required.* Consideration of zoning text amendments, rezoning requests, and special use permits shall require a public hearing before the planning commission following publication notice as provided in WCC 1.6.8 through 1.6.11. Applications for communication facilities or applications for special use permits for communication facilities for wireless services shall be processed within the applicable timeframes set forth in WCC 10.4.C.
- B. *Action by planning commission.* A vote either for or against a zoning text amendment, rezoning request, or special use permit by a majority of all of the planning commissioners present and voting shall constitute a recommendation of the planning commission. If a motion for or against the zoning text amendment, rezoning request, or special use permit fails to receive a majority vote of the planning commission, the planning commission may entertain a new motion. A tie vote of the planning commission on any motion shall be deemed to be a failure of the planning commission to make a recommendation. The planning commission's recommendation to approve or disapprove shall be submitted to the governing body for action, accompanied by an accurate written summary of the hearing proceedings. A recommendation to approve a zoning text amendment shall be submitted in the form of an ordinance.
- C. *Governing body action upon planning commission recommendation of a zoning text amendment, rezoning request, or special use permit.* The governing body may:
 - 1. Approve such recommendations by the adoption of the same by ordinance or resolution;

2. Override the planning commission's recommendation by a two-thirds majority vote of the membership of the governing body; or
 3. Return the same to the planning commission for further consideration, together with a statement specifying the basis for the governing body's failure to approve or disapprove.
- D. *Applications returned to planning commission.* Upon receipt of an application returned by the governing body, the planning commission 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 the receipt of the governing body's report, the governing body may consider such course of inaction on the part of the planning commission as a resubmission of the original recommendation and proceed accordingly.
- E. *Reconsideration by governing body.* Upon receipt of the planning commission's recommendation after reconsideration, the governing body, by a simple majority thereof, may take such action as it deems appropriate, including approval, disapproval or amendment of the application and adoption as amended, or the governing body may return the same to the planning commission for further consideration. Unless the governing body returns the application to the planning commission for further consideration or continues its consideration of the matter to another date, the governing body's action on the application shall constitute a final decision.
- F. Notwithstanding the above, applications for special use permits for communication facilities shall follow the process contained in and be subject to the provisions, definitions, time limits and requirements of article 10 of this chapter.

(Code 2008, ch. 16, § 1.6.13; Ord. No. 960, § 1(1.6.13), 7-9-2015; Ord. No. 984, § 4, 9-21-2017)

1.6.14 Protest Petition Procedures

- A. A protest against any rezoning request or special use permit shall be filed in the city clerk's office not later than 4:00 p.m. on the 14th day following the date of the conclusion of the planning commission's public hearing held pursuant to the publication notice. For the purposes of calculating the 14-day period, weekends and holidays shall be counted. However, if the last day is a nonbusiness day for city offices, then the filing deadline shall be 4:00 p.m. on the next regular business day.
- B. In order to be considered a "valid" protest, a protest petition must be timely filed and duly signed and verified by the owners of record of 20 percent of the total

area required to be notified, excepting public streets and rights-of-way and the subject property, located within or without the corporate limits of the city, in accordance with WCC 1.6.9.

- C. Verification of the genuineness and correctness of the signatures on the protest petition, either individually or collectively, shall be made by the city clerk.
- D. Once a valid protest petition has been filed with the city, it may not be withdrawn unless every person that signed the original petition signs a verified affidavit which states and fully explains the rights being waived by the withdrawal of the protest petition. Such affidavits of withdrawal must be filed with the city clerk on or before the last regular business day preceding the governing body meeting for which the protest applies.
- E. *Adoption where protest filed.* Where a valid protest petition has been filed, an ordinance approving the rezoning request, conditional use permit, or special use permit shall not be passed except by the affirmative vote of at least three-quarters of the members of the governing body.

(Code 2008, ch. 16, § 1.6.14; Ord. No. 960, § 1(1.6.14), 7-9-2015)

1.6.15 Consideration Of Appeals

- A. Appeals from the decision of any official administering the provisions of this chapter shall be filed with the city clerk within 30 days from the date of the decision by the officer whose decision is being appealed. A copy of the notice of appeal shall also be served upon the officer whose decision is being appealed. Thereafter, the officer whose decision is being appealed shall prepare and transmit to the secretary of the board of zoning appeals a complete record of all proceedings relating to the appeal.
- B. Consideration of appeals by the board of zoning appeals shall be at a public hearing, following publication notice as provided by WCC 1.6.8.
- C. This section shall not apply to any person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019 (h)(6).

(Code 2008, ch. 16, § 1.6.15; Ord. No. 960, § 1(1.6.15), 7-9-2015; Ord. No. 984, § 5, 9-21-2017; Ord. No. 1024, § 11, 2-10-2022)

1.6.16 Consideration Of Variances

- A. The board of zoning appeals may grant a variance from the specific terms of this division which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship for the applicant, and provided that the spirit of this chapter shall be observed, the public safety and welfare secured and

substantial justice done of the applicant; provided, however, that the board shall not have jurisdiction to grant a variance for property zoned under a planned zoning district.

- B. Variances shall only be considered after a public hearing has been held, following publication notice and notice to surrounding property owners as provided by WCC 1.6.8 through 1.6.9.
- C. An application for a variance may only be granted upon a finding by the board that all the provisions of WCC 1.8.4 have been met.

(Code 2008, ch. 16, § 1.6.16; Ord. No. 960, § 1(1.6.16), 7-9-2015; Ord. No. 1024, § 12, 2-10-2022)

1.6.17 Criteria For Considering Applications

In considering any application for rezoning request, conditional use permit, or special use permit, the planning commission and the governing body may give consideration to the criteria stated below, to the extent they are pertinent to the particular application, provided that any denial of an application for communication facilities or an application for a special use permit for communication facilities for wireless services 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 as defined and required by article 10 of this chapter and applicable law. In addition, the planning commission and governing body may consider other factors which may be relevant to a particular application.

- A. The conformance of the proposed use to the city's comprehensive plan and other adopted planning policies;
- B. The character of the neighborhood, including, but not limited to, land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space, and floor-to-area ratio (commercial and industrial);
- C. The zonings and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zonings and uses;
- D. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations;
- E. The length of time the property has remained vacant as zoned;
- F. The extent to which approval of the application would detrimentally affect nearby properties;
- G. The extent to which the proposed use would substantially harm the value of nearby properties;

- H. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property;
- I. The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution, or other environmental harm;
- J. The economic impact of the proposed use on the community;
- K. The gain, if any, to the public health, safety, and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application;
- L. The recommendation of professional staff.

(Code 2008, ch. 16, § 1.6.17; Ord. No. 960, § 1(1.6.17), 7-9-2015; Ord. No. 984, § 6, 9-21-2017; Ord. No. 1024, § 13, 2-10-2022)

1.6.18 Rezoning Applications; Submission Requirements

The planning commission shall adopt a document outlining submission requirements for rezoning applications. This document shall require a legal description, adequate information to provide notice to surrounding property owners (pursuant to WCC 1.6.9), and shall list additional documents and information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application pursuant to WCC 1.6.5. The building official shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

(Code 2008, ch. 16, § 1.6.18; Ord. No. 960, § 1(1.6.18), 7-9-2015)

1.6.19 Special Use Permit Applications; Submission Requirements

The planning commission shall adopt a document outlining submission requirements for special use permit applications. This document shall require a site plan, a legal description, adequate information to provide notice to surrounding property owners, and shall list additional documents and information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application pursuant to section 1.6.5. The building official shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn. Notwithstanding the above, applications for special use permits for communication facilities shall follow the process contained in and be subject to the provisions, definitions, requirements and timeframes set forth in article 10 of this chapter.

(Code 2008, ch. 16, § 1.6.19; Ord. No. 960, § 1(1.6.19), 7-9-2015; Ord. No. 984, § 7, 9-

21-2017)

1.6.20 Site Plan Approval

A site plan is required for property zoned C-0, C-1, P-1, or for nonresidential developments within an R-1 zoning district.

- A. The purpose and intent of requiring site plan approval is to encourage the compatible arrangement of buildings, off-street parking, lighting, landscaping, pedestrian walkways and sidewalks, ingress and egress, and drainage on the site and from the site, any or all of these, in a manner that will promote safety and convenience for the public and will preserve property values of surrounding properties.
- B. No property which has a conventional zoning district classification or which requires approval of a site plan may be developed or significantly redeveloped without a site plan which has been submitted to and approved by the planning commission, or the building official indicating that site will conform to the current applicable requirements of this Code. The term "significant redevelopment" means alterations or changes to property in such manner that one or more of the following is applicable:
 - 1. The development results in the construction of a building, structure, or addition that increases the gross square footage of the existing development by more than ten percent;
 - 2. The estimated construction costs of all improvements to the development exceed 25 percent of the most recent appraised fair market value of the existing property as determined by the county appraiser;
 - 3. The construction or paving of a parking lot or facility which covers ground previously not used as a parking lot or facility, or the construction or paving of any parking lot or facility which does not conform to city pavement standards;
 - 4. The intensification of property by a change of use which increases off-street parking requirements pursuant to WCC 5.4.
- C. Approved site plans are valid for two years. The planning commission may grant time extensions up to one additional year. The property owner may appeal disapproval or conditions of approval of a site plan by the planning commission to the governing body by filing a notice of appeal with the city clerk within ten days following the planning commission's decision. An approved site plan shall be required prior to the issuance of a building permit, provided that single-family buildings are hereby expressly exempted.
- D. Modifications to a valid site plan may be approved administratively by the building official if the changes proposed do not significantly deviate from the

approved site plan. The following changes are not considered significant changes to the site plan:

1. An increase in floor area not exceeding five percent;
2. Substitution of landscape materials, provided that the new materials are the same general size and type;
3. Minor changes to elevation, building materials, parking lot design, screening fences or walls, building location, etc., that would improve the site or are needed because of circumstances not foreseen at the time the site plan was approved by the planning commission.

(Code 2008, ch. 16, § 1.6.20; Ord. No. 960, § 1(1.6.20), 7-9-2015; Ord. No. 1024, § 14, 2-10-2022)

1.6.21 Site Plan Approval Criteria

The planning commission shall review the site plan to determine if it demonstrates a satisfactory quality of design in the individual buildings and in its site, the appropriateness of the building or buildings to the intended use, and the aesthetic integration of the development into its surroundings. Satisfactory design quality and harmony will involve, among other things:

- A. The site is capable of accommodating the buildings, parking areas and drives with appropriate open space;
- B. The plan is consistent with good land planning, good site engineering design principles, and good landscape architectural principles;
- C. An appropriate use of quality materials and harmony and proportion of the overall design;
- D. The architectural style should be appropriate for the project in question and compatible with the overall character of the neighborhood;
- E. The siting of the structure on the property, as compared to the siting of other structures in the immediate neighborhood;
- F. The bulk, height and color of the proposed structure as compared to the bulk, height and color of other structures in the immediate neighborhood;
- G. Landscaping to city standards shall be required on the site and shall be in keeping with the character or design of the site;
- H. Ingress, egress, internal traffic circulation, off-street parking facilities and pedestrian ways shall be so designed as to promote safety and convenience, and shall conform to city standards;
- I. The plan represents an overall development pattern that is consistent with the

city's comprehensive plan, the official street map, and other adopted planning policies.

(Code 2008, ch. 16, § 1.6.21; Ord. No. 960, § 1(1.6.21), 7-9-2015)

1.6.22 Site Plans And Final Development Plans; Contents And Submission Requirements

The planning commission shall adopt a document outlining submission requirements for a site plan for a conventional zoning district classification, and for final development plan applications for planned zoning districts. This document shall require a specific number of copies of the site plan or final development plan, outline what information must be shown on the plan, and shall list additional documents or information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application, pursuant to WCC 1.6.5. The building official shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

(Code 2008, ch. 16, § 1.6.22; Ord. No. 960, § 1(1.6.22), 7-9-2015)

1.6.23 Preliminary Development Plan; Submission Requirements

The planning commission shall adopt a document outlining submission requirements for preliminary development plan applications. This document shall require a specific number of copies of the preliminary development plan, outline what information must be shown on the plan, require a legal description, require adequate information to provide notice to surrounding property owners (pursuant to WCC 1.6.9), and list additional documents or information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application, pursuant to WCC 1.6.5. The building official shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

(Code 2008, ch. 16, § 1.6.23; Ord. No. 960, § 1(1.6.23), 7-9-2015)

1.6.24 Consideration Of Preliminary Development Plans

When property is requested to be rezoned to a planned zoning district, the preliminary development plan shall be considered and approved as part of the rezoning application. In the process of approving preliminary and final plans, the planning commission and governing body may approve deviations from the standard requirements set forth hereinafter or as set forth in an applicable commercial overlay district, provided any approved deviation is in keeping with accepted land planning principles and is clearly set out in the minutes and on the exhibits in the record. When property has been approved for rezoning to a planned zoning district, changes in the

preliminary development plan may be made only after approval of a revised preliminary development plan. Changes in the preliminary development plan which are not substantial or significant may be approved by the building official, and disapproval of such changes by the building official may be appealed to the planning commission. Substantial or significant changes in the preliminary development plan may only be approved after rehearing by the planning commission and governing body; such rehearing shall be subject to the notice and protest provisions set forth in WCC 1.6.8 through 1.6.9.

(Code 2008, ch. 16, § 1.6.24; Ord. No. 960, § 1(1.6.24), 7-9-2015)

1.6.25 Substantial Changes

A. For purposes of this section, the term "substantial or significant changes in the preliminary development plan" shall mean any of the following:

1. Increases in the density or intensity of residential uses by more than five percent;
2. Increases in the total floor areas of all nonresidential buildings covered by the plan by more than ten percent;
3. Increases of lot coverage by more than five percent;
4. Increases in the height of any buildings by more than ten percent;
5. Changes of architectural style which will make the project less compatible with surrounding uses;
6. Changes in ownership patterns or stages of construction that will lead to a different development concept;
7. Changes in ownership patterns or stages of construction that will impose substantially greater loads on streets and other public facilities;
8. Decreases of any peripheral setbacks by more than 25 percent;
9. Decreases of areas devoted to open space by more than five percent or the substantial relocation of such areas;
10. Changes of traffic circulation patterns that will affect traffic outside of the project boundaries;
11. Modifications or removal of conditions or stipulations to the preliminary development plan approval.

B. The determination of whether a proposed revised preliminary development plan contains "substantial or significant changes" shall be made by the building official within five business days following the filing of the application. The determination of the building official may be appealed to the planning

commission, whose decision shall be final.

- C. In the event that the application for the revised preliminary development plan is denied, the previously approved preliminary development plan will remain in effect.

(Code 2008, ch. 16, § 1.6.25; Ord. No. 960, § 1(1.6.25), 7-9-2015)

1.6.26 Consideration Of Final Development Plans

- A. No property which has a planned zoning district classification or which requires approval of a final development plan may be developed or significantly redeveloped without a final development plan having been submitted to and approved by the planning commission indicating that the site will conform to the current applicable requirements of city code. Final development plans for planned zoning districts which 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 is adequate and that all other submission requirements have been satisfied.
- B. A final development plan which 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 is adequate and that all other submission requirements have been satisfied. For purposes of this section, lack of "substantial compliance" shall have the same meaning as "substantial or significant changes" as set forth in WCC 1.6.25. Any determination made by the planning commission under this subsection shall be appealable to the governing body by the applicant within ten days of the date of the planning commission determination.
- C. 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 WCC 1.6.8 through 1.6.9.
- D. Revisions to approved final development plans which are insignificant in nature may be approved administratively by the building official. 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 WCC 1.6.25.
- E. The building official may accept final development plans submitted concurrently with the preliminary development plan. The planning commission may approve a final development plan prior to the approval of a preliminary development plan

by the governing body with the conditions on the final development plan approval that it is consistent with the approved preliminary development plan and subject to the preliminary development plan being approved by the governing body.

(Code 2008, ch. 16, § 1.6.26; Ord. No. 960, § 1(1.6.26), 7-9-2015)

1.6.27 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 said plan or section thereof and shall so notify the city in writing or the landowner shall fail to commence the planned development within two years after final approval has been granted, then such final approvals shall terminate and shall be deemed null and void unless such time period is extended by the planning commission upon written 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 final development plan has been approved.

(Code 2008, ch. 16, § 1.6.27; Ord. No. 960, § 1(1.6.27), 7-9-2015)

1.6.28 Conditional Approvals

When approving any application, the approving authority may stipulate that the approval is subject to compliance with certain specified conditions, including, but not limited to, time of performance requirements, limitation on hours of operation, participation in transportation systems management programs, or participation in improvement districts or other programs for financing public facilities.

(Code 2008, ch. 16, § 1.6.28; Ord. No. 960, § 1(1.6.28), 7-9-2015)

1.6.29 Written Findings

Unless otherwise specifically provided in this title, written findings are not required for a final decision on any application, provided that, in the event of a denial of an application for communication facilities or an application for a special use permit for communication facilities for wireless services, 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. However, any decision may be expressly made subject to the subsequent adoption of written findings and, in such cases, the decision shall not be considered final until such findings are adopted. When an appeal of any quasi-judicial decision has been filed in the district court of the county pursuant of K.S.A. 12-760 or 60-2101(d) in cases where written findings have not been adopted, written findings shall be adopted by the approving authority within 45 days of service of the appeal on the city and thereafter shall be certified to the district court as part of the administrative record. The 45-day time period for adoption and certification of findings may be extended with the permission of the district court.

(Code 2008, ch. 16, § 1.6.29; Ord. No. 960, § 1(1.6.29), 7-9-2015; Ord. No. 984, § 8, 9-21-2017)

1.6.30 Final Decision When Ordinance Required

In the case of approval of a zoning text amendment, rezoning request, 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.

(Code 2008, ch. 16, § 1.6.30; Ord. No. 960, § 1(1.6.30), 7-9-2015)

1.6.31 Revocation Of Special Use Permits

A. Any special use permit granted under the authority of this chapter is subject to revocation for any or all of the following reasons:

1. Noncompliance with any specified applicable performance standard requirements;
2. Noncompliance with any special conditions imposed at the time of approval of the special use permit or conditional use permit;
3. Violation of any provisions of the Code pertaining to the use of the land, construction or uses of buildings or structures, or activities conducted on the premises by the permittee or agents of the permittee;
4. When conditions in the neighborhood have changed to the extent that approval of the permit would be clearly unwarranted if being applied for at the time of revocation;
5. Violation of any other applicable Code provisions or any state or federal laws or regulations by the permittee or agents of the permittee, provided that such violations relate to the conduct or activity authorized by the permit or the qualifications of the permittee or its agents to engage in such conduct or activity.

B. Revocation proceedings may be initiated by a majority vote of the governing body.

1. The governing body shall hold a public hearing to consider the revocation of the special use permit. The city shall give the permittee and landowner notice of the scheduled revocation hearing at least five days prior to the date scheduled for such hearing. If the permittee and landowner are present at the meeting of the governing body at which the revocation proceedings are initiated, no further notice shall be required; otherwise, notice shall be given by personal service or certified mail,

return receipt requested. If the notice cannot be delivered or is not accepted, notice may be given by publishing a notice of hearing in the official city newspaper and by posting a notice of hearing on the property at least five days prior to the date scheduled for the hearing.

2. No special use permit shall be revoked unless a majority of the governing body is satisfied by a preponderance of the evidence that grounds for revocation exist. Any motion for the revocation of a special use permit shall clearly state the grounds for revocation. In addition, when the basis for revocation is "changed conditions," revocation may only occur upon an explicit finding that revocation is necessary for the protection of the public health, safety, and welfare. Adoption of any motion to revoke a special use permit or conditional use permit may be made subject to subsequent adoption of written findings of fact and conclusions of law, at the discretion of the governing body.
3. An appeal of any decision of the governing body to revoke a special use permit may be filed in the district court of the county, pursuant to K.S.A. 12-760, or amendments thereto. Any appeal taken shall not suspend the order of revocation during the pendency of the appeal unless so ordered by the district court.

(Code 2008, ch. 16, § 1.6.31; Ord. No. 960, § 1(1.6.31), 7-9-2015)

1.6.32 Appeals Of Final Decisions

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 said decision shall file the appeal in the district court of the county within 30 days of the making of the decision, provided that this section shall not apply to any person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019 (h)(6).

(Code 2008, ch. 16, § 1.6.32; Ord. No. 960, § 1(1.6.32), 7-9-2015; Ord. No. 984, § 9, 9-21-2017)

DIVISION 1.7 (RESERVED)

(Ord. No. 960, § 2, 7-9-2015)

DIVISION 1.8 BOARD OF ZONING APPEALS

[1.8.1 Board Of Zoning Appeals Created](#)

[1.8.2 Meetings](#)

[1.8.3 Minutes](#)

[1.8.4 Appeals, Exceptions, Variances Generally; Procedure](#)

1.8.1 Board Of Zoning Appeals Created

A board of zoning appeals for the city is hereby created. The members of the planning commission of the city shall sit as the board of zoning appeals.

(Code 2008, ch. 16, § 1.8.1)

1.8.2 Meetings

Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The board shall annually elect one of its members as chairperson and shall appoint a secretary who may be an officer or employee of the city. The board shall fix a reasonable time for the hearing of appeals or any other matters referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper at least 20 days prior to the date fixed for the hearing. A copy of the notice shall be mailed to each party to the appeal and to the city planning commission.

(Code 2008, ch. 16, § 1.8.2)

1.8.3 Minutes

The board shall keep minutes of such proceedings, showing evidence presented, findings of fact by the board, decisions of the board, and a vote upon each question. Records of all official actions of the board shall be filed in the office of the city clerk and shall be a public record.

(Code 2008, ch. 16, § 1.8.3)

1.8.4 Appeals, Exceptions, Variances Generally; Procedure

- A. Appeals to the board of zoning appeals may be taken by any person aggrieved, or by any officer of the city, county, or any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance or resolution. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing a notice of appeal specifying the grounds thereof and the payment of the fee required therefor. The officer from whom the appeal is taken, when notified by the board or its agent, shall transit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance or resolution. In exercising the foregoing powers, the board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate

conditions, and may issue or direct the issuance of a permit.

- B. Any request for an appeal, variance or exception shall state with specificity the relief sought and all basis or reasons for the relief. All required notices shall state the relief sought with specificity but need not elaborate on the factual or legal bases for the variance, appeal or exception.
- C. When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the following manner:
 - 1. To authorize in specific cases a variance from the specific terms of the regulations which will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the regulations, in an individual case, results in unnecessary hardship, and provided that the spirit of the regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning regulations in such district. A request for a variance may be granted in such case, upon a finding by the board that all of the following conditions have been met:
 - a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant;
 - b. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
 - c. That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
 - d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
 - e. That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
 - 2. To grant exceptions to the provisions of the zoning regulation in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation. Further, under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the governing body, are not found to be present.
- D. No variance or exception shall be granted except as explicitly provided by law.

- E. Any person, official or governmental agency dissatisfied with any order or determination of the board may bring an action in the county district court to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the board.

(Code 2008, ch. 16, § 1.8.4; Ord. No. 1024, § 15, 2-10-2022)

ARTICLE 2 DEFINITIONS

2.1 Intent

2.2 Interpretation

2.3 Definitions

2.1 Intent

For the purpose of interpreting this chapter, certain terms, words, concepts, and ideas used herein shall be interpreted or defined as follows, unless more specifically described, limited or qualified within a specific article, section or standard of this chapter.

(Code 2008, ch. 16, § 2.1; Ord. No. 984, § 10, 9-21-2017)

2.2 Interpretation

- A. Except as defined herein, all other words used in this chapter shall be as defined in the latest edition of Webster's International Dictionary.
- B. The word "lot" includes the word "plot" or "parcel" or "tract."
- C. The word "structure" shall include the word "building."
- D. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied."
- E. The terms "zoning map," and "city zoning map," shall mean "The City of Westwood Zoning Map."
- F. The term "planning commission" shall mean the "planning commission of Westwood, Kansas."
- G. The term "board of zoning appeals" shall mean the "board of zoning appeals of Westwood, Kansas."
- H. The term "building official" shall mean the "building official of Westwood, Kansas, or designee."

(Code 2008, ch. 16, § 2.2; Ord. No. 1024, § 16, 2-10-2022)

2.3 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory structure means a structure subordinate in square footage and primary use to the primary structure on a lot. In some instances only in commercial and institutional development, an accessory structure may be larger in square footage than the primary structure and may serve in an auxiliary capacity to the primary structure's primary use (e.g., the meeting hall of a church).

Accessory use means a customary use incidental and subordinate to the primary use of a building, and located on the same lot with such primary use or building.

Alteration means any addition, removal, extension, or change in the location of any exterior surface of a primary building or accessory building.

Apartment house. See *Dwelling, multiple-family*.

Appurtenance means a subordinate or accessory building or structure or portion of a primary structure, the use of which is incidental and customary to that of said primary structure.

APWA means the American Public Works Association.

Arcade means any establishment housing five or more video games, pinball games, air hockey, or similar coin-operated amusement apparatus.

Assisted living, skilled nursing, continuing care retirement facilities means a building, or a group of buildings, where for compensation, care is offered or provided for three or more persons suffering from illness, other than a contagious disease, or sociopathic or psychopathic behavior, which is not of sufficient severity to require hospital attention, or for three or more persons requiring further institutional care after being discharged from a hospital.

Automotive repair means any building, premises, and land in which or upon which the primary use of land is a business which involves the maintenance or servicing of motorized vehicles.

Back yard. See *Yard, rear*.

Baseline elevation means the average elevation of a building, calculated by adding the elevations at each building corner, the elevations of a minimum of the quarter points between each corner, and the lowest elevation between corners regardless of location, then dividing the sum by the total number of elevations used in the summation.

Basement means any floor level four feet or more below grade which is beneath the first story in a building.

Board means the city board of zoning appeals.

Board of zoning appeals means a board appointed by the city governing body, which hears and renders decisions regarding appeals and variances arising out of the zoning ordinance of the city.

Body shop means any building, premises, and land in which or upon which the primary use of land is a business which involves the painting of vehicles or the repair of exterior damage to vehicles.

Building means a structure having a roof supported by columns or walls, whether or not completely enclosed

Building height. See *Height*.

Building line means the plane, parallel to the front property line, formed by the majority of the front facades of buildings in a given block.

Building official means the person authorized by the city to interpret and administer the building codes, the zoning ordinance and any other related ordinances or regulations of the city or designated by the governing body.

Building permit means a written permission issued by the city for construction, as required by the adopted codes and ordinances of the city.

Build-out means the completed construction of all phases of a development as allowed by all ordinances that regulate an area. The scale of build-out can be from a single lot to multiple lots within the city.

Build-to line means the line, parallel to the front property line, at which construction of a building is to occur on a lot.

Carrying capacity means the amount of traffic which can be accommodated on a street without reducing the level of service the street provides as defined by the state department of transportation or street design standards of the city ordinances or other regulations. Carrying capacity is determined by the amount of traffic per lane per hour.

Certificate of occupancy means a certificate allowing the occupancy or use of a commercial building and certifying that the structure of use has been constructed or will be used in compliance with this chapter and all other applicable codes and regulations.

Child care center means a facility which provides care and educational activities for 13 or more children two weeks to 16 years of age for more than three hours and less than

24 hours per day, including day time, evening, and nighttime care; or which provides before and after school care for school-age children. A facility may have fewer than 13 children and be licensed as a center if the program and building meet child care center regulations set out in K.S.A. 65 and K.A.R. ch.28.

City clerk means the person authorized by the city to perform all the duties of his/her position as prescribed by statutes or ordinances.

Club. Class A or Class B club.

- A. *Class A club* means a premises which is owned or leased by a corporation, partnership, business trust or association, and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club as determined by the director of alcoholic beverage control of the state department of revenue, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates and their families and guests accompanying them.
- B. *Class B club* means a premises operated for profit by a corporation, partnership, or individual to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment es.

Collector street means, within the city, only Belinder Avenue, West 47th Place, and West 50th Street.

Commission means the city planning commission.

Community living facility means any dwelling or building defined as "group living" or "semi-independent living" by the state department of social and rehabilitation services (see KAR 30-22-31). This category provides residential care and treatment for patients with mental health and substance abuse illnesses. These establishments provide room, board, supervision, and counseling services. Medical services may be provided if they are incidental to the counseling, mental rehabilitation, and support services offered.

Conditional use means a use subject to specific provisions or which requires the approval of the board of zoning appeals before the issuance of a zoning permit.

Condominium dwelling residence means a building containing two or more dwelling units, which dwelling units are separated by a party wall and which dwelling units are designed and intended to be separately owned in fee under the condominium statutes of the state.

Conservatory means a greenhouse or other structure, primarily of glass or other transparent or translucent material, which encloses a pool, patio, or similar space.

Customary home occupation means any use conducted for gain entirely within a residence and carried on by the occupants thereof, which use is clearly incidental and

subordinate to the residential use and which does not change the character thereof and in connection with which there is no display or signage. When observed from beyond the lot on which it is located, a home occupation shall not give visual, audible, sensory, or physical evidence that the property is used for any nonresidential purpose.

Day care means the provision of supervision, training, food, lodging or medical services to persons for less than 24 hours a day.

Day care home means a structure designed and used as a one- or two-family dwelling where day care is provided for a maximum of 12 children, which is regulated under K.S.A. 65 and K.A.R. ch. 28.

Deck means a deck is defined as a wooden flat-floored roofless structure, often attached to a building.

Detached building means a building completely surrounded by open space.

Detention means an engineered method or technique to temporarily store stormwater on a site and control its rate of runoff.

Disability, disabled means a physical or mental impairment which substantially limits one or more of a person's major life activities.

Disturbed ground means any area of ground on a site which during construction is broken, dug up, filled, graded, built on or used for storage or parking.

Drinking establishment, bar or night club means a premises which may be open to the general public, where alcoholic liquor or cereal malt beverage by the individual drink is sold

Dwelling means a building or portion thereof, designed exclusively for residential occupancy, including single-family and multiple-family dwellings, group homes, but not motels, hotels, or mobile homes.

Dwelling, cottage court, means a group of small, detached houses, duplexes, or townhouses centered around a common courtyard. The central courtyard enhances the character of the area through the provision of consolidated open space. A cottage court may be developed on individual lots or with a common form of ownership. The term "cottage court dwelling" includes Bungalow Court.

Dwelling, multifamily, means a residential building containing two or more dwelling units occupying a single building site. The term "multifamily dwelling" includes apartments, multiplexes, and condominiums.

Dwelling, senior adult independent living, means a building containing one or more living units which building and units are designed for exclusive occupancy by persons

55 years of age or older who are in generally good health. This type of residence does not contemplate continuous health care services but may include a resident nurse. The properties do not have central commercial kitchen facilities and generally do not provide meals to residents, but may offer community rooms, social activities, and other amenities.

Dwelling, single-family, means a detached dwelling designed for or occupied exclusively by one family, including residential design manufactured homes.

Dwelling, townhouse, means a dwelling unit that is part of a building that includes at least three dwelling units with such dwelling units being separated by common walls as opposed to one dwelling unit being over another. The term "townhouse dwelling" includes rowhouses, townhomes, single-family attached units, and attached dwelling development.

Dwelling, two-family, means a single structure on a single lot containing two dwelling units, each of which is totally separated from the other by a ceiling, unpierced for any purpose including access, communication, or utility connection.

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

Dwelling unit, accessory (ADU), means a dwelling unit which is an accessory use to a detached single-family dwelling unit on one lot. The term "accessory dwelling unit" includes accessory apartments, garage apartments, and accessory cottage dwellings.

Eave means the overhang of the roof structure of a building beyond its supporting wall, at the point of intersection between the roof and the vertical building wall, typically the lowest part of the roof and where exterior or interior gutters are located.

Encroachment means the part of a structure which intrudes into a defined setback.

Facade means the vertical surface of a building facing any property line.

Family means one or more persons who are related by blood or marriage, living together and occupying a single housekeeping unit, or a group of not more than three, not thusly related, living together by joint agreement and occupying a single housekeeping unit on a non-profit cost sharing basis; plus in either case, usual domestic servants and caregivers.

Fence means a vertical structure, including live material, which may provide privacy, divides or defines a boundary.

Flat roof means roof lines or silhouettes with a pitch which is 4:12 or less; that is, a pitch

which is less than or equal to four units of vertical change for every 12 units of horizontal change.

Floodplain, flood hazard area, any area defined by the Federal Emergency Management Act and shown on its maps to be located in an area subject to flooding.

Footprint means the foundation outline of all buildings or structures.

Fountain, privately owned, means a receptacle of stone, concrete, metal, or other similar material, designed for the aesthetic dispensing and pooling of water, with a reservoir depth not exceeding 12 inches.

Front yard. See *Yard, front*.

Frontage means the lot boundary which coincides with a public thoroughfare or open space; the facade of a structure facing the street.

Frontage build-out means the portion of lot frontage which has a building or wall running parallel to it.

Gable means that portion of a building roof comprised of two sloping roof segments, typically of equal slope, that join together at one end and project to a common point vertically above the exterior building wall. A gable includes that portion of the exterior building wall which is directly beneath the roof, within the slope of the gable.

Garage, commercial, means any building, premises, and land in which or upon which the primary use of land is a business which involves the maintenance or servicing of vehicles but does not involve the painting of vehicles or the repair of exterior damage to vehicles.

Garage, residential, means the building or portions of building that fully encloses space for the storage of one or more vehicles. Garages may be attached or detached from the primary structure.

Gas station means a retail establishment which sells gasoline and other fuels for motor vehicles and may sell and install other automotive products, such as lubricants, tires, batteries, and similar accessories, and which may perform minor vehicle maintenance and repairs.

Gazebo means a freestanding, roofed structure with open sides.

General commercial use means business and retail establishments providing services and products.

Grade means the elevation of the land or land level at any given point.

Green roof means a layer of vegetation planted over a waterproofing system that is installed on top of a flat or slightly-sloped roof. Green roofs are also known as vegetative or eco-roofs.

Group home means any dwelling, licensed by a regulatory agency of the state, which is occupied by no more than ten persons, including no more than eight persons with disabilities who need not be related by blood or marriage, and not more than two staff residents for whom the dwelling is not their primary residence.

Health and welfare facilities means all hospitals and institutions specializing in medical treatment, mental health treatment, physical therapy, alcohol and drug treatment, and/or assisted living for all ages.

Height means the vertical distance from the average ground elevation adjacent to a building or structure grade plane to the average height of the highest roof surface, including, but not limited to, any parapet, roof line, decking of a mansard roof, towers, spires, steeples, and any other roof-top appurtenances, including, but not limited to, mechanical equipment or structures. Height, where not regulated in feet, shall be regulated by stories. A story shall be equal to 12 feet for purposes of measuring structures other than buildings.

Irregularly shaped lot means any lot which is not square or rectangular in shape.

Laboratory means a place equipped for experimentation or observation in a field of study, or devoted to the application of scientific principles in testing and analysis. Quantities of biological or hazardous materials used on site shall be limited to those quantities established by the state and federal requirements.

Land use segregation means the practice of prohibiting mixed-use development or close proximity of residential and nonresidential uses. This is accomplished through zoning standards which emphasize the separation of all uses, and the buffering and screening of dissimilar uses from one another.

Lot means a parcel of land, the boundaries of which have been established by some legal instrument such as a recorded deed or a recorded map, and which is recognized as a separate tract or legal unit of ownership for purposes of transfer of title. According to the recorded plat thereof, a lot shall be the parcel of land as presently platted. An interior lot is bounded on two opposite sides by other lots and on one side faces a single public right-of-way. A corner lot is bounded on two adjacent sides by two public rights-of-way.

Lot coverage means the entire area on a tract or parcel that is covered by a structure, any impermeable surface, or is otherwise built upon, including, but not limited to, the footprint or foundation outline of all buildings and structures. Lot coverage does not include decks which do not have roofs and are less than 30 inches in height from the ground, and driveways, sidewalks, and patios which are flush with the surface of the

ground. Decks which are not roofed and are 30 inches or higher from the ground are to be calculated at 50 percent of the area covered. Overhanging conditions above open-air exterior areas, including, but not limited to, building, roof, or balcony overhangs or cantilevers, shading devices, and light shelves are to be calculated at 50 percent of the covered area. Structures covered by green roofs are to be calculated at 50 percent of the covered area, up to an area equal to 10 percent of the total lot area.

Machine shop means a mechanized workshop which manufactures, sizes or assembles pieces of machinery.

Major addition means any addition or alteration that increases or alters more than 50 percent of the existing structure.

Manufactured structure means a residential or commercial building comprised of one or more component parts constructed in a manufacturing plant and transported to a site for final assembly on a permanent foundation. The city building code standards for traditional on-site construction are not strictly enforced for such structures.

Massing means the shapes, proportions and form of a building. The design elements that may affect the mass of a building may include the following:

- A. Building silhouette;
- B. Spacing between facades;
- C. Setback from property line;
- D. Proportion of windows, bays, and doorways;
- E. Proportion of primary facade;
- F. Location and treatment of entryway;
- G. Exterior materials used;
- H. Building scale;
- I. Geometric shapes offset to create the appearance of less mass.

Mechanical equipment means heating, ventilation, and air conditioning (HVAC) units.

Mixed use means the presence of residential and nonresidential uses within the same building or development complex. It may be different categories of nonresidential uses such as institutional, retail, and office within the same complex of buildings.

Mobile home means a structure that:

- A. Is transportable in one or more sections which, in the traveling mode, is eight body feet or more in width and 36 body feet or more in length and is built on a

permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; and

- B. Is not subject to the federal manufactured home construction and safety standards established pursuant to 42 USC 5403.

Modular home means a dwelling unit, a majority of which is assembled in an off-site manufacturing plant and transported to the building site for final assembly on a permanent foundation and constructed in compliance with the city's building codes.

Mother's day out means a day care program operating more than five consecutive hours or more than one day per week and in which any one child is enrolled for not more than one session per week.

Nonconforming use means any lawful use of any land, building, or structure which later becomes unlawful as a result of legal or regulatory changes in, or amendments to, this chapter.

Off-street parking means parking which occurs on a lot and not on a street or other public right-of-way.

Office use means business, professional, service, or governmental occupations within a building.

Open space means any area which does not consist of buildings, streets, rights-of-way, pavement, parking, or easements.

Overlay district means a set of regulations, which add an additional layer of building standards to a specific area within a zoning district.

Parking area means any portion of land designated for the parking of vehicles.

Paved means covered by a contiguous, impervious, hard substance such as concrete, asphalt, brick, stone, or other material which is similar in durability, appearance, and permeability.

Patio means a paved outdoor area adjoining a house.

Pedestrian-oriented development means a land use plan which emphasizes the needs of pedestrians in addition to the needs of automotive traffic.

Permitted uses means uses allowed to occur within a designated zoning district.

Planning commission means a review board appointed by the mayor and approved by the governing body to make recommendations on zoning issues provided herein (see

article 1.4 of this chapter).

Platted lot means a lot surveyed and recorded at the county office of records and tax administration.

Pool means any constructed, outdoor basin or tank designed to hold water greater than 12 inches in depth.

Porch means a structure, attached to the exterior of a building, which leads to an entrance and may be:

- A. Enclosed; roofed, with walls and a second door or doorway;
- B. Open; usually roofed, with no walls, which may have columns or other appurtenances to support the roof;
- C. Screened; roofed with screened sides and a second door or doorway.

Preschool means a day care facility providing educational experiences and operating in compliance with the definitions and regulations of the state.

Primary building means the structure on a multi-structured lot in which the majority of activities occur.

Public safety station means police, fire and rescue stations.

Public street means any right-of-way used for vehicular traffic that is permanently maintained by any city, county, or state agency and is open to all traffic.

Public utility buildings means outside storage of materials and equipment is an accessory use in buildings used by public utilities provided all storage is screened from view off the premises.

Quadrangle means a rectangular area, such as a courtyard, enclosed by buildings.

Rear yard. See *Yard, rear*.

Residential street means all streets within the city except those designated as collector streets or thoroughfares.

Residential-design manufactured homes means a manufactured dwelling affixed to a permanent foundation which has minimum dimensions of 22 body feet in width, a pitched roof, and siding and roofing materials which are customarily used on site-built homes.

Retention means an engineered method to completely retain a specified amount of stormwater without release except by means of evaporation, infiltration, or pumping.

Ridge line means the point at which two sides of a roof meet at their highest edges, which is typically the highest point of the primary roof.

Right-of-way (ROW) means an area of public land dedicated to infrastructure such as streets, sewer lines, water lines, electric lines, gas lines, etc.

Roof line means the shape of a roof, formed by its slope, pitch, eaves, ends, and projections, such as dormers, which are above the eave line.

Satellite dish means any circular or semi-circular dish-shaped receiving antenna used to receive signals transmitted from satellites, generally for highly specialized industrial communications or for receiving television signals from a satellite. The term "satellite dish" does not apply to antennas regulated pursuant to article 10 of this chapter.

Setbacks means the mandatory distance between a lot line and the face or nearest part of a structure.

Shed dormer means a dormer with a roof sloping in the same direction as the roof from which the dormer projects.

Shop-front means a business or retail establishment located on the ground floor of a structure, the facade of which is aligned directly along the frontage line and the entrance of which is at grade.

Side yard. See *Yard, street side and/or yard, interior side.*

Site plan means the plan of a construction site showing the position and dimensions of the building to be erected and the dimensions and contours of the lot; a map done by a surveyor or design professional accurately depicting the scale distances and measurements of all existing and planned structures on a lot, and the location and dimensions of the lot itself.

Stormwater means stormwater runoff, snow melt runoff, surface runoff, and drainage.

Stormwater runoff means rainwater flowing on the surface of the ground.

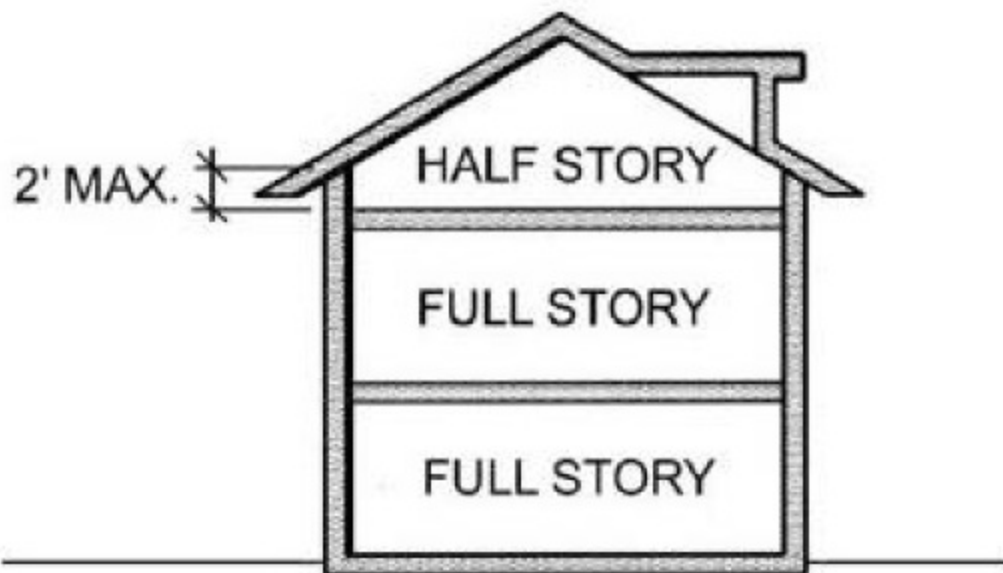
Story means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that habitable portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. An attic, regardless of its interior dimensions, shall not be considered a story provided it remains unconditioned space, is accessible by nothing more substantial than a pull-down stairway or ladder, and contains no dormers with the exception of minimal vent features. Determination of a building's number of stories shall be based on qualifying floor area being situated directly above other qualifying floor area.

Story, above grade, means any story having its finished floor surface entirely above grade, except that a basement shall be considered as a story above grade when the finished surface of the floor above the basement is:

- A. More than six feet above grade plane;
- B. More than six feet above finished ground level for more than 50 percent of the total building perimeter; or
- C. More than 12 feet above the finished ground level at any point.

Story, first, means the street level of a building which is less than four feet below grade for no more than 50 percent of the perimeter and no portion of which is more than eight feet below grade.

Story, half, means a partial story located above a full story and underneath a sloping roof, where the roof planes intersect two opposite exterior walls at a height of no more than two feet above the half-story floor level, and window dormers or other projections out from this roof plane do not exceed more than 50 percent of the horizontal length of the roof for a 2 1/2 level, or 85 percent of the horizontal length of the roof for a 1 1/2 story level, measured along both opposite roof planes at two feet above the half-story floor level or higher.



Street means pavement and sub-grade of a city residential, collector, or thoroughfare roadway, excluding curbs, gutters, and portions adjacent to the pavement and sub-grade of a roadway that lie in a right-of-way.

Street frontage means that portion of a lot that directly faces the public right-of-way along its front property line.

Street yard means the area of land along the front property line parallel to a street (i.e., front yard) that is reserved for tree planting and landscaping.

Structure means anything constructed or erected, including retaining walls, the use of which demands a permanent location on the soil, or which is attached to something having a permanent location on the soil.

Sustainable means having the ability to accommodate and/or maintain future population growth and economic expansion.

Temporary structures means buildings placed on a lot for a specific purpose, which are to be removed within a specified time period. Examples of temporary structures are monitoring stations, mobile classrooms or office space, construction trailers or guard houses, manufactured housing placed on a lot for temporary housing while the primary home renovations are done, and produce stands. The duration permitted for a temporary structure is established by this chapter.

Temporary use permit means a permit issued by the city allowing a specific use for a specific period of time.

Testing and research facilities means primarily office uses or an establishment primarily engaged in commercial research and providing testing services for scientific research. This use can include the design, development, and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing. This use does not involve the fabrication, mass manufacture, or processing of the products, and does not include general medical or dental laboratory services.

Thoroughfare means, within the city, only Shawnee Mission Parkway, State Line Road, Rainbow Boulevard, West 47th Street, and Mission Road.

Through lot means a parcel of land that has access to a public right-of-way from both the front and back property line.

Transitional yard means the area of a property running along the side or rear yard of a nonresidential lot when it abuts a residential lot, used as a buffer.

Undercroft means the area underneath any structure that, due to its height above the ground, is exposed to view. Such structure may be a roof or floor.

Utility structure means any cabinet, pedestal, box, building or other structure used for public utility services, public service corporations, or telecommunications providers, including any associated equipment such as condensing units and generators. Towers, poles and traffic signal controllers shall not be considered utility structures. Facilities with a footprint smaller than two square feet, or underground facilities that extend no more than six inches above grade are exempt from this definition.

Vocational center means a teaching or learning business where classes are held, which may be affiliated with an educational institution.

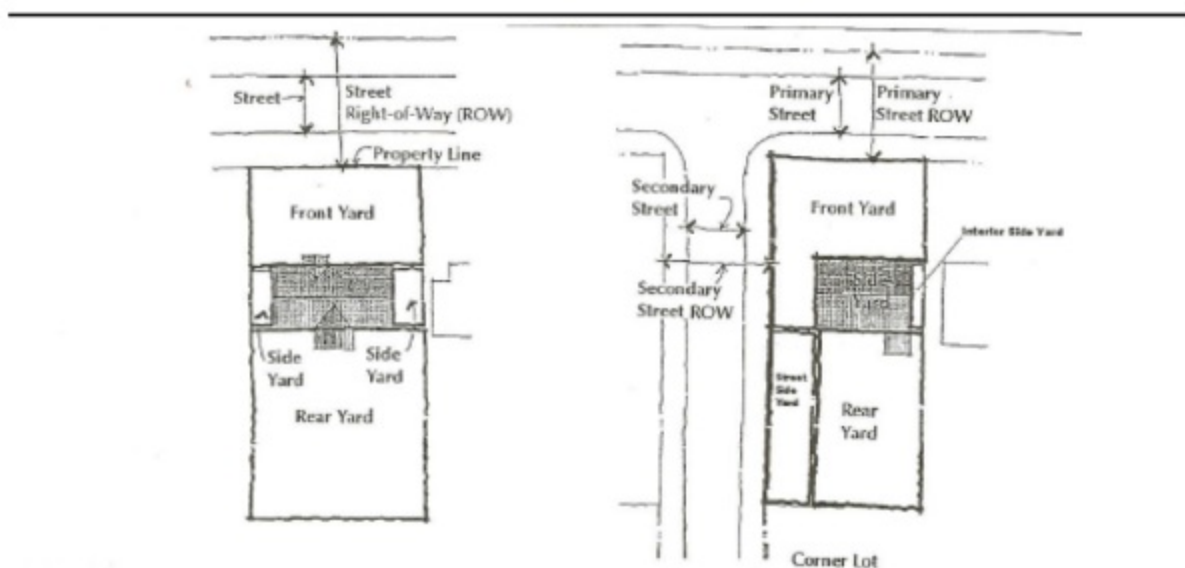
Yard means the part of the building plot not occupied by structures and open to sky.

Yard, front, means open space across the full width of the lot extending from the front line of the primary structure to the front line of the lot where the street right-of-way begins. On corner lots, the front yard shall be determined by the street address but extends around on the exterior or right-of-way side to the rear corner of the primary structure.

Yard, interior side, means open space between the side of the primary structure and the adjacent sideline of the lot, and between the front yard and the rear yard.

Yard, rear, means open space between the rear line of the primary structure and the rear lot line or public right-of-way and between the side lot lines. On corner lots, the rear yard adjacent to the public right-of-way ends at the corner of the primary structure nearest the rear yard and the adjacent side yard public right-of-way.

Yard, street side, means on corner lots, side yards extend along the yard adjacent to the public right-of-way from the rear corner of the primary of the primary structure to the real property line.



(Code 2008, ch. 16, § 2.3; Ord. No. 960, § 3, 7-9-2015; Ord. No. 984, § 11, 9-21-2017; Ord. No. 1000, §§ 1, 2, 3-14-2019; Ord. No. 1024, § 17, 2-10-2022)

ARTICLE 3 GENERAL REGULATIONS

3.1 Applicability

3.2 Nonconforming Uses

3.3 Uses Prohibited

[3.4 Allowed Uses](#)

[3.5 Temporary Structures](#)

[3.5.1 Construction Trailers, Sanitary Facilities And Roll-Off Dumpsters](#)

[3.5.2 Temporary Uses Allowed](#)

[3.5.3 Application For Other Uses](#)

[3.5.4 Manufactured Homes](#)

[3.5.5 Manufactured Structures As A Temporary Conditional Use](#)

[3.6 Yard And Garage Sales](#)

[3.7 Sale Of Seasonal Products](#)

[3.8 General Lot Standards](#)

[3.9 Stormwater Runoff Provisions](#)

[3.10 Off-Street Parking And Loading](#)

[3.11 Solar Collectors](#)

3.1 Applicability

The following provisions shall apply throughout the jurisdiction of this chapter, regardless of the underlying zoning district.

(Code 2008, ch. 16, § 3.1)

3.2 Nonconforming Uses

The provisions of this article shall not apply to existing buildings or structures, but shall apply to any alteration of a building or structure to provide for its use for a purpose or in a manner different from the use to which it was put before the alteration. However, nothing in this article shall prevent the restoration of a building damaged by fire, explosion, act of God or the public enemy, or prevent the continuance of the use of such building, or part thereof, as such use existed at the time of such damage, except that a building which is damaged by more than 50 percent of its fair market value shall not be restored if the use of such building is not in conformance with the regulations herein. A nonconforming use may be changed to a more restricted use, and when so changed, it shall not be changed again to a less restricted use. When a nonconforming use has been discontinued for a period of 90 days, it shall not be reestablished, and any future use shall be in conformity with the provisions of this chapter, notwithstanding the purpose for which the premises were erected or used.

(Code 2008, ch. 16, § 3.2; Ord. No. 1024, § 18, 2-10-2022)

3.3 Uses Prohibited

- A. Unless a project is subject to a valid building permit, no open excavation, no partially constructed structure, and no building or structure so damaged as to become unfit for use or habitation, shall be permitted, maintained or remain in such condition within the city for a period of more than six months, except by special permission of the governing body.

- B. No building material, construction equipment, machinery, or refuse shall be stored, maintained, or kept in the open on any lot, tract, or parcel within residential (R-I) district, other than during actual construction operations on said premises or related premises. In unusual cases, the governing body may waive this requirement for a limited time.
- C. No building or premises in the city shall be used or occupied for any of the following purposes:
 - 1. Junkyard or junk storage area;
 - 2. Tourist cabin or trailer camp;
 - 3. Slaughterhouse, commercial poultry dressing or processing establishment where such is primary and not incidental to some authorized use;
 - 4. Auto wholesale and retail.
- D. No above-ground construction or planting shall be permitted in any public street, sidewalk or right-of-way, except for traffic and public safety signs, plantings less than 24 inches in height, and hydrants or pedestals less than 30 inches in height and having a width or depth not more than 12 inches, provided that communication facilities for wireless services may be permitted by application and approval subject to the provisions of article 10 of this chapter, as well as city-sponsored improvement projects.
- E. No poles, towers, conduits, or lines for any purpose, including for the purpose of transmission of electricity, data, cable television, voice signals, electronic mail, telecommunications, or other purposes shall be permitted or constructed above ground, provided that communication facilities for wireless services may be permitted by application and approval subject to the provisions of WCC article 10 of this chapter.
- F. Portable storage units, dumpsters, portable toilets, portable on demand storage units (PODS), storage trailers, and other impermanent storage or other facilities are prohibited unless a permit is first obtained. Such a permit shall be for a maximum period of 30 days or as may be required pursuant to any valid building permit. Such permit may be renewable upon a showing of reasonable necessity or as set out in any building permit.

(Code 2008, ch. 16, § 3.3; Ord. No. 920, § 1; Ord. No. 984, § 12, 9-21-2017; Ord. No. 1024, § 19, 2-10-2022)

3.4 Allowed Uses

Uses designated as "permitted uses" and "uses permitted with conditions" are allowed in a district as a matter of right. It is recognized that new types of land use will develop

and forms of land use not anticipated may seek to locate in the city. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

- A. For any use not listed in this chapter, the owner has the right to appeal to the board of zoning appeals to determine if said use can be reasonably interpreted to fit into a use category where similar uses are described in this chapter and is consistent with the comprehensive plan of the city, as provided herein.
- B. Certain uses preexisting the adoption of the ordinance from which this chapter is derived, are allowed to remain as nonconforming uses in accordance with WCC 3.2. Temporary uses are allowed in accordance with WCC 3.5.2. Unless a use is allowed as "permitted," "permitted with conditions," "conditional," "nonconforming," "temporary," or "special," such use is expressly prohibited in that district.

(Code 2008, ch. 16, § 3.4; Ord. No. 1024, § 20, 2-10-2022)

3.5 Temporary Structures

When in compliance with all applicable provisions of this chapter and all other ordinances of the city, temporary structures and uses shall be permitted as hereinafter provided.

(Code 2008, ch. 16, § 3.5)

3.5.1 Construction Trailers, Sanitary Facilities And Roll-Off Dumpsters

Construction trailers and roll-off dumpsters may be used in conjunction with construction projects, provided that the following conditions are met:

- A. Construction trailers may be located at a building site where there is a valid permit for the construction project.
- B. All construction trailers shall be located at least ten feet off any street right-of-way.
- C. Roll-off dumpsters must be utilized during all such projects and shall be located at least ten feet of any street right-of-way, and shall be emptied at least monthly of all debris or when filled above the top rim.
- D. Temporary sanitary facilities shall be located at least ten feet away from any street right-of-way, and serviced on a weekly basis or more often, as needed.
- E. In addition to construction trailers, at any construction site for a construction project valued at \$1,000,000.00 or more, one or more security guard houses may be installed. Use of such structures may include overnight stay, provided adequate sanitary facilities are provided and the same conditions for

construction trailers, listed above, are met.

(Code 2008, ch. 16, § 3.5.1)

3.5.2 Temporary Uses Allowed

Certain uses of a temporary nature which would not otherwise be permitted in a particular zoning district may be issued a temporary permit as provided in this section. The permit shall be valid for a specified time only, not to exceed 45 days in duration. Upon receipt of an application, the governing body may grant a temporary use permit for the following uses:

- A. Christmas tree sales;
- B. Revivals;
- C. Shows for civic and youth organizations; and
- D. Markets and art fairs.

(Code 2008, ch. 16, § 3.5.2)

3.5.3 Application For Other Uses

All other temporary uses not otherwise listed in WCC 3.5.2 may be granted a temporary use permit only after the governing body has made the following determinations:

- A. The proposed use will not materially endanger the public health, welfare, and safety; and
- B. The proposed use will not have a substantial negative effect on adjoining properties.

In approving such a temporary permit, the governing body may authorize conditions regarding the duration of use, hours of operation, signage, lighting, traffic, and other land use and public safety concerns, and such conditions shall be made part of the permit issued. Violations of such conditions shall be considered a violation of this chapter.

(Code 2008, ch. 16, § 3.5.3)

3.5.4 Manufactured Homes

Manufactured homes may be allowed on a temporary basis in a zoning district in which such use is not listed as a permitted use, if a disaster destroys an occupied single-family dwelling or renders it uninhabitable (i.e., it receives damage greater than 60 percent of its tax value as indicated on the cost current tax listing). In this instance, a

manufactured home may be placed on the lot on which the dwelling was destroyed. The manufactured home is permitted in order to provide living quarters for the residents of the destroyed dwelling while a new dwelling is being constructed or the original dwelling is being repaired. In such instances, the use of a manufactured home is subject to the following conditions:

- A. Such manufactured home shall not be placed in the front yard and shall be located a minimum of 15 feet from the principal residential structures on adjacent lots and a minimum of ten feet from all lot lines.
- B. The building official has the authority to issue a one-time-only temporary use permit for a period of up to 45 days. Said permit may be renewed on a one-time-only basis for a reasonable amount of time by the governing body if it is determined that:
 - 1. Construction of the new dwelling unit is proceeding in a diligent manner; and
 - 2. The granting of such permit will not materially endanger the public health, welfare, or safety; and
 - 3. The location of the manufactured home on the site does not have a negative effect on adjacent properties.

(Code 2008, ch. 16, § 3.5.4)

3.5.5 Manufactured Structures As A Temporary Conditional Use

- A. Manufactured structures may be used for any temporary business space as a temporary conditional use granted by the governing body, provided the following conditions are met:
 - 1. The manufactured structures are necessary for temporary needs due to construction.
 - 2. The manufactured housing shall be provided with underpinning, from the bottom of the walls to the ground, made of vinyl, prepainted aluminum material, or other material specifically manufactured for mobile homes.
 - 3. Additional on-site parking for employees or driving patrons must be provided.
- B. The governing body can impose requirements to protect the public health, welfare, and safety.
- C. If the governing body finds that the of this section conditions are met, and construction and planning of permanent facilities are being carried out diligently, the governing body may issue a temporary use permit for a maximum of one

year.

(Code 2008, ch. 16, § 3.5.5)

3.6 Yard And Garage Sales

Yard, estate sales, auctions, sample sales, garage, and patio sales are permitted as an accessory use on any residentially or institutionally developed lot in any district. Such sales may only be conducted by residents of the city or their representatives, and may take place only on the tract on which said resident actually resides or has resided. A no-fee permit is mandatory, and can be obtained from the city clerk.

(Code 2008, ch. 16, § 3.6)

3.7 Sale Of Seasonal Products

Seasonal goods, including, but not limited to, produce, Christmas trees, and pumpkins may not be displayed for sale in any R-1 zoning district.

(Code 2008, ch. 16, § 3.7)

3.8 General Lot Standards

No building or land shall hereafter be used, and no building or part thereof shall be erected, moved or altered, except in conformity with the regulations herein specified for the district in which it is located.

- A. No lot existing at the time of passage of the ordinance from which this chapter is derived shall be reduced in size or area below the minimum requirements set forth for the subdistrict in which said lot is located. Lots created after 2008 shall meet at least the minimum requirements established by this chapter.
- B. Every building erected, moved, or structurally altered shall be located on a single lot. In no case shall there be more than one principal building and its customary accessory buildings on any lot, except in appropriate regulated districts which permit more than one commercial or residential structure on a lot.

(Code 2008, ch. 16, § 3.8; Ord. No. 1024, § 21, 2-10-2022)

3.9 Stormwater Runoff Provisions

All stormwater collection and runoff systems shall conform to the 2003 APWA Standards, section 5600, as amended.

(Code 2008, ch. 16, § 3.9)

3.10 Off-Street Parking And Loading

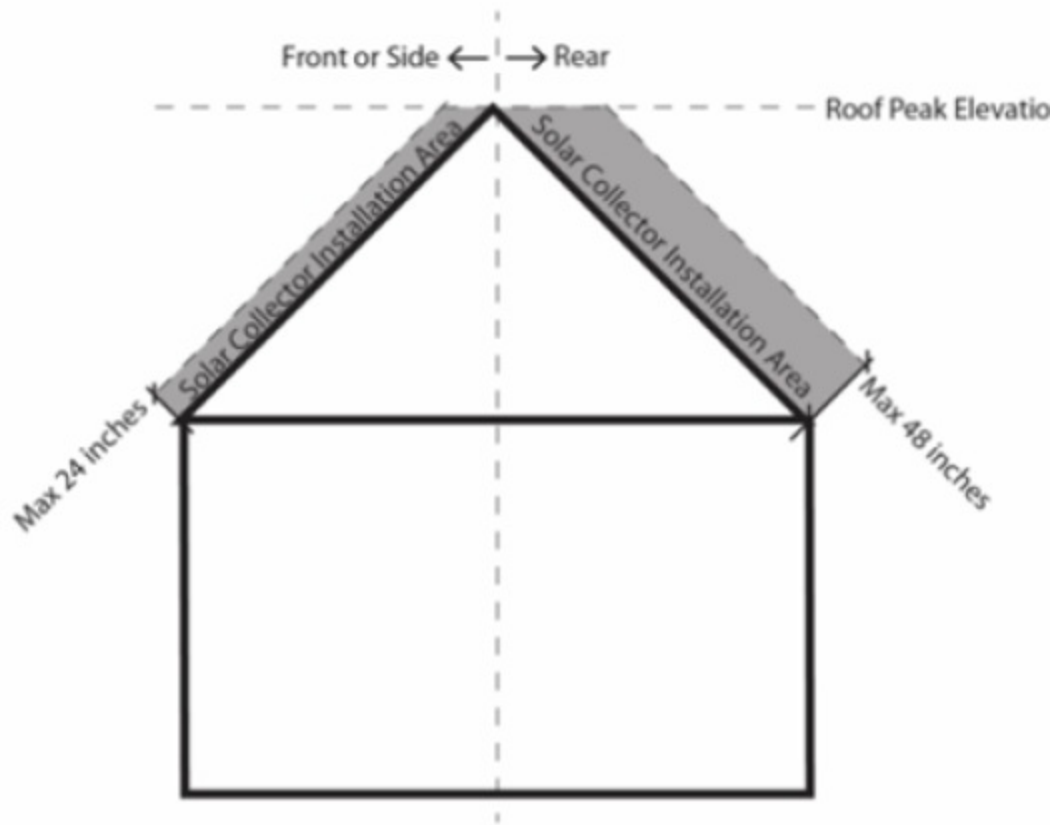
For all buildings or structures hereafter erected, constructed, reconstructed, moved, or altered, off-street parking in the form of garages or areas made available exclusively for that purpose shall be provided. Permanent occupancy shall not be allowed until all provisions for parking have been met.

(Code 2008, ch. 16, § 3.10)

3.11 Solar Collectors

Solar collectors are permitted, provided the following performance standards are met:

- A. Roof-mounted solar collectors visible from the front or side of public right-of-way not extend above the peak of the roof where it is mounted, and no portion of solar collectors shall extend more than 24 inches perpendicular to the point of roof where it is mounted; the support structure shall not be enclosed.
- B. Roof-mounted solar collectors located on the rear side of building roofs shall extend above the peak of the roof where it is mounted, and no portion of such collectors shall extend more than 48 inches perpendicular to the point on the roof where it is mounted.
- C. Ground-mounted solar collectors shall not exceed six feet in total height and shall be located within the rear yard at least 12 feet inside the property line.
- D. All lines serving a ground-mounted solar system shall be located underground.



(Code 2008, ch. 16, § 3.11)

ARTICLE 4 RESIDENTIAL ZONING DISTRICTS

DIVISION 4.1 RESIDENTIAL DISTRICTS GENERALLY

DIVISION 4.2 USES PERMITTED WITH CONDITIONS

DIVISION 4.3 SINGLE-FAMILY RESIDENTIAL

DIVISION 4.4 NEW INFILL HOUSES AND MAJOR ADDITIONS; SPECIAL CONSIDERATIONS

DIVISION 4.5 WAIVERS AND EXCEPTIONS

DIVISION 4.1 RESIDENTIAL DISTRICTS GENERALLY

4.1.1 Intent

4.1.2 Residential Zoning Districts Described

4.1.1 Intent

The R-1 Single-Family Residential District is established to promote the health of the city's historical neighborhoods as well as providing for their expansion along the same traditional lines used when they were established.

A. The following is a list of objectives to achieve housing that is compatible within the existing neighborhood:

1. Materials and colors should be used to reduce the apparent bulk of the structure.
2. The building height should be in proportion to the style and size of the house and to the lot area.
3. Higher portions of structure should be set back from the lot lines to reduce the impression of height.
4. Architectural features should be used to reduce the impression of bulk.
5. A combination of vertical and horizontal elements should be used to break up long or tall facade walls.
6. Recessed and projecting spaces should be used to create interest.
7. The completed structures must not overcrowd or overwhelm neighboring residences.
8. The creation of a vertical canyon effect between houses should be minimized. When a two-story house is proposed adjacent to one-story houses, the space between the houses should increase as wall height increases.
9. Similar materials, colors and roof pitch should be used on all sides and on all structures on the site.
10. The use of highly reflective materials should be avoided.
11. Mechanical equipment should be screened.
12. Large, continuous, paved areas should be avoided. Paved areas should be broken up by the use of textured or colored materials.

B. Consistent with the city's comprehensive plan, the objectives in development of this district are:

1. To promote positive growth in the city's residential areas;
2. To accommodate the renovation and expansion needs of residents;
3. To allow for future redevelopment;
4. To alleviate problems in compatibility with neighboring properties;
5. To provide clear criteria for new infill houses;
6. To allow for flexibility in expansion and remodeling of existing homes.

C. In addition, the governing body recognizes the unique attributes of the area

known as the Westport Annex, and finds as follows:

1. Whereas the area known as Westwood East of Rainbow (WEBO) consists of the area on 47th Terrace and 48th Street between Rainbow Boulevard and State Line Road, and is unique in its construction, platting, and configuration in the city; and
2. Whereas WEBO consists of lots nearly all of which were originally platted to have uniform dimensions of 40 feet in width by 110 feet in depth; and
3. Whereas the housing stock in WEBO has a significant percentage of smaller, older homes which present remodeling and redevelopment challenges; and
4. Whereas the construction of many homes in WEBO predate the widespread ownership of automobiles, and thus many homes have little or no garage space; and
5. Whereas the scarcity of garage space contributes to parking congestion which may negatively affect the safety, comfort, and convenience of the citizens; and
6. Whereas creative and distinct efforts may be necessary to create an environment for stable and productive redevelopment in WEBO; and
7. Whereas the governing body has received comments from the planning commission, residents of WEBO, other citizens, and others, and has studied the challenges posed by the unique characteristics of WEBO, and has concluded that certain rules or requirements may be too restrictive or otherwise interfere with redevelopment or the most productive use of property in WEBO, and that it is appropriate to create certain rules that pertain to WEBO based on the unique and distinct characteristics that predominate in the neighborhood, and the circumstances of WEBO justify the creation of an overlay district or similar special considerations for this area;
8. Therefore, a category R1-E shall be created as further set forth herein.

(Code 2008, ch. 16, § 4.1.1; Ord. No. 1024, § 22, 2-10-2022)

4.1.2 Residential Zoning Districts Described

The single-family residential areas of the city are divided into the following single-family residential zoning districts as further defined and described herein, including, but not limited to, the definitions and descriptions set forth in WCC 4.3.2:

- (a) R-1(A) are lots which are less than 50 feet in width as measured at the curb

along the front property line;

- (b) R-1(B) are lots which are less than 65 feet in width but at least 50 feet in width as measured at the curb along the front property line;
- (c) R-1(C) are lots which are less than 75 feet in width but at least 65 feet in width as measured at the curb along the front property line;
- (d) R-1(D) are lots which are at least 75 feet in width as measured at the curb along the front property line; and
- (e) R-1(E) are lots which are less than 50 feet in width as measured at the curb along the front property line, and which are located on 47th Terrace or 48th Street between State Line Road and Rainbow Boulevard, otherwise referred to as WEBO.

(Code 2008, ch. 16, § 4.1.2; Ord. No. 1024, § 23, 2-10-2022)

DIVISION 4.2 USES PERMITTED WITH CONDITIONS

4.2.1 Intent

4.2.2 Customary Home Occupation

4.2.3 Churches And Civic Uses

4.2.4 Public Safety Uses

4.2.5 Group Home

4.2.6 Communications Facilities

4.2.7 Day Care Center

4.2.8 Parking Space Requirements For Uses With Conditions

4.2.9 Essential Utility Structures

4.2.1 Intent

- A. Certain uses exist which may be constructed, continued and/or expanded, provided they meet certain mitigating conditions specific to their design and/or operation. Such conditions ensure compatibility among other building types so that different uses may be located in proximity to one another without adverse effects to either.
- B. Each use shall be permitted in compliance with all conditions listed for the use in this article. A special use permit may be required as identified in article 8 of this chapter for each use permitted with the following conditions. Applications for communication facilities for wireless services and for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within article 10 of this chapter, and the city shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

All uses permitted with conditions in a residential district shall comply with article 5, divisions 5.1, 5.4, 5.5, and 5.6 of this chapter.

(Code 2008, ch. 16, § 4.2.1; Ord. No. 984, § 13, 9-21-2017; Ord. No. 1024, § 24, 2-10-2022)

4.2.2 Customary Home Occupation

- A. Any business operated within a residence shall not change the character of the dwelling.
- B. No outside storage associated with the home occupation is permitted.
- C. No more than 25 percent of the home shall be used in connection with the home occupation, except for a day care service.
- D. A maximum of one nonresident employee is permitted.
- E. No display or advertising on premises is permitted.
- F. Only vehicles used primarily as passenger vehicles shall be permitted in connection with the home occupation.

(Code 2008, ch. 16, § 4.2.2)

4.2.3 Churches And Civic Uses

- A. Churches, schools, and governmental uses shall be placed on a lot so as to front on the street.
- B. Any buildings incidental to the primary structure shall be behind a line a minimum of 20 feet from the front facade of the structure and, if more than one, shall be arranged to create secondary gathering spaces within the lot.
- C. Parking shall be located toward the interior of the lot. On-street parking may be used to fulfill parking requirements, where permitted. Parking may not occur within a front setback or corner side setback.
- D. Site plan review by the planning commission and approval by the governing body is required.

(Code 2008, ch. 16, § 4.2.3; Ord. No. 1024, § 25, 2-10-2022)

4.2.4 Public Safety Uses

- A. All public safety stations shall be similar in architectural design to nearby structures.
- B. Parking shall be to the rear of the lot.

- C. Site plan review by the planning commission and approval by the governing body is required.

(Code 2008, ch. 16, § 4.2.4)

4.2.5 Group Home

- A. All group homes shall be residential in architectural design.
- B. Minimum lot size shall be 7,000 square feet.
- C. Parking shall be to the rear of the home and shall be screened from adjoining properties.
- D. Site plan review by the planning commission and approval by the governing body is required.

(Code 2008, ch. 16, § 4.2.5)

4.2.6 Communications Facilities

- A. Communication facilities are subject to the application, review, building, and performance standards of article 10 of this chapter.
- B. Communication facilities, limited to the following, are a conditionally permitted use:
 - 1. Towers and base stations, as defined within WCC 10.2, designed as an architecturally compatible element to an existing nonresidential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in residential districts.
 - 2. Antennas, as defined within WCC 10.2, mounted on and designed as an architecturally compatible element to an existing nonresidential structure or building.
 - 3. Small cell and distributed antenna systems, as defined within WCC 10.2, mounted or collocated on monopoles, utility poles, or streetlights in the public right-of-way.

(Code 2008, ch. 16, § 4.2.6; Ord. No. 984, § 14, 9-21-2017)

4.2.7 Day Care Center

- A. Any business operated within a residence shall not change the character of the dwelling.
- B. No display or advertising on premises is permitted.

C. A state license is issued to the day care center.

(Code 2008, ch. 16, § 4.2.7)

4.2.8 Parking Space Requirements For Uses With Conditions

- A. The table below includes requirements for employee parking.
- B. Employee parking spaces are included in the ratios in the below table.
- C. No use shall provide more than 125 percent of the minimum required parking without documented evidence of actual parking demand based on studies of similar uses in similar context.
- D. Any parking permitted over 115 percent of the minimum shall require mitigating potential impacts of more parking through one or more of the following strategies:
 - 1. Provide shared parking for other uses on the block or adjacent blocks.
 - 2. Use alternative surfaces designed to infiltrate stormwater or otherwise increase permeability without significantly sacrificing stability and durability.
 - 3. Provide additional buffers and site open spaces to screen parking with at least a ten percent increase in the open space or buffers required for the parking, and at least a 20 percent increase in the landscape material amount required for the parking.
 - 4. Design all parking areas over the 115 percent maximum as dual-purpose space, such as plazas or courtyards, playgrounds, event areas for regular use of the space during non-peak times.

Institutions of higher learning	1 per 5 students/1 per 2 residents
High schools	1.5 per five students
All other schools	1.5 per classroom
Government institutions	1 per 300 sq. ft./1 per 4 seats of meeting area
Religious institutions	1 per 4 seats of meeting area
Civic organizations	1 per 300 sq. ft./1 per 4 seats
Group homes	1 per 3 residents
Nursing homes/retirement	1 per 3 beds
General health and welfare institutions	1.2 per bed

Independent living facilities	1.5 per unit
Convention facilities	1 per 250 sq. ft.
Post office	1 per 400 sq. ft.

(Code 2008, ch. 16, § 4.2.8; Ord. No. 1024, § 26, 2-10-2022)

4.2.9 Essential Utility Structures

Utility structures may only be installed in a utility easement, provided that utility structures may be located within the public right-of-way subject to the approval of the public works director and, if applicable, located behind any sidewalk. Other locations for utility structures may be allowed pursuant to the issuance of a special use permit as provided in article 8 of this chapter.

- A. When placing utility structures, priority will be sought in the following order:
 1. Properties with nonresidential uses.
 2. Thoroughfare easements.
 3. Rear yards.
 4. Street side yards on a corner lot behind the front yard setback.
- B. No newly constructed above-ground facilities shall be located directly in front of any single-family home (or in front of where a single-family home could be constructed, in the case of a vacant lot), provided that if the public works director deems it necessary or appropriate, such facilities may be located in the front yard, at or along the property line between two adjacent properties.
- C. The structure is limited to 66 inches in height above average grade and shall be limited to a footprint of no larger than 20 square feet in area.
- D. Utility structures shall comply with all noise limitations and requirements established by the city.
- E. Landscaping shall be provided for all utility structures with a footprint greater than two square feet, where necessary to substantially screen the utility structure from public view and the view of adjacent landowners. Where landscaping is required for screening, a landscaping plan signed by a registered landscape architect shall be submitted with an application for a right-of-way permit, and, if approved, installed as part of the work performed in accordance with the right-of-way permit.
- F. Any utility structure that is not operated for a continuous period of six months shall be considered abandoned, and the owner of the utility structure shall

remove the structure and return the site to its original condition.

(Code 2008, ch. 16, § 4.2.9; Ord. No. 984, § 15, 9-21-2017)

DIVISION 4.3 SINGLE-FAMILY RESIDENTIAL

[4.3.1 Uses Permitted By Right](#)

[4.3.2 Single-Family Primary Structure Requirements](#)

[4.3.3 Lot Exceptions](#)

[4.3.4 Accessory Structure Setback And Other Requirements](#)

[4.3.5 Accessory Structures](#)

[4.3.6 Garages](#)

[4.3.7 Building Standards](#)

[4.3.8 Building Additions; Special Conditions](#)

[4.3.9 Fence And Wall Standards](#)

[4.3.10 Driveways](#)

[4.3.11 Off-Street Parking](#)

[4.3.12 Parking Or Storage Of Boats, Trailers, Commercial And Recreational Vehicles](#)

[4.3.13 Satellite Dishes](#)

4.3.1 Uses Permitted By Right

In the R-1 district, no building or premises shall be used and no building or structure shall be hereinafter erected or altered unless otherwise provided in this division, except for the following uses:

- A. Single-family dwellings and appurtenances incident thereto;
- B. Accessory dwelling unit (ADU);
- C. Public parks or playgrounds, churches on lots of one acre or more, public or parochial school, city halls and police stations;
- D. Group homes;
- E. Accessory uses as provided herein;
- F. Essential utility services subject to the limitations provided herein; or
- G. Communication facilities, limited to the following:
 - 1. Towers and base stations, as defined within WCC 10.2, designed as an architecturally compatible element to an existing nonresidential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in residential districts.
 - 2. Antennas, as defined within WCC 10.2, mounted on and designed as an architecturally compatible element to an existing nonresidential structure or building.

3. Small cell and distributed antenna systems, as defined within WCC 10.2, mounted or collocated on monopoles, utility poles, or streetlights in the public right-of-way.
4. Communication facilities (e.g., towers, base stations and antennas) are subject to the application, location, and performance standards of article 10 of this chapter.
5. Communication facilities with conditions as provided herein or as otherwise deemed necessary by the approval authority to protect the public health, safety or welfare.

H. Nonresidential development permitted in a residential district shall be in compliance with divisions 5.1, 5.4, 5.5 and 5.6 of article 5 of this chapter.

(Code 2008, ch. 16, § 4.3.1; Ord. No. 984, § 16, 9-21-2017; Ord. No. 1024, § 27, 2-10-2022)

4.3.2 Single-Family Primary Structure Requirements

- A. Residential lots are described and defined in WCC 4.1.2 and are reaffirmed herein by reference. For lots which have front footage lying on a curve or arc (such as may occur on a lot on a cul-de-sac) or which otherwise are not rectangular and have a front width which is narrower than the width at the back property line, the width shall be measured along the front building line of the primary structure for purposes of determining the lot category.
- B. The primary structure of all residences in R-1(A), R1-(B), R1-(C), and R1-(D) shall be a maximum of two stories in height. Residences in R-1(E) shall be a maximum of 2 1/2 stories.
- C. For all residential tracts in R-1(A) and R-1(E), the total lot coverage of all structures, including, but not limited to, all primary and accessory structures, shall not exceed 40 percent of the area of the lot. For R-1(B), R-1(C), and R-1(D) lots, the total lot coverage of all structures, including, but not limited to, all primary and accessory structures, shall not exceed 35 percent of the area of the lot. However, in calculating lot coverage, decks which are at least 30 inches high, measured from the ground, shall be calculated at 50 percent of the area they encompass. Thus, a deck having an area of 100 square feet shall count as 50 square feet for purposes of calculating total lot coverage. Decks lower than 30 inches in height are not counted toward lot coverage.
- D. Primary structures shall have at least 60 percent of their front facade on the front yard build-to line.
- E. The vertical surface of any building elevation shall not exceed more than 600 square feet or 25 feet measured horizontally without incorporating architectural relief. Architectural relief shall be defined as a building element or elements that

breaks up a wall plane and occurs cumulatively over at least 25 percent of the wall plane requiring relief.

1. Examples may include dormers, projecting primary entrance features, projections or recessions in the building face (either horizontal or vertical), columns, chimneys, arches, eaves, alternating roof pitches, and/or by other architectural means.
 2. Windows, doors, and changes of material do not constitute architectural relief.
- F. Window openings shall match or exceed the existing percentage of wall-to-window openings of the existing house or the construction of adjacent properties for new homes. The requirements of this provision, however, shall not apply to the first floor of attached garages.
- G. Front setback encroachments for all residences shall be no greater than four feet into the front yard setback. See WCC 4.3.3.E.
- H. The maximum height of the primary structure shall be 35 feet.
- I. With respect to lots which have existing primary or accessory structures less than five feet from a side property line, such existing primary or accessory structure's existing wall may be extended further along the property line provided that a distance of ten feet is maintained between the structure and any extension thereof and any structure on any adjacent lot.
- J. Notwithstanding the above, any construction within such a five-foot setback shall require that any future construction of a structure on the adjacent lot be not less than ten feet away from the new construction. Thus, for example, and not by way of limitation, an extension on one lot that is four feet off the side yard property line would necessitate that any later construction on the adjacent lot be at least six feet off of its side yard.
- K. A permit for construction of a non-conforming primary or accessory structure in the setback will not be granted until the applicant obtains the following in writing signed by the adjacent property owner:
1. A statement advising the adjacent neighbor of the nature of the project or construction under consideration;
 2. An acknowledgement by said adjacent neighbor that that property owner may not build any closer than ten feet to the proposed project or construction in the future;
 3. A statement that said adjacent property owner consent to said project or construction; and
 4. This writing shall be acknowledged before a notary public and said notarized acknowledgement shall be filed with the county office of

records and tax administration, and proof of said filing provided to the city before any building permit shall issue.

L. Except as set forth in WCC 4.3.3, lot exceptions below, specific requirements for each residential zoning district are as follows:

1. R-1(A):

- a. Lots shall be less than 50 feet in width;
- b. Minimum setbacks are established at:
 - (1) 20 feet for the front yard;
 - (2) Seven feet for a second-story side yard;
 - (3) 15 feet for the rear yard;
 - (4) 15 feet for the side yard on corner lots;
 - (5) Ten feet for first story side yard;
 - (6) Other first-story side yard setbacks as set forth in subsection I of this section;
- c. The maximum lot width coverage at front yard setback shall be 80 percent;
- d. The maximum eave height above the first floor shall not be greater than half the width of the lot as measured at the curb along the front property line;
- e. The maximum stories of the primary structure shall be two.

2. R-1(B):

- a. Lots shall be at least 50 feet and less than 65 feet in width and have a minimum area of 5,500 square feet;
- b. Minimum setbacks are established at:
 - (1) 35 feet for the front yard;
 - (2) Seven feet for a second-story side yard;
 - (3) 15 feet for the rear yard;
 - (4) 15 feet for the side yard on corner lots;
 - (5) Ten feet for first story side yard;
 - (6) Other first-story side yard setbacks as set forth in subsection H of this section;

- c. The maximum lot width coverage at front yard setback shall be 80 percent;
- d. The maximum eave height above the first floor shall not exceed 23 feet;
- e. The maximum stories of the primary structure shall be two.

3. R-1(C):

- a. Lots shall be at least 65 feet and less than 75 feet in width and have a minimum area of 7,020 square feet;
- b. Minimum setbacks are established at:
 - (1) 35 feet for the front yard;
 - (2) Seven feet for a second-story side yard;
 - (3) The greater of 15 feet or 20 percent of depth of lot for the rear yard;
 - (4) 15 feet for the side yard on corner lots;
 - (5) Ten feet for first story side yard;
 - (6) Other first-story side yard setbacks as set forth in subsection H of this section;
- c. The maximum lot width coverage at front yard setback shall be 70 percent;
- d. The maximum eave height above the first floor shall not exceed 23 feet;
- e. The maximum stories of the primary structure shall be two.

4. R-1(D):

- a. Lots shall be at least 75 feet width and have a minimum area of 9,000 square feet;
- b. Minimum setbacks are established at:
 - (1) 35 feet for the front yard, seven feet for a second-story side yard;
 - (2) The greater of 15 feet or 20 percent of depth of lot for the rear yard;
 - (3) 15 feet for the side yard on corner lots;
 - (4) Ten feet for first story side yard;

(5) Other first-story side yard setbacks as set forth in subsection H of this section;

- c. The maximum lot width coverage at front yard setback shall be 70 percent;
- d. The maximum eave height above the first floor shall not exceed 23 feet;
- e. The maximum height of the primary structure shall be 35 feet;
- f. The maximum stories of the primary structure shall be two.

5. R-1(E):

- a. Lots shall be less than 50 feet in width;
- b. Minimum setbacks are established at:
 - (1) 20 feet for the front yard;
 - (2) Five feet for a second-story side yard, seven feet for the third-story;
 - (3) 15 feet for the rear yard but five feet for a detached garage in the rear yard;
 - (4) 15 feet for the side yard on corner lots;
 - (5) Ten feet for first story side yard;
 - (6) Other first-story side yard setbacks as set forth in subsection H of this section;
- c. The maximum lot width coverage at front yard setback shall be 70 percent;
- d. The maximum eave height above the first floor shall not exceed 23 feet;
- e. The maximum stories of the primary structure shall be 2 1/2;
- f. The total square footage of the one-half story above the second story shall not exceed 50 percent of the total square footage of the second story.

M. The chart below is provided to assist property owners for single-family primary structures, however subsections A through I of this section shall prevail in the event of any question of interpretation or ambiguity with respect to said chart.

Chart 4.3.2. Single-Family Primary Structure Requirements

Primary Structure Requirements	R-1(A)	R-1(B)	R-1(C)	R-1(D)	R-1(E)
Lot width minimum		50'	65'	75'	
Lot width maximum	< 50'	< 65'	< 75'		< 50'
Lot size minimum		5,500 sq. ft.	7,020 sq. ft.	9,000 sq. ft.	
Maximum lot coverage including accessory structures (deck calculated at 50 percent)	40%	35%			40%
Minimum setbacks:					
Front yard build-to line (see WCC 4.2.3.d)	20'	35'			20'
First story side yard setbacks (see WCC 4.3.2.l)	10'	10'	10'	10'	10'
Corner lots side yard**	15'				15'
Rear yard	15'	greater of 15' or 20% of lot depth			15', detached garage at 5'
Maximum lot width coverage at front yard setback	80%	70%			80%
Front setback encroachments:					
Open stoops, open porches & raised doorways	4' into the front yard setback				
Maximum eave height above first floor	< 1/2 lot width	23'			
Maximum height of primary structure	35'				
Maximum stories of primary structure	2	2			2 1/2*

Continuous wall limits	Not to exceed more than 600 square feet or 25' horizontally without incorporating architectural relief. See WCC 4.3.2 E
Attached garages	The front wall of front-facing attached garages shall be located entirely behind the front wall of the primary building (2.3.520). Front porches or colonnades shall not constitute the front wall of the dwelling for this review.

*New home builds should see division 4.4 of this article for special considerations.

*The total square feet of the top one-half story shall not exceed 50 percent of the area of the second story.

**Corner lots side yard diagramed in the definition of the term "yard, street side" in WCC 2.3.

(Code 2008, ch. 16, § 4.3.2; Ord. No. 1024, § 28, 2-10-2022)

4.3.3 Lot Exceptions

- A. No new R-1(A) or R-1(B) lots shall be platted.
- B. A cul-de-sac lot shall have a minimum width of 30 feet at the front building line.
- C. Lot splits of existing platted lots shall be subject to the requirements set forth in article 1.5 of this chapter.
- D. Setback exceptions are as follows:
 - 1. 47th Street Terrace and 48th Street between Rainbow Boulevard and State Line Road: front yard setback 20 feet;
 - 2. 50th Street Terrace east of Belinder Road: front yard setback 30 feet and rear yard setback ten feet;
 - 3. 47th Street Terrace between Belinder Road and Rainbow Boulevard: front yard setback 25 feet;
 - 4. Fairway Road between 49th Street and 50th Street: front yard setback 23 feet;
 - 5. Norwood Road between 49th Street and 50th Street: front yard setback 32 feet;
 - 6. Where irregular front yard setbacks exist and specific setbacks are not indicated above, the front yard shall not be less than the primary structure on either side.
- E. Encroachment exceptions are as follows:

1. Chimneys, open steps, and medically necessary ramps may encroach on front setbacks;
2. Bay windows may encroach on the front yard to a maximum of 30 inches;
3. All encroaching stoops and porches shall be open with no enclosing screens or windows;
4. All the above encroachments shall be constructed using materials and construction methods similar to those of the existing house.

F. Height exceptions are as follows:

1. Roof equipment;
2. Spires;
3. Chimneys and other roof appurtenances not intended for human occupancy and which are necessary to the structure to which they are attached.

(Code 2008, ch. 16, § 4.3.3)

4.3.4 Accessory Structure Setback And Other Requirements

- A. The setback for accessory structures for all residential zoning districts currently established shall be five feet for the rear yard and for the side yards, including the interior side lot of corner lots, except as set out in WCC 4.3.2.H.
- B. On corner lots, the street side yard setback (i.e., the setback for the side yard nearest to the street) for accessory structures shall be equal to the setback of the primary structure (i.e., accessory structures may not encroach on the setback established for the primary structure).
- C. The following chart sets forth other requirements pertaining to accessory structures. Parameters which do not relate to setbacks are set forth in related sections below the chart. The subsections A and B of this section shall prevail over chart data in the event of any question of interpretation or ambiguity.

<i>Accessory Building Setbacks and Other Requirements (WCC 4.3.4, 4.3.5, 4.3.6)</i>	<i>R-1(A)</i>	<i>R-1(B)</i>	<i>R-1(C)</i>	<i>R-1(D)</i>	<i>R-1(E)</i>
Interior lots side yard	See WCC 4.3.2.H				
Rear yard	5'				
Corner lots interior side	5'				

Corner lots side yard	equal to primary structure setback				
Maximum accessory structures per dwelling	2				
Maximum detached garage height	35' or 2 stories				
Detached garage roof pitch	Same roof pitch as primary structure				
All other structure height	16' and 1 story				
Maximum footprint of all accessory structures	662 sq. ft.	704 sq. ft.	704 sq. ft.	704 sq. ft.	662 sq. ft.
Minimum garage size	175 sq. ft.				
Maximum garage door height	9'				
Detached garage allowed in rear yard	Yes				
Tandem garage permitted	Yes				
Adjacent property interior common wall garages (see WCC 4.3.6.D)	Yes				
Materials and construction	Similar to primary structure				

(Code 2008, ch. 16, § 4.3.4; Ord. No. 1024, § 29, 2-10-2022)

4.3.5 Accessory Structures

- A. No more than two accessory structures, including detached garage, shall exist for a single residence.
- B. Accessory structures must be clearly incidental to and customarily and commonly associated with the primary structure and must be located in the rear yard. Accessory structures may have plumbing, heating, ventilation, air conditioning, cooking facilities, or other amenities, and may be used for any purpose which is otherwise lawful in the primary structure, including, but not limited to, garages, storage areas, home offices, studios, or workshops, and accessory dwelling units, provided all applicable building, fire safety, and other codes are met.
- C. Only one accessory dwelling unit (ADU) is permitted on any single-family residential building site. If the ADU is greater than 500 square feet in size, an additional parking space located behind the front yard setback and at least 20 feet from the street side lot line is required. ADUs that are 500 square feet or smaller that have code compliant parking for the principal structure at the time the principal structure was constructed are not required to have an additional parking space for the ADU.

- D. For R-1(A) and R-1(E) tracts, the total coverage of the combined footprints of all accessory structures shall not exceed 662 square feet. For R-1(B), R-1(C), and R-1(D) tracts, the total coverage of the combined footprints of all accessory structures shall not exceed 704 square feet. However, notwithstanding the above, an accessory structure may only be constructed provided that all other zoning, building, and other legal requirements are met.
- E. Accessory structures other than garages which are less than 150 square feet in area and do not have a permanent foundation may be constructed of any permitted residential building wall material and may have a roof pitch different from that of the existing pitch of the roof on the primary structure.
- F. No structure may be set in any utility or other easement.
- G. No structure may be more than 16 feet, and one story, in height, except as provided in WCC 4.3.6.
- H. Dog runs must be in the rear yard and must comply with all setback and fence height requirements, and shall be no more than four feet wide and 12 feet long with a paved floor for sanitation purposes. Each lot shall have no more than one dog run.

(Code 2008, ch. 16, § 4.3.5; Ord. No. 1024, § 30, 2-10-2022)

4.3.6 Garages

- A. Each single-family residence hereinafter constructed within the city limits must have at least a one-car garage.
- B. No remodeling or construction shall be permitted which eliminates all garage space for a single-family residence.
- C. Basement parking garages in R-1(A) and R-1(E) districts may extend above existing grade a maximum of four feet if the front entrance to the first floor faces the street and no exterior entrance to the garage, other than the garage doors, faces the street.
- D. One detached garage on each of two adjacent lots may be built on the side property line and share a common wall. Such a garage may be built only following a hearing before the governing body with notification by certified mail to all property owners who are adjacent, abutting, or opposite the properties upon which the garage is proposed to be built. At the hearing, the governing body may approve such a garage provided that the applicants have appropriate easements, party wall agreements, or other documentation and provided further that no existing easements or property rights will be affected by the garage.
- E. Any detached garage shall have a permanent foundation, cover an area of at least 175 square feet, and be constructed using materials and construction

similar to the primary structure, including the same roof pitch as the existing roof on the primary structure.

- F. The front wall of front-facing attached garages shall be located entirely behind the front wall of the primary building (WCC 2.3.520). Front porches or colonnades shall not constitute the front wall of the dwelling for this review.
- G. Detached garages shall be located entirely behind the rear line of the primary structure.
- H. Any three-car garage must have at least two garage doors for vehicle access.
- I. No detached garage shall be more than 35 feet and two stories in height.
- J. No garage door shall be more than nine feet in height.

(Code 2008, ch. 16, § 4.3.6; Ord. No. 1024, § 31, 2-10-2022)

4.3.7 Building Standards

A. Acceptable materials for all structures in all R-1 districts are as follows:

1. The exterior surfaces of residential building walls shall be stone, brick, finished concrete, precast concrete, copper, plaster stucco, EIFS (exterior insulation finishing system), clear glass, wood (clapboard, shingle, drop siding, primed board, or board and batten), brick, metal (for detailing and awnings), vinyl siding and details (including soffits), aluminum siding, or steel siding. Also, vinyl windows are permitted. All other materials shall be prohibited, including, but not limited to, plastic columns or other ornamentation, concrete masonry units, corrugated metal, and mirror or other reflective glass.
2. Residential roofs shall be dressed in wood shingles, slate, asphalt shingles, copper, tern-coat metal, tile, concrete tile, painted metal, or single membrane roof. No person shall construct a green roof prior to first submitting a detailed maintenance plan to the city and obtaining a conditional use permit from the building official.
3. Gutters and downspouts shall be made of copper, galvanized metal, painted metal, baked finish aluminum or vinyl.

B. Configurations for all structures in all R-1 districts shall be as follows:

1. The undercroft of buildings shall be enclosed by a lattice or similar enclosure.
2. All rooftop equipment, such as solar panels or turbines, shall be visually compatible with the structure. Roof penetrations, except chimneys and skylights, shall be located on the rear or side so as not to be visible from the street, whenever possible.

3. Window openings shall match or exceed the existing percentage of wall-to-window openings of the existing house or the construction of adjacent properties.

(Code 2008, ch. 16, § 4.3.7; Ord. No. 1024, § 32, 2-10-2022)

4.3.8 Building Additions; Special Conditions

- A. For new additions facing the street, roofs shall have the same pitch as one of the existing roofs on the primary structure, and any roof extension facing the street must have the same pitch as the roof from which it extends. For roof additions other than those facing the street, the roof shall have the same pitch as one of the existing roofs on the primary structure with a permitted variation in pitch of up to two feet of vertical drop for 12 feet of horizontal distance in either direction. Dormers can have any roof pitch and can be any size.
 1. On corner lots, the front shall be the side with the primary entrance facing the street only.
 2. Notwithstanding the above, in the case of the replacement of a portion of an existing home, the replacement roof line may replicate the previously-existing roof line. For example, if a porch has a roof line that differs from that of the roof to which it is attached, and that porch is torn out to be replaced, the previous roof line can be duplicated on the replaced structure. This provision shall not apply to new additions or modifications that deviate from the existing structure.
 3. Further, a roof over an open porch or stoop on the front of a house may have a roof pitch that is different from the pitch or pitches of any of the existing roofs on the primary structure.
- B. The primary eave lines of house additions shall match in height the existing structure's primary eave lines for both the first and second stories.
- C. Acceptable building materials are as follows:
 1. The building materials on house additions shall match the building materials and construction of the existing house.
 2. The building materials on two-story additions may be different above the first-story eave if the material covering the wall of the first story is the heavier in appearance of the two (e.g., stone on the first story and wood siding on the second story).
- D. Considering massing of two-story additions, the following shall apply:
 1. Structures with the primary roof ridge line parallel to the street frontage

must maintain the existing line along two thirds of their street frontage.

2. For one- or 1 1/2-story structures which have the primary roof's ridge line perpendicular to street frontage, the existing eave line shall be maintained along the full width of street frontage, a distance of at least four feet back from the vertical surface of any building elevation.
3. The primary two-story roof ridge shall run parallel to existing one- or 1 1/2-story primary roof structure.
4. Within the limits set forth in subsection D.2 of this section, where the new second-story roof line meets or extends in front of the existing front building wall, the second-story roof line may be perpendicular to the primary existing roof line.

E. Notwithstanding the above restrictions on materials and roof pitch, a sunroom or conservatory added to an existing primary structure may have a roof constructed primarily of Lexan or a similar translucent material and may have a pitch which differs from pitches on existing roofs on the primary structure.

(Code 2008, ch. 16, § 4.3.8; Ord. No. 1024, § 33, 2-10-2022)

4.3.9 Fence And Wall Standards

No fence may be placed upon any public right-of-way except by the city. No fence or wall detached from or attached to any building shall be erected or constructed upon any lot, plot, tract, or premises without a valid permit specific to said construction project.

A. The requirements for materials and style of construction shall be as follows:

1. The type and design of any fence or wall must be suitable to and in conformity with the improvements on the lot on which it is constructed and shall be compatible with the surrounding neighborhood. Both sides of any fence or wall shall be of equal quality or finish; any fence or wall of post-and-support construction shall be built with the posts facing the interior of the tract. All fences and walls must be kept in good repair and appearance.
2. All fences and walls exceeding four feet in height shall be made of wood and of board-on-board style, or shall be of live material such as bushes or shrubs.
3. All fences and walls constructed of live material must be kept trimmed and of an orderly appearance, may not exceed six feet, and may be situated at any location upon the lot or tract subject to easements and the city's tree ordinance.

B. The requirements for fence and wall height shall be as follows:

1. No fence or wall other than a retaining wall shall exceed six feet in height, except as hereinafter provided.
2. The height requirement established by this section may be exceeded by not more than six inches in situations where additional height is necessary to allow for normal installation.
3. Fences constructed to secure structural, mechanical, electrical, or other devices not customarily found in residential areas, including, but not limited to, electrical substations and churches or schools with electrical equipment, may be up to 12 feet in height in order to ensure public safety.

C. The requirements for placement of fences and walls shall be as follows:

1. No fence or wall shall be closer to the front property line than the front line of the residence.
2. No fence or wall on a vacant lot shall be closer to the property lines than the allowable building lines as set forth in this chapter.
3. On a corner lot, no fence or wall shall be closer than ten feet to the street-side property line.
4. No fence or wall shall restrict or obstruct the sight distance triangle, as defined and illustrated in WCC 9.1.3, or any traffic control sign.

D. Retaining walls may be erected, constructed and maintained on any lot, provided any such wall complies with the following requirements:

1. The erection, construction and maintenance of any such wall is reasonably necessary because of the topography of said lot; and
2. Any such wall is located at least two feet back from any street line; and
3. Any such wall shall extend no more than six inches above ground level of the land retained thereby.

E. Fences or walls around pools may be of solid construction, and shall also be no more than six feet in height, and shall be constructed in accordance with WCC 8-601 through 8-604.

F. Fences or walls which would exceed the height limitation or would fail to comply with any other requirement of this Ordinance may be constructed and maintained, contingent upon the following:

1. Application shall be made to the governing body, which shall study said application to determine the following:
 - a. The fence or wall will not adversely affect the general welfare of

the immediate neighborhood in which the fence or wall is to be erected, taking into consideration factors, including, but not limited to, the value of the property and the safety of residences in said neighborhood;

- b. The appearance, location, and purpose of the proposed fence or wall;
 - c. The effect on adjoining properties;
 - d. The size of the area to be enclosed; and
 - e. The desirability of open views with regard to beauty, value and safety of the neighborhood; and
 - f. With respect to any fence on a lot adjacent to a street, a variance shall not be granted if the proposed fence would interfere with a safe view of the street for vehicular traffic, or would impair the view from any nearby driveway, or would extend closer to the street than the adjacent front yard setbacks.
2. Said application must be approved by at least four of the five members of the governing body.

(Code 2008, ch. 16, § 4.3.9; Ord. No. 1024, § 34, 2-10-2022)

4.3.10 Driveways

- A. Each single-family dwelling is limited to one curb cut or entrance with a corresponding one-lane driveway having a maximum width of 12 feet.
- 1. However, a single-family residence may have two single-lane curb cuts, each a maximum of 12 feet wide, provided:
 - a. No curb cut may be located within 30 feet of an intersection;
 - b. 75 feet of contiguous property is immediately adjacent to the public right-of-way on the subject tract; and
 - c. There must be at least 36 linear feet of public right-of-way between the driveways, measured at the edge of the right-of-way on the tract.
 - 2. For multiple curb cut properties, each curb cut must either:
 - a. End at a garage; or
 - b. Be configured so that one driveway arcs or circulates in such a fashion that it connects to the other driveway in the front, or front-

side yard in the case of a corner lot, while the other driveway ends at a garage.

3. The total impervious area of the yards in which the multiple curb cuts and corresponding driveways are located, measured from the edge of the rights-of-way, shall not exceed 40 percent of the total area of the front, side, or back yards on which any part of said driveway lies. This is derived by dividing the total area of the driveway by the sum of the total areas of any front, side, or rear yard on which any part of the driveway or driveways lie on that property.
 4. In the event of an arched, or circular, driveway, the arched driveway must be:
 - a. No wider than 12 feet from the edge of the right-of-way to where it connects to the other driveway; and
 - b. Arched so that there is at least 17 feet between the inside of the arch and the public right-of-way for at least 18 linear feet (i.e., the inside radius of the arch must be sufficient to maintain at least a 17-foot setback from the nearest right-of-way for a distance of 18 feet along that right-of-way).
- B. Any house with a single-car garage may have a driveway that widens to a maximum of 18 feet. This widening is allowed only for the final 18 feet of the driveway closest to the garage. Any such driveway may widen gradually for an additional nine feet of transitional length in which the driveway widens from one lane to the prescribed maximum width.
- C. Any house with a garage built to hold more than one car side-by-side may have a driveway which widens up to the width of the garage or 24 feet, whichever is less. If a house with only one curb cut has a side-by-side two-car garage with street access from the front, and the garage door face is in line with or in front of the closest adjacent rear corner of the house, that driveway and curb cut may be a maximum of 24 feet wide, or the width of the garage, whichever is less, from the edge of the right-of-way to the garage.
- D. Any house with a side-by-side garage with more than two side-by-side garage spaces shall be permitted an additional nine feet of width than that width permitted in the previous section for each additional side-by-side garage space greater than two spaces in the widened area closest to the garage. Widening of the drive to this greater amount adjacent to the garage doors is allowed for the final 24 feet of the driveway closest to the garage, or for a length equal to the width at the garage, whichever is less. Any such widened driveway may widen gradually for an additional ten feet of transitional length in which the driveway widens from one lane to the prescribed maximum for two-car garages, and another additional five feet of transitional length for each additional side-by-side

garage space over the two-car configuration.

- E. Driveways shall be constructed of pavers, concrete, asphalt, brick, or similar hard surfaces, or hard surfaces interspersed with green space, vegetation, or natural stone or a combination thereof. Driveway approaches shall conform to the current city right-of-way ordinance.
- F. Pavement is allowed up to one foot from the side yard property line on all R-1 lots. Notwithstanding, common drives which lie on both sides of a property line to serve both the adjacent properties are allowed.
- G. Any house with garage door access on the rear or side of the house but having drive access only from the front, shall also be constructed with driveways having a maximum width of 12 feet from the edge of the right-of-way to the face of the garage, subject to the other rules set forth herein. The path of travel from the back of the house to the garage door shall be by the most direct path, considering turning radius, entry grade, and the geometry of the existing structures and the lot. For garages facing the rear of the property, horseshoe or U-shaped drives are to be used whenever possible, with the distance between the portions going from the street and the reversed portion going into the garage, or ends of the horseshoe, being as narrow as possible; and the distance of the driveway before reversing, or the depth of the horseshoe, shall be as short as possible. For garages facing either side yard, right-angle or L-shaped driveways are to be built wherever possible. The maximum allowed inside turning radius to accomplish the turn into the garage is 13 feet. An additional hard surface area of up to 162 square feet is permitted behind the front face of the house to permit the turning of vehicles and to allow vehicular access to the garage.
- H. Any house with no garage shall be treated the same as a house with a single car garage, except that:
 - 1. All driveways shall be straight and perpendicular to the curb cut;
 - 2. All driveways shall be located as close as possible to either side yard property lines; and
 - 3. All driveways may widen for the final 18 feet farthest from the street, and such driveways may widen gradually for an additional nine feet of transitional length in which the driveways widen from one lane to the prescribed maximum width. Such driveways shall terminate at least five feet from any rear yard property line and shall not be constructed in a fashion which violates the easement rights of other parties.
- I. Notwithstanding anything to the contrary herein, the entrance to a driveway may widen at the street entrance pursuant to the city's ordinances regarding driveway approaches or right-of-way governance. Any measurements hereunder shall be made from the edge of the right-of-way, wherever applicable. Nothing herein shall be deemed to permit any parking or storage of vehicles on

any right-of-way or in other areas designated for public use.

(Code 2008, ch. 16, § 4.3.10; Ord. No. 915, § 1; Ord. No. 1024, § 35, 2-10-2022)

4.3.11 Off-Street Parking

A minimum of two spaces per primary structure must be provided on the site and off the public right-of-way. Additional off-street parking requirements per accessory structure are outlined in WCC 4.3.5.

(Code 2008, ch. 16, § 4.3.11; Ord. No. 1024, § 36, 2-10-2022)

4.3.12 Parking Or Storage Of Boats, Trailers, Commercial And Recreational Vehicles

- A. No boats, campers, trailers, motorcycles, or jet skis may remain in public view on any portion of any lot, tract, or parcel of land in the city for more than 72 hours, except as provided in this section.
- B. A special permit to park campers, trailers, motorcycles, or jet skis in public view may be obtained from the police department for additional time; however, no permit shall be issued for more than a total of 14 days each in each calendar year.
- C. Repairing and/or mechanical work on any motor vehicle must be done in an enclosed building or garage.
- D. All recreational equipment and vehicles such as boats, campers, trailers, motorcycles, or jet skis, must be stored inside an enclosed structure except as provided under subsection A of this section.
- E. Any vehicle larger than one-ton pickup truck shall be parked in an enclosed garage.
- F. In areas zoned for residential use, vehicles must be parked on driveways or in garages. No part of any vehicle shall be parked on any yard or green space.
- G. The above requirements shall not be interpreted to prohibit vehicles from loading and unloading household goods in any residential district for a period of up to 24 hours.
- H. No boat, trailer, commercial or recreational vehicle shall be used as a dwelling unit or for living, sleeping, or housekeeping purposes. The connection of such vehicle to utility services (other than for periodic maintenance and/or repair purposes), temporarily or permanently, is prohibited. However, this prohibition shall not apply to manufactured homes and structures approved under WCC 3.5.4 and 3.5.5.

(Code 2008, ch. 16, § 4.3.12)

4.3.13 Satellite Dishes

Building- and/or roof-mounted satellite dish antennas are allowed in all residential use districts if the following performance standards are met:

- A. No dish antenna shall exceed 24 inches in diameter.
- B. Every dish antenna must be attached directly to the primary structure.
- C. Every dish antenna shall be located on the rear elevation of the structure, shall not extend above the highest point of the roof, and shall not be visible from the public right-of-way, unless necessary for reception.
- D. No more than one satellite dish antenna shall be allowed per residential lot.

(Code 2008, ch. 16, § 4.3.13)

DIVISION 4.4 NEW INFILL HOUSES AND MAJOR ADDITIONS; SPECIAL CONSIDERATIONS

[4.4.1 Intent](#)

[4.4.2 Tree Preservation.](#)

[4.4.3 Massing](#)

[4.4.4 Sustainability \(Green\) Features](#)

[4.4.5 Plans And Documents](#)

4.4.1 Intent

- A. Consistent with the city's comprehensive plan, these regulations are designed to allow redevelopment in existing neighborhoods, using the same traditional lines along which each neighborhood was established.
- B. All new development shall reflect, complement, and preserve the nature and character of existing adjacent development.
- C. All new residential construction shall conform in street orientation and massing to adjacent homes.

(Code 2008, ch. 16, § 4.4.1; Ord. No. 1024, § (37(4.4.1), 2-10-2022)

4.4.2 Tree Preservation.

- A. A tree protection and removal plan shall be submitted with the site plan. The tree protection and removal plan shall:
 - 1. Show all existing trees, including size and species;

2. Identify trees proposed for removal and those to be retained; and
3. Include locations of protection fences and other protection measures.

B. Tree removal is only permitted if:

1. The tree is dead;
2. The tree is diseased or dying, and constitutes a threat to healthy trees, property, or public safety;
3. The tree has visible structural deficiencies; or
4. Removal of the tree is necessary for construction, development, or redevelopment under the following criteria:
 - a. All reasonable efforts have been made to avoid removing the tree through comparable alternative design;
 - b. The presence of the tree places an undue financial burden on the applicant; and
 - c. No other reasonable accommodations, including adjustments to the otherwise allowable building footprint or site design can be made to preserve the tree.

C. All removed trees shall be replaced. Replacement trees shall:

1. Be at least two inches in caliper;
2. Be placed in the front yard if the tree removed was in the front yard;
3. Be placed anywhere on site if the tree removed was not in the front yard;
4. Be outside of the right-of-way; and
5. Be planted once construction is complete.

D. All infill construction properties shall:

1. Contain at least one front yard tree;
2. If no front yard trees exist on the property at the time of construction:
 - a. A tree of at least two inches in caliper should be planted in the front yard of the property;
 - b. The new tree shall be planted outside of the right-of-way, once construction is complete.

(Ord. No. 1024, § 37(4.4.2), 2-10-2022)

4.4.3 Massing

- A. All new structures must have enough one-story eaves that a one-story appearance is maintained. Up to one third of any new building structure may be two stories in height without a one-story element in front. The portion of a two-story structure that does not have a one-story structure in front shall have a change in material from the first to the second story, with a line of separation that aligns with the first story eave line.
- B. One-story eave lines shall be apparent as described in subsection A of this section.

(Code 2008, ch. 16, § 4.4.2; Ord. No. 1024, § 37(4.4.3), 2-10-2022)

4.4.4 Sustainability (Green) Features

The city recognizes customer demand for sustainable (green) design and construction practices. These practices offer increased energy efficiency, reduced water consumption, reduced stormwater runoff, resource conservation, and improved indoor air quality. Where a sustainability effort conflicts with this chapter, consideration will be given to granting a waiver or exception.

(Ord. No. 1024, § 37(4.4.4), 2-10-2022)

4.4.5 Plans And Documents

The building official may require documentation from any applicant for a new residential infill building permit necessary to determine whether the project complies with all applicable codes and requirements, including, but not limited to, any plans or drawings of any structure to be built, and a sealed survey which accurately depicts any easements, boundaries, dimensions or structures pertinent to the project.

(Code 2008, ch. 16, § 4.4.3; Ord. No. 1024, § 37(4.4.5), 2-10-2022)

DIVISION 4.5 WAIVERS AND EXCEPTIONS

[4.5.1 Purpose](#)

[4.5.2 Applicability](#)

[4.5.3 Initiation](#)

[4.5.4 Approval Criteria](#)

[4.5.5 Decision](#)

[4.5.6 Scope Of Approval](#)

[4.5.7 Recordkeeping](#)

4.5.1 Purpose

This division creates a flexible, streamlined process where applicants can seek

exceptions from the specific rules in this title where granting the waiver or exception would result in superior design, and the consideration of a variance request by the board of zoning appeals is not suitable or proper in the circumstances.

(Ord. No. 1000, § 3, 3-14-2019)

4.5.2 Applicability

This division applies to a request for a waiver or exception from the building design or site development standards of only the following sections: WCC 4.3.2, single-family primary structure requirements; WCC 4.3.5, accessory structures; WCC 4.3.6, garages; WCC 4.3.7, building standards; WCC 4.3.8, building additions – special conditions; and WCC division 4.4, new infill houses – special considerations.

(Ord. No. 1000, § 3, 3-14-2019; Ord. No. 1024, § 38, 2-10-2022)

4.5.3 Initiation

An exception shall be requested at the time of filing a building permit. Consideration of a request for an exception shall require a public hearing before the planning commission following public notice as provided in WCC 1.6.8 through 1.6.11.

(Ord. No. 1000, § 3, 3-14-2019; Ord. No. 1024, § 39, 2-10-2022)

4.5.4 Approval Criteria

A waiver or exception shall not be approved if it is contrary to the public interest or unnecessarily burdens the city. The approving authority may approve the waiver or exception if the applicant demonstrates one or more of the following:

- A. An alternative higher quality development design in being proposed with no negative impacts to either nearby residential or nonresidential properties.
- B. Relief of the development restrictions imposed on the property will ensure low impact land uses, and quality building and site design arrangements in which adjoining residential properties will not be negatively impacted by any deviations from the applicable regulations.
- C. The granting of the waiver or exception will not be opposed to the general spirit and intent of the adopted comprehensive plan.

(Ord. No. 1000, § 3, 3-14-2019)

4.5.5 Decision

- A. The planning commission may approve, approve with conditions, or deny any requests for an exception or waiver.

- B. The planning commission's decision may be appealed by the applicant only, to the governing body. In that case, the governing body can approve, approve with conditions, or deny the waiver request.

(Ord. No. 1000, § 3, 3-14-2019)

4.5.6 Scope Of Approval

The waiver or exception is a condition of the underlying application for approval, and has the same effect as any approval of that application. In such instances, findings shall be prepared that:

- A. No private rights will be injured or endangered by granting of the waiver or exception.
- B. The public will suffer no loss or inconvenience thereby and that in justice to the applicant the application should be granted.

(Ord. No. 1000, § 3, 3-14-2019)

4.5.7 Recordkeeping

The building official will maintain a record of approved waivers and exceptions.

(Ord. No. 1000, § 3, 3-14-2019)

ARTICLE 5 COMMERCIAL ZONING DISTRICTS

DISTRICT 5.1 COMMERCIAL DISTRICTS GENERALLY

DISTRICT 5.2 C-O COMMERCIAL -- OFFICE

DISTRICT 5.3 C-1 COMMERCIAL MIXED-USE

DIVISION 5.4 OFF-STREET PARKING AND LOADING; ALL COMMERCIAL DISTRICTS

DIVISION 5.5 C-O, C-1, P-1 GENERAL DISTRICT PARKING AND LOADING REQUIREMENTS

DIVISION 5.6 LANDSCAPING FOR ALL COMMERCIAL DISTRICTS

DISTRICT 5.1 COMMERCIAL DISTRICTS GENERALLY

5.1.1 Intent

5.1.2 (Reserved)

5.1.3 (Reserved)

5.1.1 Intent

Zoning serves the city in that it maintains property values, stabilizes neighborhoods, provides uniform regulations, provides safe and efficient traffic movement, and promotes aesthetics and architectural harmony. It is the intent of the city to promote high

design standards and safety in its land use policies and ordinances.

A. Consistent with the city's comprehensive plan, the goals of these commercial district ordinances are as follows:

1. To be able to accommodate the types of uses desired by the citizens of the city, including, but not limited to, retail, dining, and office services;
2. To improve the overall cohesiveness of the commercial areas of the city;
3. To enable future development to improve the look and character of the city;
4. To accommodate the needs of future expansion and improvements.

B. Several issues are paramount in achieving the goals indicated in the city's comprehensive plan, relating to the continued redevelopment of the commercial districts. They are as follows:

1. Creating or improving proper commercial buffering from adjacent residential properties;
2. Solving parking and driveway problems to accommodate both vehicles and pedestrians properly;
3. Creating consistent sight lines to commercial buildings, thereby strengthening city cohesiveness;
4. Providing better access to commercial areas for both pedestrians and vehicles;
5. Creating the proper image on the side streets that serve as gateways into the residential neighborhoods adjacent to the commercial corridors; and
6. Accommodating a variety of property uses in a small, densely built area.

(Code 2008, ch. 16, § 5.1.1; Ord. No. 984, § 17, 9-21-2017)

5.1.2 (Reserved)

5.1.3 (Reserved)

DISTRICT 5.2 C-O COMMERCIAL -- OFFICE

[5.2.1 Office And Commercial District \(C-O\) Use Regulations](#)

5.2.1 Office And Commercial District (C-O) Use Regulations

In the office and professional district, no building, structure, land, or premises shall be

used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one or more of the following uses:

A. Office buildings to be used only for the administrative function of businesses, companies, corporations, or social or philanthropic organizations or societies.

B. Other offices, including, but not limited to, the following:

1. Accountants;
2. Architects;
3. Banks;
4. Brokers;
5. Engineers;
6. Dentists;
7. Lawyers;
8. Insurance offices;
9. Physicians, osteopaths, chiropractors, psychologists, mental health counselors, or other physical or mental health care professionals;
10. Real estate;
11. Advertising, public relations, and graphic arts;
12. Financial planning, stock brokerage, and securities businesses;
13. Computer programming, and technology services;
14. Massage therapists.

C. Customary accessory uses, provided that accessory uses related to communication facilities for wireless services are subject to the application, location, and performance standards of article 10 of this chapter.

D. No merchandise shall be handled or displayed, nor equipment, material, or vehicle used for transportation to and from a building in this district.

E. Communication facilities limited to the following:

1. Antennas, as defined in WCC 10.2, mounted on and designed as an architecturally compatible element to an existing structure or building or affixed to water tower.
2. Small cell or distributed array facilities, as defined in WCC 10.2, on utility poles or streetlights in the public right-of-way.
3. Communication facilities are subject to the application, location, and

performance standards of article 10 of this chapter.

(Code 2008, ch. 16, § 5.2.1; Ord. No. 984, § 18, 9-21-2017)

DISTRICT 5.3 C-1 COMMERCIAL MIXED-USE

5.3.1 Intent

5.3.2 Building Use And Mixed Use

5.3.3 Uses Permitted By Right

5.3.4 Uses Permitted With Conditions

5.3.5 Uses Not Permitted

5.3.6 Lot Coverage

5.3.7 Street Frontages, Setbacks, Build-To Lines, And Encroachments

5.3.8 Building Height

5.3.1 Intent

- A. Consistent with the city's comprehensive plan, the C-1 Commercial Mixed-Use District is intended to provide redevelopment or investment opportunities for existing or planned commercial centers within the city. Developments in commercial mixed-use districts are to follow the characteristics of traditional "Main Street" commercial neighborhood developments, and to encourage pedestrian use through connections to adjacent neighborhoods and the construction of mixed-use buildings. The purpose of this district is to allow for the development of fully integrated, mixed-used, pedestrian-oriented neighborhoods.
- B. Within the city, the following uses should be so arranged as to service the needs of the resident population in a convenient walking environment by providing open space, civic buildings, single-family residential, multifamily residential, retail/commercial, business/workplace, and parking.
- C. The streets and sidewalks are the main pedestrian activity centers in commercial mixed-use districts. Minimal setbacks bring buildings close to the street and the pedestrians.
- D. The typical form of the suburban retail center is oriented entirely to the auto and parking. Smaller shops are dependent on their relationship to the anchor stores when arrival is only by vehicle. The C-1 Commercial Mixed-Use design offers an opportunity for a more diverse patronage, both from the traditional auto/anchor and from the walk-in neighborhood and transit activity. To attract foot traffic to local shops, the configuration of streets, entrances, and parking must provide a comfortable route for pedestrians. Large pass-through parking lots and access roads designed for heavy auto traffic are discouraged. Configurations that provide traditional "Main Street" sidewalk storefronts, in combination with artery-oriented anchors, which provide accessibility for both the pedestrians and auto, are encouraged.

- E. The configuration of commercial shops in the C-1 Commercial Mixed-Use District is intended to strike a balance between pedestrian and auto comfort, visibility, and accessibility. While anchor stores may need to orient to an arterial road and parking lots, smaller shops should orient to the main streets that have been made desirable for the pedestrian or to public open space such as plazas. Direct local street pedestrian access from the local neighborhood is required.

(Code 2008, ch. 16, § 5.3.1; Ord. No. 1024, § 40, 2-10-2022)

5.3.2 Building Use And Mixed Use

- A. Consistent with the city's comprehensive plan, new developments in the C-1 commercial areas are to become mixed-use by providing floors of residential and/or office uses above a ground-floor level with retail shops.
- B. Such commercial areas may mix the ground-floor shop-front retail with office and commercial space. Land designated for such shop-front use may contain residential as well as commercial uses. However, residential uses are not permitted on the ground floors of shop-front buildings. All uses shall be conducted within completely enclosed buildings unless otherwise specified.
- C. Mixed-use buildings shall maintain the opportunity and flexibility to accommodate a variety of active uses adjacent to sidewalks and plazas.
- D. In certain locations, multifamily construction, such as condominiums, may be appropriate, since such a use poses many of the same planning concerns that commercial buildings do, such as traffic, drainage, fire safety, and other concerns.

(Code 2008, ch. 16, § 5.3.2; Ord. No. 920, § 2)

5.3.3 Uses Permitted By Right

Unless otherwise provided in this article, no buildings or premises shall be used, and no building or structure shall be erected or altered hereafter in C-1 Commercial Mixed-Use Districts, except for the following uses:

- A. Retail stores;
- B. Retail trade and shops for custom work or the making of articles to be sold at retail on the premises;
- C. Manufacturing, clearly incidental or necessary to a retail business, lawfully conducted on the premises, provided that it is not in any way a nuisance or a hazard, and it meets all city ordinances regarding vibration, noise, and odor;
- D. The place of business of a baker, barber, beauty shop, caterer, light dry cleaning

and dying, confectioner, decorator, dressmaker, electrician, florist, furrier, milliner, theater, public utility station or substation, painter, paperhanger, photographer, plumber, printer, publisher, restaurant, shoe repairer, tailor, upholsterer, small animal veterinarian, health club, aerobics studio or similar facility;

- E. Fire and police stations or other public buildings;
- F. Any and all uses enumerated in division 5.2 of this article;
- G. Other general commercial uses up to 30,000 gross square feet. (Exceptions: automotive repair, garages, welding shops, machine shops, outdoor storage or sales, pool halls, game rooms);
- H. Other office uses up to 30,000 gross square feet;
 - I. Hotels and/or convention facilities up to 50 rooms and 30,000 gross square feet of convention floor area;
- J. Restaurants (exception: drive-through restaurants);
- K. Nursing or assisted living facilities;
- L. In addition to multifamily uses in connection with a mixed-use development, freestanding multifamily residential uses which are restricted to individually owned townhouse developments as defined in the Townhouse Ownership Act (K.S.A. 58-3701 et seq.), as amended, and residential condominium units as defined in the Apartment Ownership Act (K.S.A. 58-3101 et seq.), as amended, shall be permitted in C-1 districts. Any requirement or regulation pertaining to C-1 uses shall apply also to such individually owned townhouse developments and residential condominium units. Furthermore, in addition to meeting all plan, development, building code, and other approvals and regulations imposed by the city, or state or federal law, any such multifamily use shall meet the following criteria:
 - 1. Multifamily condominium or townhouse developments may be located only in areas which have adequate street, drainage, and other infrastructure capabilities, and further must be located so that such developments can be adequately buffered from, or transitioned to, surrounding or nearby properties;
 - 2. Multifamily condominiums or townhouse developments can be located only on or at intersections with Rainbow Boulevard, 47th Street, State Line Road, or Shawnee Mission Parkway.
- M. Multifamily residential as permitted within an applicable commercial overlay district.

(Code 2008, ch. 16, § 5.3.3; Ord. No. 920, § 3; Ord. No. 1024, § 41, 2-10-2022)

5.3.4 Uses Permitted With Conditions

The following uses are permitted in C-1 districts:

- A. Commercial uses exceeding 30,000 gross square feet;
- B. Multifamily over 45 feet in height;
- C. Customary home occupations;
- D. Commercial child care;
- E. Hotels and/or convention facilities exceeding 50 rooms and 30,000 gross square feet of convention floor area;
- F. Office uses exceeding 30,000 gross square feet;
- G. Parking decks;
- H. Restaurants with outdoor seating;
- I. Service stations;
- J. Commercial uses which allow patrons to remain in their automobiles while receiving goods and services.
- K. Communication facilities limited to the following:
 - 1. Antennas, as defined in WCC 10.2, mounted on and designed as an architecturally compatible element to an existing structure or building or affixed to water tower.
 - 2. Small cell or distributed array facilities on utility poles or streetlights in the public right-of-way.
 - 3. Communication facilities are subject to the application, location, and performance standards of article 10 of this chapter.

(Code 2008, ch. 16, § 5.3.4; Ord. No. 984, § 19, 9-21-2017; Ord. No. 1024, § 43, 2-10-2022)

5.3.5 Uses Not Permitted

The following uses are not permitted in C-1 districts:

- A. Drive-through restaurants;
- B. Chemical manufacturing;
- C. Storage or distribution as a primary use;
- D. Enameling, painting, or plating, except artists' studios;

- E. Outdoor advertising or billboard as a primary use;
- F. Carting, moving, or hauling terminal or yard;
- G. Prisons and/or detention centers (except for the city's public safety prisoner holding cell), or halfway houses;
- H. Manufacturing of hazardous materials, or storage or disposal of hazardous materials or hazardous waste materials;
- I. Scrap yards;
- J. Mobile homes;
- K. Sand, gravel, or other mineral extraction;
- L. Any use which produces adverse impacts which violate any city ordinance related to vibration, noise, and odor.

(Code 2008, ch. 16, § 5.3.5; Ord. No. 1024, § 43, 2-10-2022)

5.3.6 Lot Coverage

Mixed-use retail/office/residential buildings with ground-level shop fronts shall cover no more than 60 percent of the lot area. Business use only buildings shall not cover more than 50 percent of the lot area.

(Code 2008, ch. 16, § 5.3.6; Ord. No. 920, § 4)

5.3.7 Street Frontages, Setbacks, Build-To Lines, And Encroachments

- A. Unless otherwise indicated in a specific overlay district, the facade of buildings in the C-1 district shall be constructed directly on the build-to line along at least 70 percent of the length of the building.
- B. Exceptions are allowed for pedestrian walkways and any lots for civic use.
- C. Parking areas and parking garages shall be recessed or placed to the rear of buildings.
- D. Larger setbacks may be permitted for street-side outdoor cafes and patios.
- E. Buildings on such C-1 district lots shall have no setback from at least one side lot line.
- F. Balconies and awnings, shall be permitted to encroach upon sidewalk areas as follows:
 - 1. Balconies: three feet horizontal with ten feet vertical clearance.
 - 2. Awnings: six feet horizontal with seven feet vertical clearance.

- G. All buildings shall be parallel or perpendicular to the street frontage or may face the corner on a corner lot.
- H. The required setbacks shall be as indicated in each overlay district, or, in the absence of such criteria, as follows:
 - 1. Front and side setbacks: zero feet.
 - 2. Rear setback: 20 feet minimum.
- I. Requirements for transitional yards between residential districts shall be as indicated in WCC 4.3.7 building standards.

(Code 2008, ch. 16, § 5.3.7; Ord. No. 920, § 5)

5.3.8 Building Height

- A. One-, two- and three-story buildings are permitted in the C-1 Mixed-Use Districts.
- B. The maximum height shall be 45 feet, except as provided or restricted in any overlay district herein, and except as set forth herein.
- C. Under certain circumstances, and upon approval of all site and development plans by the city, portions of buildings may reach a maximum of 75 feet in height. Necessary roof-mounted mechanical equipment and its screening may be placed above 75 feet but may not exceed an additional 15 feet in height, for a maximum height of 90 feet. Any building or part thereof with such increased height is also referred to herein as a "mid-rise building." In order for a mid-rise building to be lawfully constructed, the building must conform to all relevant planning and construction requirements, criteria, and regulations, including, but not limited to, the following:
 - 1. Mid-rise buildings shall be on corner lots only. An entire block of mid-rise buildings shall not be permitted;
 - 2. Mid-rise buildings must have a street or open space to the north of the building. In no event shall a mid-rise building be permitted if it will cast a shadow during winter months on any property or, in the discretion of the city, will create a possible hazard by casting a shadow which permits ice and snow to remain on streets and sidewalks or otherwise impairs or hampers the city's removal of snow and ice from streets and sidewalks. A green space or the building's parking area lying to the north of the mid-rise building can be used to provide a buffer space to meet these criteria;
 - 3. Mid-rise buildings must be on lots that are sufficiently large to avoid towering over neighboring properties and to avoid interfering with neighboring properties' access to light and air;

4. Mid-rise buildings must be tiered; only a portion of the building may be the maximum height;
5. Mid-rise buildings are to be located in lower elevations and/or against hillsides, unless the city finds that a mid-rise building which is neither lying in a lower elevation nor against a hillside meets all other criteria established in the zoning and other codes of the city, and further finds that such a building will have no significant negative impact on nearby properties;
6. No mid-rise building shall be approved or constructed unless the city finds that all infrastructure and public safety and welfare needs have been met, including, but not limited to, obtaining appropriate engineering and other studies assuring that traffic, sanitary sewer, surface water drainage, and other infrastructure and public safety and welfare needs which are generated or affected by the project can be properly and safely met;
7. No mid-rise building shall be approved or constructed unless the city finds that all fire safety issues have been addressed, and the city further finds that existing firefighting and other public safety issues will be satisfactorily met by the design of the building and its overall development plans. Included in this fire safety evaluation shall be a consideration by the city and/or the relevant fire safety authority of the firefighting equipment available at the time, and the maximum height accessible by the firefighting authority's equipment, given the proposed design of the building and street or parking access for firefighting equipment.

(Code 2008, ch. 16, § 5.3.8; Ord. No. 920, § 6)

DIVISION 5.4 OFF-STREET PARKING AND LOADING; ALL COMMERCIAL DISTRICTS

[5.4.1 General Design Standards](#)

[5.4.2 Parking Space Requirements](#)

[5.4.2.1 Minimum Parking Spaces Per Use](#)

[5.4.3 Drive-Through Services](#)

[5.4.4 Parking Space Dimensions](#)

[5.4.5 Aisle And Driveway Widths](#)

[5.4.6 Cooperative Parking](#)

[5.4.7 Parking Area Uses](#)

5.4.1 General Design Standards

- A. Unless no practical alternative is available, any off-street parking area in any commercial district shall be designed so that vehicles may exit such areas

without backing onto a public street.

- B. Off-street parking areas of all developments shall be designed so that sanitation, emergency, and other public service vehicles can serve such developments.
- C. Every off-street parking area shall be designed so that vehicles cannot extend onto public rights-of-way, sidewalks and shall be designed to prevent damage to any wall, vegetation, or other obstruction.
- D. Parking spaces may be located either on the premises or within 300 feet of land zoned for retail business.
- E. Circulation areas shall be designed so that vehicles can proceed safely without posing danger to pedestrians and without interfering with parking areas.
- F. Stormwater shall be collected on site and run underground to the nearest storm sewer. Retention or detention facilities shall be provided if a runoff study so dictates.
- G. Lighting used to illuminate the parking area in any district shall be so arranged as to direct the light away from any adjacent premises in a residential district.
- H. Curbs and islands are required pursuant to city standards.
 - I. All drives and parking surfaces shall be constructed of concrete, asphalt, paving stones, masonry, or similar dust-free, non-granular surfaces and shall have curbs that conform to city standards.
- J. All disabled parking spaces shall conform to all legal design requirements.

(Code 2008, ch. 16, § 5.4.1)

5.4.2 Parking Space Requirements

- A. Mixed-use parking is as indicated in the specific overlay district.
- B. The table in WCC 5.4.2.1 includes requirements for employee parking.
- C. Any use not specifically addressed or referred to in this list shall have parking requirements determined by the planning commission.
- D. All square footage is in leasable square feet.
- E. No use shall provide more than 125 percent of the minimum required parking without documented evidence of actual parking demand based on studies of similar uses in similar context.
- F. Any parking permitted over 115 percent of the minimum shall require mitigating potential impacts of more parking through one or more of the following strategies:
 - 1. Provide shared parking for other uses on the block or adjacent blocks.

2. Use alternative surfaces designed to infiltrate stormwater or otherwise increase permeability without significantly sacrificing stability and durability.
3. Provide additional buffers and site open spaces to screen parking with at least a ten percent increase in the open space or buffers required for the parking, and at least a 20 percent increase in the landscape material amount required for the parking.
4. Design all parking areas over the 115 percent maximum as dual-purpose space, such as plazas or courtyards, playgrounds, event areas for regular use of the space during non-peak times.

(Code 2008, ch. 16, § 5.4.2; Ord. No. 1024, § 44, 2-10-2022)

5.4.2.1 Minimum Parking Spaces Per Use

Offices	1 per 333 sq. ft.
Retail	1 per 250 sq. ft.
Theaters	1 per 3 seats
Night clubs, lounges, bars, restaurants	1 per 75 sq. ft. of patron area
Drive-through (procession lanes)	12 car lengths for first window, 8 lengths per additional window
All other commercial uses	1 per 300 sq. ft.

(Code 2008, ch. 16, § 5.4.2.1; Ord. No. 1024, § 44, 2-10-2022)

5.4.3 Drive-Through Services

Where allowed by this division, businesses offering drive-through services shall provide stacking lanes in sufficient number and of sufficient length to provide a safe and efficient flow of traffic. Procession lanes shall be of sufficient length to accommodate a minimum of 12 cars for the first service window and a minimum of eight cars for each additional window.

(Code 2008, ch. 16, § 5.4.3)

5.4.4 Parking Space Dimensions

- A. In all lots other than single-family dwellings, each parking space (other than those designed for the disabled) shall contain a rectangular area at least 18 feet long and nine feet wide. Parking space lines may be drawn at various angles in relation to curbs or aisles, provided the parking spaces so created contain the

rectangular area required by this section.

- B. In all lots other than for single-family dwellings, wherever parking areas consist of spaces set aside for parallel parking the dimensions of such parking shall not be less than 20 feet long by eight feet wide.
- C. All uses shall be required to provide the number of disabled accessible parking spaces as required by law.

(Code 2008, ch. 16, § 5.4.4)

5.4.5 Aisle And Driveway Widths

- A. In all lots other than for single-family dwellings, parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking. In all cases, where an aisle serves two or more angles of parking, the larger minimum width shall prevail.

<i>Aisle Widths for One-Way Traffic</i>		<i>Aisle Widths for Two-Way Traffic</i>	
<i>Angle of Parking</i>	<i>Aisle Width</i>	<i>Angle of Parking</i>	<i>Aisle Width</i>
Parallel (zero degrees)	13 feet	Parallel (zero degrees)	19 feet
30 degrees	13 feet	30 degrees	19 feet
45 degrees	13 feet	45 degrees	20 feet
60 degrees	18 feet	60 degrees	22 feet
90 degrees	20 feet	90 degrees	24 feet

- B. Except for a lot containing a single-family dwelling, all uses shall be required to provide driveways which are not less than ten feet in width for one-way traffic and 18 feet in width for two-way traffic, except that driveways ten feet in width are permissible for two-way traffic when:
 - 1. The driveway is not longer than 50 feet;
 - 2. It provides access to not more than six spaces; and
 - 3. Sufficient turning space is provided so that vehicles need not back into a public street.
- C. In no case shall a driveway exceed 30 feet in width, except when required by the state department of transportation.

(Code 2008, ch. 16, § 5.4.5)

5.4.6 Cooperative Parking

- A. Cooperative provisions for off-street parking may be made by contract between two or more adjacent property owners. The parking area provided on any one lot may be reduced to not less than one half of the number of required parking spaces for the use occupying such lot.
- B. To the extent that property owners who wish to make joint use of the same parking spaces operate at different times, up to one half of the parking spaces may be credited to both uses (e.g., one use, such as a church, theater, or assembly hall, has peak hours of attendance at night or on Sundays, and the other use or uses are closed at night or on Sundays). Such contract shall be recorded with the county register of deeds.

(Code 2008, ch. 16, § 5.4.6)

5.4.7 Parking Area Uses

Parking and loading areas for nonresidential properties shall be used only for access and parking necessary for the use of any business in the building served by said parking lot and loading areas. Vehicles which are necessary for persons using said building and guests or customers of occupants or tenants of said building are permitted, as are delivery and other commercial vehicles used by or necessary for any business located in such building. However, no vehicles unrelated to the use of the occupants or tenants of any nonresidential building shall be parked or stored on any property. Such parking areas also shall not be used for the storage of any vehicles over 24 hours except those vehicles which are operable and necessary to the commercial function of the occupants or tenants or any business located in said building. Such parking areas shall not serve for any other uses.

(Code 2008, ch. 16, § 5.4.7)

DIVISION 5.5 C-O, C-1, P-1 GENERAL DISTRICT PARKING AND LOADING REQUIREMENTS

[5.5.1 Location](#)

[5.5.2 Access](#)

[5.5.3 Minimum Commercial Off-Street Loading Requirements](#)

5.5.1 Location

- A. Generally, parking lots shall be located at the rear or side of buildings and shall be screened from the sidewalk by low walls, fences, or hedges.
- B. In C-1 districts, off-street parking of no less than 75 percent of the parking places shall be to the rear or side of the building.

- C. Parking for existing structures, which are not built out to the front build-to line can occur within the front setback. Parking within front setbacks shall be five feet from the right-of-way.
- D. Parking can extend to side and rear lot lines only (including corner lots).
- E. Parking shall be a minimum of four feet from the rear of any building.
- F. Parking on or in side yards on corner lots adjacent to the secondary street must not encroach upon the public right-of-way, and maintain a minimum of four feet from the side of the building.

(Code 2008, ch. 16, § 5.5.1)

5.5.2 Access

Ingress and/or egress will be reviewed during the site plan review process. Such entries shall be separated by a minimum of 20 feet unless otherwise indicated on a specific overlay district development plan.

(Code 2008, ch. 16, § 5.5.2)

5.5.3 Minimum Commercial Off-Street Loading Requirements

The following minimum off-street loading requirements shall apply:

- A. Buildings of less than 10,000 square feet: none.
- B. Buildings of 10,000 to 50,000 square feet: one bay.
- C. Buildings of over 50,000 square feet: two bays.

(Code 2008, ch. 16, § 5.5.3)

DIVISION 5.6 LANDSCAPING FOR ALL COMMERCIAL DISTRICTS

[5.6.1 Parking Areas](#)

[5.6.2 Utility, Storage, And Loading Areas](#)

[5.6.3 Transitional Yards And Buffers](#)

[5.6.4 Satellite Dishes](#)

[5.6.5 Mechanical Equipment Placement And Screening](#)

5.6.1 Parking Areas

The following landscaping standards apply to all new development within all commercial zoning districts:

- A. Parking areas within 50 feet of the right-of-way shall have a planted screen between the parking perimeter and the front property line.

- B. Screening shall be three feet high with no gaps greater than four feet (excluding driveways).
- C. Walls may be substitute for vegetation. Walls may not exceed four feet in height.
- D. Interior plantings required for new lots include two shade trees per 2,400 square feet of surface area, or one for every eight spaces, whichever is less.

(Code 2008, ch. 16, § 5.6.1)

5.6.2 Utility, Storage, And Loading Areas

Utility, storage, and loading areas shall be screened as follows:

- A. Screening shall be by walls or fences;
- B. One-third of the surface area of the wall or fence must be screened from the right-of-way with plants; and
- C. Plant screening must be evergreen.

(Code 2008, ch. 16, § 5.6.2)

5.6.3 Transitional Yards And Buffers

Transitional yards are all nonresidential properties that abut a residential or mixed-use district.

- A. Standards for types of transitional fences, walls, and berms are:
 - 1. Rear yard fences and walls shall be a maximum height of six feet.
 - 2. Side yard fences and walls, where permitted, shall be a maximum height of six feet.
 - 3. A minimum of one tree per 20 feet of linear fence or wall shall be planted.
 - 4. Plantings must be located between the fence or wall and the adjoining property line.
 - 5. If required landscaping of a transitional yard makes up over 20 percent of a lot, the use of an earth berm may reduce the yard requirement, as recommended by the planning commission and approved by the governing body.
 - 6. Fences shall be constructed of brick, stucco, stone, wrought iron, and/or wood (excluding farm-type fencing, such as chicken wire, barbed wire, razor wire, or the like). The heavier material shall be below.
 - 7. Chain link may be used only when necessary for security upon review

by the planning commission and approval by the governing body.

The above requirements may be waived by the city upon proof of impossibility of performance.

- B. No fence or wall, freestanding or attached to any building, shall be erected or constructed upon any lot, plot, tract, or premises, without a specific, valid permit therefor, issued by the building official. Said fence shall be erected or constructed pursuant to the specifications set forth on the permit application.
- C. Open parking areas and access drives for commercial, civic, and apartment uses shall be located a minimum of eight feet from any property line abutting a street or an R-1 district.

(Code 2008, ch. 16, § 5.6.3)

5.6.4 Satellite Dishes

- A. Ground-mounted satellite dish antennas are permitted in commercial districts if the following performance standards are met:
 - 1. No satellite dish antenna shall exceed 13 feet in height above the grade where it is mounted.
 - 2. All satellite dish antennas shall be located behind the required yard setback of each district.
 - 3. All satellite dish antennas must have a detailed site and landscaping plan approved by the building official prior to the issuance of any permit. If any antenna is proposed to be located within 300 feet of any property zoned residential district or office commercial district, said plans shall require the screening of the antenna to the fullest extent possible without interfering with the operation of the antenna.
 - 4. All cables and lines serving the satellite dish antenna shall be located underground or concealed inside the building enclosure. No exposed or surface-mounted conduit is allowed.
- B. Roof-mounted satellite dish antennas are permitted if the following performance standards are met:
 - 1. Any satellite dish antenna shall be located within the rear yard and shall be located a distance inside the property line at least equal to its height;
 - 2. The top edge of satellite dish antenna shall not exceed 13 feet above the roof surface;
 - 3. Any roof-mounted satellite dish antenna shall be screened from view to the fullest extent possible without interfering with its operation. The permit for such antenna shall be issued only after a final development

plan indicating the screening is reviewed by the planning commission and approved by the governing body;

4. Landscape screening shall be provided which prevents all antennas from being observed from any street or from surrounding properties to the fullest extent possible not to interfere with the operation of the antenna or to impose undue cost or hardship;
5. All cables and lines serving the satellite dish antenna shall be located underground or concealed inside the building enclosure. No exposed or surface-mounted conduit is allowed.

- C. All satellite dish antennas shall be required to have a final development plan reviewed by the planning commission and approved by the governing body prior to issuance of any permit that the antenna is screened from view to the fullest extent possible without interfering with the operation of the antenna or to impose undue cost or hardship.

(Code 2008, ch. 16, § 5.6.4)

5.6.5 Mechanical Equipment Placement And Screening

- A. All roof-mounted equipment shall be set back from any edge of the roof upon which it is mounted a distance greater than or equal to the height of the mechanical equipment.
- B. Screening walls shall be made of materials that comply with appropriate district regulations.
- C. Screening walls materials shall be consistent with those of the primary structure and shall match or be compatible with the primary structure with regard to color and composition.
- D. All rooftop equipment shall be enclosed in building material that matches the structure or is visually compatible with the structure.

(Code 2008, ch. 16, § 5.6.5)

ARTICLE 6 PLANNED ZONING DISTRICTS

DIVISION 6.1 P-1 PLANNED PARKING DISTRICT

DIVISION 6.2 PD PLANNED DEVELOPMENT DISTRICT

DIVISION 6.3 PLANNED RESIDENTIAL CLUSTER DEVELOPMENT (PRCD) DISTRICT

DIVISION 6.4 PLANNED MEDIUM DENSITY RESIDENTIAL (PMDR)

DIVISION 6.1 P-1 PLANNED PARKING DISTRICT

6.1.1 Uses Allowed

6.1.1 Uses Allowed

- A. In P-1 parking districts, no building or structure shall be erected and no land or premises shall be used except for the parking of motor vehicles, for recurrent periods not in excess of 24 consecutive hours. Parking areas shall not be used for permanent or long-term storage of such vehicles, a parking lot for dealerships, privately advertising used vehicles for sale, or other non-parking uses.
- B. Additional zoning regulations which apply to P-1 districts, including parking, landscaping, fences and walls, transitional yards, and screens, are set forth in WCC divisions 5.4, 5.5 and 5.6.

(Code 2008, ch. 16, § 6.1.1)

DIVISION 6.2 PD PLANNED DEVELOPMENT DISTRICT

[6.2.1 Intent](#)

[6.2.2 Planned Zoning Incorporated](#)

6.2.1 Intent

The zoning of land in the city to one of the planned districts shall be to encourage and require orderly development and redevelopment on a quality level generally equal to or exceeding that which prevails in the city, but shall permit deviations from certain requirements. The use of planned zoning procedure is intended to encourage efficient development and redevelopment of small tracts, innovative and imaginative site planning, conservation of natural resources, and a minimal waste of land. The following are specific objectives of this section:

- A. A proposal to rezone land to a planned district shall be subject to the same criteria relative to compliance with the city's comprehensive plan, land use policies, neighborhood compatibility, adequacy of streets and utilities and other elements, which are established and customary development techniques in the city.
- B. The submittal by the developer and the approval by the city of development plans represent a firm commitment by the developers that development will follow the approved plans in such areas as concept, intensity of use, aesthetic levels and quantities of open space.
- C. Deviations in yard requirements, setbacks and relationship between buildings, as set out in standards of development in this chapter, may be recommended by the planning commission and approved by the governing body if it is deemed that other amenities or conditions will be gained to the extent that an equal or higher quality of development will be produced.

- D. Commercial areas are to be planned and developed so as to result in attractive, viable and safe centers and clusters, as opposed to strip patterns along thoroughfares. Control of vehicular access, circulation, architectural quality, landscaping and signs will be exercised to soften the impact on nearby residential neighborhoods, and to ensure minimum adverse effects on the street system and other community services.
- E. The developer will be given latitude in using innovative techniques in the development of land not feasible under the strict application of standard zoning requirements.
- F. Planned zoning shall not be used as a refuge from the standard requirements of the zoning district as to intensity of land use, amount of open space or other established development criteria.
- G. Any building or portion thereof may be owned in condominium.
- H. For purposes of this article, the terms "shopping center," "business park," "office park," or other grouping of buildings shall mean developments that were planned as integrated units or clusters on property under unified control or ownership at the time the zoning was approved by the governing body. The sale, subdivision, or other partition of the site after zoning approval does not exempt the project or any portion thereof from complying with development standards that were committed at the time of zoning.
- I. Additional zoning regulations which apply to PD-1 districts, including parking, landscaping, fences and walls, transitional yards, and screens, are set forth in WCC divisions 5.4, 5.5 and 5.6.

(Code 2008, ch. 16, § 6.2.1)

6.2.2 Planned Zoning Incorporated

Planned zoning districts and their equivalent districts are as follows:

<i>Planned District</i>	<i>Equivalent</i>
PD Planned Development	C-1

(Code 2008, ch. 16, § 6.2.2; Ord. No. 1024, § 47, 2-10-2022)

DIVISION 6.3 PLANNED RESIDENTIAL CLUSTER DEVELOPMENT (PRCD) DISTRICT

[6.3.1 Intent](#)

[6.3.2 Permitted Uses](#)

[6.3.3 Height And Area Regulations](#)

[6.3.4 Parking Regulations](#)

[6.3.5 Development And Performance Standards](#)

6.3.1 Intent

The Planned Residential Cluster Development District (PRCD) is established to provide for small-scale medium density housing options. The developments can incorporate the permitted uses described in this division, with flexible yard requirements. Projects may be developed on a single lot or parcel of land. Cottage style developments and patio homes, and other cluster subdivision developments that create a higher density single-family residential environment are encouraged.

(Code 2008, ch. 16, § 6.3.1; Ord. No. 960, § 4(6.3.1), 7-9-2015; Ord. No. 1024, § 48, 2-10-2022)

6.3.2 Permitted Uses

No building, structure, land, area or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, remodeled, moved or altered except for one or more of the following uses:

- A. Single-family dwellings;
- B. Multifamily dwellings limited to the following building types: two-family, townhouse, and cottage court;
- C. Group homes;
- D. Accessory structures; or
- E. Accessory uses, as provided in WCC 4.2.2, 4.2.5, 4.2.6, 4.2.7, 4.3.12, and 4.3.13;
- F. Communication facilities as defined in WCC division 10.2, limited to:
 - 1. Towers and base stations, as defined within WCC division 10.2, designed as an architecturally compatible element to an existing nonresidential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in such districts.
 - 2. Antennas, as defined within WCC division 10.2, mounted on and designed as an architecturally compatible element to an existing nonresidential structure or building.
 - 3. Small cell and distributed antenna systems, as defined within WCC division 10.2, mounted or collocated on monopoles, utility poles, or streetlights in the public right-of-way.

(Code 2008, ch. 16, § 6.3.2; Ord. No. 960, § 4(6.3.2), 7-9-2015; Ord. No. 984, § 20, 9-21-2017; Ord. No. 1024, § 49, 2-10-2022)

6.3.3 Height And Area Regulations

The maximum height of buildings, the minimum dimensions of yard areas, and the minimum lot area per dwelling permitted on any parcel shall be as follows, except as otherwise provided in this chapter:

A. Maximum height:

1. Residential structures, 2 1/2 stories, not exceeding 35 feet.
2. Detached garages, 1 1/2 stories, not exceeding 26 feet and not exceeding the height of the main structure.
3. All other accessory structures and uses, one story, not exceeding 20 feet and not exceeding the height of the main structure.

B. Minimum yard areas/setbacks:

1. *Front yards.* No principal or accessory structure shall be closer than ten feet to a public street right-of-way, and 25 feet from back of curb if fronting on a private street.
2. The perimeter setback along a public street shall not be less than the average setback for residential uses along the same and facing block faces, and shall not be greater than 15 feet back from the average existing setback.
3. *Structure separation.* No portion of any principal structure shall be located less than ten feet from any other principal structure. Each accessory building shall provide a yard area between the building and the property line of the project, other than a street line, of not less than five feet.

C. Area regulations:

1. The minimum net site area per dwelling unit shall be 3,500 square feet of the project area.
2. The aggregate total lot coverage of all structures, both principal and accessory, shall not exceed 40 percent of an individual lot for detached principal residences.
3. Maximum total lot coverage of all buildings and hard surface areas shall not exceed 65 percent of the total project area.

(Code 2008, ch. 16, § 6.3.3; Ord. No. 960, § 4(6.3.3), 7-9-2015; Ord. No. 1024, § 50, 2-10-2022)

6.3.4 Parking Regulations

Two off-street parking spaces shall be provided for each principal dwelling, at least one of which shall be in a garage or carport. To fulfill the off-street parking requirements, the development may develop accessory off-site parking areas within common open space areas. The off-site parking areas must be accessible to all units for which they are intended. These accessory off-site parking areas shall be indicated on the initial development plan.

(Code 2008, ch. 16, § 6.3.4; Ord. No. 960, § 4(6.3.4), 7-9-2015)

6.3.5 Development And Performance Standards

- A. Attached principal dwellings which otherwise comply with the ordinances of the city may be divided at the party wall (or ceiling in the case of two-family dwellings) as to ownership and owned as separate dwelling units by separate owners and such ownership shall not constitute violation of the lot and yard requirements of this chapter.
- B. Private gated communities are not encouraged.
- C. All driveways shall be at least 20 feet long to accommodate off-street parking,
- D. Pedestrian circulation systems (sidewalks, walkways and paths) should be located and designed to provide adequate physical separation from vehicles along all public and private streets and drives and within any parking area.
- E. Site drainage patterns shall be designed, graded and constructed to prevent surface drainage from collecting on and flowing across pedestrian paths, walks and sidewalks.
- F. Detached accessory buildings, including garages and carports, shall not be located in any required front or setback area, but may be located in the rear yard area provided that no such building may be closer than five feet to any interior property line, closer than 20 feet from any street right-of-way line, or in front of any building setback line. No more than two detached accessory buildings shall be permitted for each residence.
- G. Common open space is encouraged, but not required with this type of planned development. Such common open space shall be perpetually owned and maintained by a homeowners' association. The owners shall cause a final plat to be recorded which clearly describes the open spaces, required deed restrictions, and conditions thereof, prior to the issuance of any building permits.
- H. An orderly transition from adjacent lower-density to higher density developments is encouraged by providing well designed transition area between existing residential parcels and structures, and the proposed project.
- I. Prior to issuance of any building permit, final development plan approval shall be obtained as provided for in WCC 1.6.21 and 1.6.25.

(Code 2008, ch. 16, § 6.3.5; Ord. No. 960, § 4(6.3.5), 7-9-2015; Ord. No. 1024, § 51, 2-10-2022)

DIVISION 6.4 PLANNED MEDIUM DENSITY RESIDENTIAL (PMDR)

6.4.1 Intent

6.4.2 Permitted Uses

6.4.3 Height And Area Regulations

6.4.4 Parking Regulations

6.4.5 Development And Performance Standards

6.4.1 Intent

The Planned Medium Density Residential Zoning District (PMDR) is established as a planned zoning district to allow attached and/or detached dwelling units, consisting of one or several buildings designed as a planned unified development in a higher-density setting upon a finding of compatibility with surrounding uses while ensuring that livability, property values, open spaces, high levels of landscaping, safety and the general welfare will be sustained. Projects may be developed on a single lot or parcel of land. Higher density and intensity residential developments are to be located bordering a designated thoroughfare: Shawnee Mission Parkway, State Line Road, Rainbow Boulevard, West 47th Street, and Mission Road.

(Code 2008, ch. 16, § 6.4.1; Ord. No. 960, § 5(6.4.1), 7-9-2015; Ord. No. 1024, § 53, 2-10-2022)

6.4.2 Permitted Uses

No building, structure, land, or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one or more of the following uses:

- A. Residential buildings containing one to eight dwelling units;
- B. Senior adult independent living dwellings;
- C. Community living facility;
- D. Assisted living, skilled nursing, continuing care retirement facilities;
- E. Accessory structures; or
- F. Accessory uses as provided in WCC 4.2.2, 4.2.5, 4.2.6, 4.2.7, 4.3.12, and 4.3.13;
- G. Communication facilities as defined in WCC division 10.2, limited to:
 - 1. Towers and base stations, as defined within WCC division 10.2, designed as an architecturally compatible element to an existing nonresidential use such as schools, churches, and the like, and that

comply with the same height and setback requirements as other structures in such districts.

2. Antennas, as defined within WCC division 10.2, mounted on and designed as an architecturally compatible element to an existing nonresidential structure or building.
3. Small cell and distributed antenna systems, as defined within WCC division 10.2, mounted or collocated on monopoles, utility poles, or streetlights in the public right-of-way.

(Code 2008, ch. 16, § 6.4.2; Ord. No. 960, § 5(6.4.2), 7-9-2015; Ord. No. 984, § 21, 9-21-2017; Ord. No. 1024, § 54, 2-10-2022)

6.4.3 Height And Area Regulations

The maximum height of buildings, the minimum dimensions of lots and yards, and the minimum lot area per dwelling permitted on any lot shall be as follows:

A. Maximum height:

1. Three-story maximum not exceeding 48 feet.
2. Accessory structures and uses, 1 1/2 stories, not exceeding 26 feet and not exceeding the height of the main structure.

B. Minimum setbacks:

1. All main structures shall be located at least 20 feet from any lot line or street rights-of-way.
2. All accessory structures shall be located at least five feet from any interior lot line or structure.
3. All accessory structures shall be at least 20 feet from any lot line which abuts a street or any property zoned R-1.

C. Minimum yard areas/setbacks:

1. Where a lot line abuts a public street, the minimum setback for main structures shall be ten feet from any street.
2. The perimeter setback along a public street shall not be less than the average setback for residential uses along the same and facing block faces.
3. *Structure separation.* No portion of any principal structure shall be located less than ten feet from any other principal structure. Each accessory building shall provide a yard area between the building and

the property line of the project, other than a street line, of not less than five feet.

D. The minimum net site area per dwelling unit shall be 1,500 square feet.

(Code 2008, ch. 16, § 6.4.3; Ord. No. 960, § 5(6.4.3), 7-9-2015)

6.4.4 Parking Regulations

A. Parking spaces shall be provided at the following rates for multifamily, senior adult, or elderly housing dwellings:

<i>Dwelling Unit</i>	<i>Number of Spaces Required per Unit</i>
Studio/efficiency	1
1 bedroom	1.25
2 bedroom	1.5
More than 2 bedrooms	2.0

B. Parking spaces shall be provided at the following rates for assisted living, skilled nursing, and continuing care retirement facilities:

C. Not less than three off-street parking spaces shall be provided on the premises for every four apartments or congregate living units.

D. One space shall be provided for every five beds, and not less than one space shall be provided for each employee on the premises on the maximum shift.

E. No parking or access drives shall be located within 15 feet from any lot line which abuts a property zoned R-1

F. No parking area shall be located within 15 feet of any public street rights-of-way.

G. 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.

(Code 2008, ch. 16, § 6.4.4; Ord. No. 960, § 5(6.4.4), 7-9-2015; Ord. No. 1024, § 55, 2-10-2022)

6.4.5 Development And Performance Standards

A. Attached principal dwellings which otherwise comply with the ordinances of the city may be divided at the party wall as to ownership and owned as separate dwelling units by separate owners and such ownership shall not constitute

violation of the lot and yard requirements of this chapter.

- B. Pedestrian circulation systems (sidewalks, walkways and paths) shall be located and designed to provide adequate physical separation from vehicles along all public and private streets and drives and within any parking area.
- C. Site drainage patterns shall be designed, graded and constructed to prevent surface drainage from collecting on and flowing across pedestrian paths, walks and sidewalks.
- D. Detached accessory buildings including garages and carports shall not be located in any required front or side yard setback area, but may be located in the rear yard setback area provided that no such building may be closer than five feet to any interior property line, closer than 20 feet from any street right-of-way line, or in front of any building setback line. No more than two detached accessory buildings shall be permitted for each residence.
- E. An orderly transition from adjacent lower-density to higher density developments is encouraged by providing well designed transition area between existing residential parcels and structures, and the proposed project.
- F. Prior to issuance of any building permit, final site plan approval shall be obtained as provided for in WCC 1.6.21 and 1.6.25.

(Code 2008, ch. 16, § 6.4.5; Ord. No. 960, § 5(6.4.5), 7-9-2015; Ord. No. 1024, § 56, 2-10-2022)

ARTICLE 7 COMMERCIAL OVERLAY DISTRICTS

DIVISION 7.1 COMMERCIAL OVERLAY DISTRICTS, GENERALLY

DIVISION 7.2 COD-1 47TH AND MISSION ROAD AREA OVERLAY DISTRICT

DIVISION 7.3 COD-2 COMMERCIAL OVERLAY DISTRICT NUMBER 2 (RAINBOW BOULEVARD -- WEST SIDE)

DIVISION 7.4 COD-3 COMMERCIAL OVERLAY DISTRICT NUMBER 3 (RAINBOW BOULEVARD -- EAST SIDE)

DIVISION 7.5 COD-4 COMMERCIAL OVERLAY DISTRICT NUMBER 4 (47TH PLACE AND RAINBOW BOULEVARD)

DIVISION 7.1 COMMERCIAL OVERLAY DISTRICTS, GENERALLY

7.1.1 Intent

7.1.2 Building Design

7.1.3 Pedestrian Emphasis

7.1.4 Building Entries

7.1.5 Commercial Overlay District Map

7.1.1 Intent

Consistent with the city's comprehensive plan, the overlay districts herein described

have been established to assist in directing the appropriate redevelopment within certain commercial areas of the city. These specific areas are as indicated on the following diagrams and are described and guided by the criteria established within each specific overlay district. In brief, the goals of the city's comprehensive plan related to the redevelopment within these commercial overlay districts are as follows:

- A. To encourage high quality mixed-use office/retail and/or residential footprint in two- and three-story buildings;
- B. To promote consistent clusters of parking behind the buildings;
- C. To promote consistent drive lane locations to access parking/buildings;
- D. To allow parking/drives to serve as components of buffers and pedestrian access from adjacent neighborhood streets.

Consistent with the overall intent of the C-1 Commercial/Mixed-Use District, general building criteria have been established relating to the following commercial overlay districts.

(Code 2008, ch. 16, § 7.1.1; Ord. No. 920, § 8)

7.1.2 Building Design

- A. Building facades that are varied and exhibit architectural relief are key to making a place pedestrian-oriented, as set forth in the city's comprehensive plan. Streets with monotonous and unarticulated buildings are not conducive to pedestrian activity and make walking less appealing.
- B. Buildings should differentiate between the building facade at the sidewalk level and the floors above in order to recognize the differences in the character of activities at pedestrian level.
- C. Buildings should incorporate elements at the street level that draw pedestrians and reinforce street activity. Street-side buildings should encourage window shopping, heavy foot traffic in and out of stores, and people watching from outdoor seating areas. Building facades should be varied and articulated to provide visual interest to pedestrians. Street level windows and numerous building entries are required in the core commercial areas. Building materials such as concrete masonry, tile stone, and wood should be encouraged.
- D. Buildings shall be built of materials of Class C or better as defined in Marshall Valuation Service 2006 as amended; however, deviations may be permitted in conjunction with site plan review where there is ample evidence that said deviation will not adversely affect the neighboring properties or constitute the mere granting of a privilege on a project-specific basis.
- E. Buildings should integrate roof shape, surface materials, colors, mechanical

equipment, and other penthouse functions into the total building design. Roof terraces and gardens are permitted.

(Code 2008, ch. 16, § 7.1.2)

7.1.3 Pedestrian Emphasis

The following concepts are encouraged:

- A. Reinforce and enhance the pedestrian system. Maintain an attractive access route for pedestrian travel where a public right-of-way exists or has existed. Recognize the different zones of a sidewalk: curb, street furniture zone, walking zone, and window shopping zone. Where appropriate, develop pedestrian routes through sites and buildings to supplement the public right-of-way.
- B. Provide an attractive, convenient pedestrian access-way to building entrances. Integrate an identification, signage, and lighting system that offer interest, safety, vitality, and diversity to the pedestrian.
- C. Protect the pedestrian. Protect the pedestrian environment from bicycle and vehicular movement.
- D. Bridge pedestrian obstacles. Bridges across barriers and obstacles by connecting pedestrian pathways with strongly marked crossings and inviting sidewalk design.
- E. Provide stopping and viewing places. Increase the pleasure of the community experience by providing safe, comfortable places where people can visit, meet, stop, and rest without conflicting with other street uses.
- F. Plazas, parks, and open spaces should be inviting and maximize opportunities for public use. These spaces should be well defined, accommodating, and create a secure environment. Such area should be oriented to receive sunlight, work well with pedestrian circulation patterns, and accommodate special events.
- G. Consider sunlight, shadow, glare, reflection, wind, and rain.
- H. Consider view opportunities. Create new viewing opportunities through the situation of windows, entrances, and adjacent exterior spaces as they relate to surrounding points of interest and activity.
- I. Pedestrian landscape. Where appropriate, enhance the pedestrian way with landscaped setbacks, decorative features, planters, trees, and other devices.
- J. Develop or strengthen gateways at locations identified by the comprehensive plan.

(Code 2008, ch. 16, § 7.1.3; Ord. No. 1024, § 57, 2-10-2022)

7.1.4 Building Entries

- A. All buildings, except accessory structures, shall have their main entrance opening onto the street or a plaza that faces the street.
- B. Secondary entries from the interior of a block (i.e., from rear parking lots) are also permitted.
- C. Entries into all shops and offices must face directly onto the street. Each first floor shop or office must have a door facing the street. Buildings with multiple retail tenants should have numerous entries to the street; small single-entry malls are not allowed. Off-street parking should also be located at the rear of buildings with openings leading between the buildings to the street and primary entrances.
- D. Retail anchor stores (those over 30,000 square feet), such as grocery stores, may have parking lot access to the primary entry. Anchor tenant retail buildings may have their entries from off-street parking lots; however, on-street entries are also required. Pedestrian access to the entry should be provided from the street and configured so pedestrians are not required to walk through the parking lot to enter the store.
- E. Along walls without entries, building elevations shall include windows and display areas and/or be lined with retail shops.

(Code 2008, ch. 16, § 7.1.4)

7.1.5 Commercial Overlay District Map

The boundaries of such districts are shown upon an overlay district map of the city on file in the office of the city clerk and made a part of this article, being designated as the "COD Map," and said map and all of the notations, references, and other things shown thereon shall be as much a part of this division as if the matters and things set forth by said map are all fully described herein.

(Code 2008, ch. 16, § 7.1.5; Ord. No. 1024, § 58, 2-10-2022)

DIVISION 7.2 COD-1 47TH AND MISSION ROAD AREA OVERLAY DISTRICT

[7.2.1 47th And Mission Road Area Design Review Overlay District Purpose And Authority](#)

[7.2.2 Applicability](#)

[7.2.3 Type Of Development](#)

[7.2.4 Other Regulations](#)

[7.2.5 Definitions](#)

[7.2.6 Underlying Zoning Uses](#)

[7.2.7 Overlay Uses](#)

[7.2.8 Commercial Site Design Standards](#)

[7.2.9 Building Placement](#)

[7.2.10 Site Access](#)

[7.2.11 Parking](#)

[7.2.12 Architecture Feature](#)

[7.2.13 Landscape Requirements And Screening](#)

[7.2.14 Signs](#)

[7.2.15 Multifamily Public Improvements And Notification](#)

[7.2.16 Depiction Of 47th And Mission Road Area Design Review Overlay District And 47th And Mission Road Area Concept Plan](#)

7.2.1 47th And Mission Road Area Design Review Overlay District Purpose And Authority

(a) The 47th and Mission Road Area Design Review Overlay District is established by this chapter, 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:

(1) The interlocal cooperation acts, K.S.A. 12-2901—12-2909.

(2) K.S.A. 12-744(c); and

(3) The interlocal agreement between the Cities of Roeland Park, Westwood, and the Unified Government of Wyandotte County/Kansas City, Kansas (collectively, jurisdictions).

(b) This division translates the relevant portion of the division within the boundaries of the city into this chapter, in addition to all current regulations. This division will accompany a similar ordinance adopted by each jurisdiction to ensure consistent implementation of the 47th and Mission Road Area Concept Plan, as shown in WCC 7.2.16.

(Code 2008, ch. 16, § 7.2.1; Ord. No. 1024, § 59(7.2.1), 2-10-2022)

7.2.2 Applicability

A. This division shall apply to all property within the city and within the 47th and Mission Road Area Design Review Overlay District. The official zoning map of the city is hereby amended to reflect the 47th and Mission Road Area Design Review Overlay District.

B. The standards in this division shall apply to all property currently or subsequently zoned for commercial or multifamily use.

C. Any property zoned for single-family residential use is included within this

overlay to indicate neighborhood areas to be protected by buffers and design enhancements established in this division for commercial or multifamily use. In addition, to further protect existing neighborhoods, any property currently zoned for single-family residential use which is subsequently rezoned to multifamily or commercial uses must satisfy all design standards in this division.

- D. Any legal nonconforming structure or use cannot increase its level of nonconformity without complying with this division.

(Code 2008, ch. 16, §§ 7.2.2, 7.2.3; Ord. No. 1024, § 59(7.2.2), 2-10-2022)

7.2.3 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 division and directly related to proposed development, redevelopment, or exterior modification shall be applied.

(Code 2008, ch. 16, § 7.2.4; Ord. No. 1024, § 59(7.2.3), 2-10-2022)

7.2.4 Other Regulations

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

(Code 2008, ch. 16, § 7.2.5; Ord. No. 1024, § 59(7.2.4), 2-10-2022)

7.2.5 Definitions

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All other terms and phrases shall use definitions given in the city 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 city code shall have the standard dictionary definition.

Adjacent lot means 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 means the construction of man-made site elements on an improved or unimproved parcel of land.

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

Exterior modification means 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 means the reconstruction, enlargement, conversion, relocation of a human-made structure.

(Code 2008, ch. 16, § 7.2.6; Ord. No. 1024, § 59(7.2.5), 2-10-2022)

7.2.6 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 division. Any future rezoning shall be to a use district consistent with the 47th and Mission Road Area Concept Plan.

(Code 2008, ch. 16, § 7.2.11; Ord. No. 1024, § 59(7.2.6), 2-10-2022)

7.2.7 Overlay Uses

In addition to those uses allowed by the underlying zoning, all property zoned for commercial use within the 47th 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 3 1/2 stories, whichever is less.
- C. All structures with supplemental residential uses, whether new or existing at the time of adoption of the ordinance from which this chapter is established, must comply with all other standards established in this chapter in order to be eligible for supplemental residential uses.

(Code 2008, ch. 16, § 7.2.12; Ord. No. 1024, § 59(7.2.7), 2-10-2022)

7.2.8 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 design standards provided in WCC 7.2.9 are implemented and shall be interpreted consistent with the plan.

(Code 2008, ch. 16, § 7.2.13; Ord. No. 1024, § 59(7.2.8), 2-10-2022)

7.2.9 Building Placement

Site design in the 47th and Mission Road Area shall conform to the following design standards:

- A. The provisions of this section shall apply to new development.
- B. *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 WCC 7.2.10.
- C. *Side setbacks.* The minimum side setbacks shall be:
 - 1. Zero feet;
 - 2. Property abutting residential districts shall have a side setback equivalent to this of the abutting residential district. In this case, the side setback area shall be used to provide a buffer according to division 7.5 of this article.
- D. *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.
- E. *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 2 1/2- to four-foot fence or wall constructed out of the same material as the building facade, or by a continuous landscape element.
- F. *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.

(Code 2008, ch. 16, § 7.2.14; Ord. No. 1024, § 59(7.2.9), 2-10-2022)

7.2.10 Site Access

- A. *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.
1. *Alternative.* Sidewalks outside the village area (as identified 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.
 2. *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.
- B. *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.
- C. *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 accessways.
 3. All pedestrian walkways across driveways, alleys, parking lots, or other vehicle accessways shall be distinguished from the vehicle accessway by a visually identifiable path or distinctly textured surface.

(Code 2008, ch. 16, § 7.2.15; Ord. No. 1024, § 59(7.2.10), 2-10-2022)

7.2.11 Parking

- A. *Required parking.* The parking required for uses in the overlay district shall be established by the applicable standards for the underlying zoning district.

- B. *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.
- C. *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 subsection C, at the sole discretion of the city, according to the following standards:
 - a. 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 chapter requirement.
 - b. 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.
 - c. Shared parking shall meet jurisdiction standards. If the parking spaces are more than 800 feet from the main entrance of the building.
 3. Direct pedestrian access, meeting the requirements of WCC 7.2.10, is required between any shared parking and the main entrance of any building proposing to share parking.
 4. 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.
 5. 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 chapter if the shared agreement is invalidated must be submitted

with the proposed agreement.

- D. *On-street parking.* Any on-street parking, authorized by the 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.
- E. *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.
- F. *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 WCC 7.2.13. 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.
- G. *Lighting.* Exterior lighting on commercial properties shall be designed to have minimal light trespass onto adjacent residential properties.
- H. All exterior lighting on the building must be full cut-off with nonadjustable heads to direct light 90 degrees downward. No light may cast light or glare off the property or onto the public street.
- I. 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 nonadjustable heads to direct light 90 degrees downward. Bare light bulbs shall not be permitted in view of adjacent property or public right-of-way.
- J. 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 footcandles (meter reading) as measured from that property line.
- K. Applicants shall be required to submit a base meter reading as part of their application materials.

(Code 2008, ch. 16, § 7.2.16; Ord. No. 1024, § 59(7.2.11), 2-10-2022)

7.2.12 Architecture Feature

- A. *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.
- B. *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.
- C. *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 7 1/2 feet above grade. Any awnings provided shall be fabric and 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.
- D. *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.
- E. *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.

(Code 2008, ch. 16, § 7.2.17; Ord. No. 1024, § 59(7.2.12), 2-10-2022)

7.2.13 Landscape Requirements And Screening

- A. *Residential buffers.* All commercial uses and multifamily 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.

- B. *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.

(Code 2008, ch. 16, § 7.2.18; Ord. No. 1024, § 59(7.2.13), 2-10-2022)

7.2.14 Signs

The following signs are allowed in the overlay district:

- A. *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.
- B. *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.
- C. *Murals*. Murals are allowed in the overlay district.
1. *Definition*. The term "mural" means 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. The term "primary facade" means, 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.

- 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.

(Code 2008, ch. 16, § 7.2.19; Ord. No. 1024, § 59(7.2.14), 2-10-2022)

7.2.15 Multifamily 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 the 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.

(Code 2008, ch. 16, § 7.2.26; Ord. No. 1024, § 59(7.2.15), 2-10-2022)

7.2.16 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 are 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. 1024, § 59(7.2.16), 2-10-2022)

DIVISION 7.3 COD-2 COMMERCIAL OVERLAY DISTRICT NUMBER 2 (RAINBOW BOULEVARD -- WEST SIDE)

[7.3.1 District Requirements](#)

[7.3.2 Building Standards](#)

Commercial lots west of Rainbow Boulevard bounded by 47th Terrace and 48th Terrace.

(Code 2008, ch. 16, § 7.3)

7.3.1 District Requirements

<i>District Requirements</i>	<i>COD-2</i>
Uses permitted by right	Retail and office use
Build-to lines	35' from street right-of-way
Corner lot build-to lines	35' from both street rights-of-way
Maximum lot coverage	35%
Minimum setback lines:	
Interior side yard	10'
Rear yard	10'
Maximum building height	35'
Maximum building stories	2

(Code 2008, ch. 16, § 7.3.1)

7.3.2 Building Standards

Commercial building walls shall be wood clapboard, wood shingle, wood drop siding, primed board, wood board and batten, brick, stone, stucco or similar material, and glass.

(Code 2008, ch. 16, § 7.3.2)

DIVISION 7.4 COD-3 COMMERCIAL OVERLAY DISTRICT NUMBER 3 (RAINBOW BOULEVARD -- EAST SIDE)

[7.4.1 District Requirements](#)

[7.4.2 Parking](#)

7.4.3 Building Standards

Commercial lots east of Rainbow Boulevard within the WEBO beginning with Lot 1 south to the city limits, including lots 1-2, 31-36, 91-93; provided, however, that COD-3 shall specifically not include any portion of COD-4, as described in WCC 7.5.

(Code 2008, ch. 16, § 7.4; Ord. No. 920, § 9; Ord. No. 1024, § 60, 2-10-2022)

7.4.1 District Requirements

<i>District Requirements</i>	<i>COD-3</i>
<i>Uses Permitted by Right</i>	
Ground floor	Retail and office use
Second floor	All permitted commercial & residential uses
Third floor	All permitted commercial & residential uses
Lot provisions	Continuous street frontage along Rainbow and 47th Place
Build to lines	35' from property line
Corner lot build to lines	35' from both property lines
Maximum lot coverage	35%
Minimum setback lines:	
Interior side yard	10'
Rear yard	10'
Maximum building height	48'
Maximum building stories	3
Parking	75% rear parking

(Code 2008, ch. 16, § 7.4.1)

7.4.2 Parking

- A. All parking to be provided to the rear of the building.
- B. *Drives and driveways.* No drives are allowed onto Rainbow Boulevard. Driveway access shall be from adjacent side streets. Provide two-lane drive in north-south direction along rear of parking lot, with buffers as required to adjacent residential lots.

(Code 2008, ch. 16, § 7.4.2)

7.4.3 Building Standards

- A. Commercial building walls shall be wood clapboard, wood shingle, wood drop siding, primed board, wood board and batten, brick, stone, stucco or similar material, and glass.
- B. Two primary siding materials, maximum, and the heavier in appearance being at the bottom.

(Code 2008, ch. 16, § 7.4.3)

DIVISION 7.5 COD-4 COMMERCIAL OVERLAY DISTRICT NUMBER 4 (47TH PLACE AND RAINBOW BOULEVARD)

[7.5.1 District Requirements](#)

[7.5.2 Building Standards](#)

The properties located on the east side of Rainbow Boulevard on the south and north side of the intersection of 47th Place, legally described as follows: All of lot 5, Westport View and now legally described as: Lots 1 and 2 of Woodside Village North, a subdivision of land in the city, and all of lots 1 and 2, Woodside Club Complex, subdivisions lying in the northwest quarter of section 2, township 12 south, range 25 East, in the city, along with all adjoining rights-of-way, easements, and appurtenances.

(Code 2008, ch. 16, § 7.5; Ord. No. 920, § 9; Ord. No. 969, § 1(7.5), 4-14-2016)

7.5.1 District Requirements

<i>District Requirements</i>	<i>COD-4</i>
<i>Uses Permitted by Right</i>	
Ground floor	All permitted commercial uses, multifamily residential (including condominiums and apartments), and fitness and health club use
Second floor	All permitted commercial uses within an approved live/work unit, multifamily residential uses (including condominiums and apartments), and fitness and health club uses
Third floor	Multifamily residential (including condominiums and apartments)
Fourth floor	Multifamily residential (including condominiums and apartments)
	Multifamily residential (including condominiums and

Fifth floor	apartments) in accordance with the approved final site plan
Build to lines	Per approved final site plan
Corner lot build to lines	In accordance with the approved final site plan
Maximum coverage lot	In accordance with the approved final site plan
Minimum setback lines	In accordance with the approved final site plan
Front yard	In accordance with the approved final site plan
Interior side yard	In accordance with the approved final site plan
Rear yard	In accordance with the approved final site plan
Maximum building height	In accordance with the approved final site plan
Maximum building stories	5 stories - in accordance with the approved final site plan
Parking	Set forth in WCC 7.5.2

(Code 2008, ch. 16, § 7.5.1; Ord. No. 920, § 10; Ord. No. 969, § 1(7.5.1), 4-14-2016)

7.5.2 Building Standards

- A. Mechanical equipment and roof appurtenances shall be included in the building height limitations.
- B. Commercial building walls shall be wood clapboard, wood shingle, wood drop siding, primed board, wood board and batten, brick, stone, stucco, or similar material and glass.
- C. *Parking*. Surface and up to a five-story parking structure at the rear of the lot, subject to and in accordance with approval of a final site plan for the same.

(Code 2008, ch. 16, § 7.5.2; Ord. No. 920, § 11; Ord. No. 969, § 1(7.5.2), 4-14-2016)

ARTICLE 8 SPECIAL USE PERMITS

8.1.1 Special Uses

8.1.2 Special Uses Designated

8.1.3 Special Uses Not Permitted

8.1.4.010 Amusement Centers And Arcades

8.1.4.015 Clubs And Drinking Establishments; Bar Or Night Club

8.1.4.020 Community Living Facility

8.1.4.025 Communications Facilities (Including Towers, Base Stations And Antennas)

[8.1.4.030 Day Care Homes, Group Day Care Homes, Child Care Centers, Preschools, And Mother's Day Out Programs](#)

[8.1.4.035 Hospitals](#)

[8.1.4.040 Off-Street Parking Lots/Structures Of A Temporary Or Permanent Nature](#)

[8.1.4.045 Public Utility Services Or Public Service Corporations; Buildings, Structures, And Premises](#)

[8.1.4.050 Radio And Television Towers](#)

[8.1.4.055 Testing And Research Facilities, Laboratories](#)

[8.1.4.060 Temporary Uses Of Land For Commercial Or Industrial Purposes](#)

8.1.1 Special Uses

Certain uses of land or buildings may not be appropriate under all circumstances in any zoning district, but may be appropriate where adequate precautions can be taken to ensure the compatibility of the use with surrounding uses and protect the public health, safety and welfare. It is the intent of this article to allow for such WCC by the granting of a special use permit, subject to the same procedures applicable to a rezoning set forth in section 1.6. Communication facilities and communication facilities for wireless services are subject to the application, location, building and design standards of article 10 of this chapter.

(Code 2008, ch. 16, § 8.1.1; Ord. No. 960, § 6(8.1.1), 7-9-2015; Ord. No. 984, § 22, 9-21-2017)

8.1.2 Special Uses Designated

Any building, structure, land or premises may be used, and any building or structure may be erected, constructed, reconstructed, moved or altered, for one or more of the following special uses, subject to approval of a special use permit by the governing body and subject to the development and performance standards set forth in WCC 8.1.4:

- A. Amusement centers and arcades;
- B. Clubs and drinking establishments; bar or night club;
- C. Community living facility;
- D. Communications facilities and antennas;
- E. Day care homes, group day care homes, child care centers, preschools, and Mother's Day Out programs;
- F. Hospitals;
- G. Off-street parking lots/structures of a temporary or permanent nature;
- H. Public utility services or public service corporations; buildings, structures, and premises;

- I. Radio and television towers;
- J. Communication facilities (towers, base stations, antennas, and the like);
- K. Testing and research facilities, and laboratories;
- L. Temporary use of land for commercial or industrial purposes.

(Code 2008, ch. 16, § 8.1.2; Ord. No. 960, § 6(8.1.2), 7-9-2015; Ord. No. 984, § 23, 9-21-2017)

8.1.3 Special Uses Not Permitted

It shall be presumed that any use listed in WCC 8.1.2 shall not be permitted in the city without a special use permit unless that use is also specifically listed as a use permitted by right or as an accessory use in a given zoning district.

(Code 2008, ch. 16, § 8.1.3; Ord. No. 960, § 6(8.1.3), 7-9-2015)

8.1.4.010 Amusement Centers And Arcades

- A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- B. The initial special use permit may be granted for a period of up to 12 months, with renewals for a period of up to five years.

(Code 2008, ch. 16, § 8.1.4.010; Ord. No. 960, § 6(8.1.4.010), 7-9-2015)

8.1.4.015 Clubs And Drinking Establishments; Bar Or Night Club

- A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- B. An initial permit may be issued for a maximum time period of two years. Subsequent renewals may be issued for a maximum time period of five years. Provided, however, that establishments within facilities such as convention centers, health clubs, hotels, or similar structures determined not to have traffic, parking, noise, litter or other adverse impacts on surrounding properties, may be issued a special use permit for an indefinite time period.

(Code 2008, ch. 16, § 8.1.4.015; Ord. No. 960, § 6(8.1.4.015), 7-9-2015)

8.1.4.020 Community Living Facility

- A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- B. An initial permit may be issued for a maximum time period of one year. Subsequent renewals may be issued for a maximum time period of three years.

(Code 2008, ch. 16, § 8.1.4.020; Ord. No. 960, § 6(8.1.4.020), 7-9-2015)

8.1.4.025 Communications Facilities (Including Towers, Base Stations And Antennas)

- A. Applications for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within article 10 of this chapter, and the city shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.
- B. Each application for a special use permit shall follow the process set forth and submit the information listed in WCC division 10.5.
- C. A special use permit for communications facilities shall be subject to the performance standards WCC division 10.7.
- D. A special use permit for communications facilities shall be for a term of not less than ten years.
- E. A denial of a special use permit for communications facilities shall comply with the provisions and requirements set forth in WCC division 10.8.

(Code 2008, ch. 16, § 8.1.4.025; Ord. No. 960, § 6(8.1.4.025), 7-9-2015; Ord. No. 984, § 24, 9-21-2017)

8.1.4.030 Day Care Homes, Group Day Care Homes, Child Care Centers, Preschools, And Mother's Day Out Programs

- A. A special use permit is require only on property zoned District R-1 or residentially zoned property, which are not otherwise permitted as an accessory use or as a permitted use.
 - 1. Day care homes shall be allowed subject to the following standards:
 - a. The day care provider shall be licensed by the state and shall reside on the premises.
 - b. Outside play areas shall be fenced.

- c. Only one employee, other than persons residing on the premises, shall be permitted.
- 2. Child care centers, preschools and Mother's Day Out programs may be allowed as an accessory use only in religious, educational and community buildings.
 - a. Such programs shall be subject to a general traffic circulation plan being submitted. Such plan shall not permit parking on any adjacent public street, and shall include a drop-off and pick-up site designed to prevent traffic congestion or vehicles stacking up onto the public streets.
 - b. The day care operation shall be licensed or registered with the state.
 - c. The planning commission and governing body may, as a part of any special use permit renewal, require that the number of children and/or employees be reduced until, in their judgment, the adjoining properties are not adversely impacted.
 - d. Where the day care operation is operated from a residential dwelling, the owner or operator shall occupy the structure as his or her private residence.
 - e. No signs identifying the day care operation shall be permitted on the premises.

B. An initial permit may be issued for a maximum time period of two years. Subsequent renewals may be issued for a maximum time period of three years.

(Code 2008, ch. 16, § 8.1.4.030; Ord. No. 960, § 6(8.1.4.030), 7-9-2015)

8.1.4.035 Hospitals

- A. The following uses are accessory uses within a hospital where located within the main building and designed to serve hospital personnel, visitors or patients:
- 1. Florist.
 - 2. Food service and vending machines.
 - 3. Gift shops.
 - 4. Laundry, cleaning and garment services; pickup and delivery.
 - 5. Nursing and personal care facilities.
 - 6. Pharmacies.

7. Residential quarters for staff and employees.

8. Fitness centers, pools, game rooms

B. An initial permit may be issued for a maximum time period of two years. Subsequent renewals may be issued for a maximum time period of five years.

C. The planning commission and governing body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.

(Code 2008, ch. 16, § 8.1.4.035; Ord. No. 960, § 6(8.1.4.035), 7-9-2015)

8.1.4.040 Off-Street Parking Lots/Structures Of A Temporary Or Permanent Nature

A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.

B. An initial permit may be issued for a maximum time period of two years. Subsequent renewals may be issued for a maximum time period of three years

(Code 2008, ch. 16, § 8.1.4.040; Ord. No. 960, § 6(8.1.4.040), 7-9-2015)

8.1.4.045 Public Utility Services Or Public Service Corporations; Buildings, Structures, And Premises

A. Outside storage of materials and equipment is an accessory use in buildings used by public utilities provided all storage is screened from view off the premises.

B. The initial special use permit may be granted for a period of up to two years, with renewals for a period of up to five years, provided that a special use permit for communications facilities for wireless services shall be for a term of not less than ten years.

C. Applications for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within article 10 of this chapter and WCC 8.1.4.025, and the city shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

D. The planning commission and governing body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.

(Code 2008, ch. 16, § 8.1.4.045; Ord. No. 960, § 6(8.1.4.045), 7-9-2015; Ord. No. 984, § 25, 9-21-2017)

8.1.4.050 Radio And Television Towers

- A. The property owner must provide maintenance and inspection reports for towers and all supporting structures, guys, and attachments. Such reports shall follow the guideline and checklist set forth in TIA-EIA-222-F, Annex E.
- B. The property owner shall maintain \$1,000,000/\$2,000,000 aggregate commercial general liability insurance on each tower or in the alternative the applicant shall maintain \$2,000,000/\$4,000,000 aggregate commercial general liability insurance for any casualty occurring with respect to either tower.
- C. The property owner shall provide a certificate of insurance, with a 30-day notice in the event of cancellation, to the city clerk, evidencing that it has obtained the requisite liability insurance.
- D. The initial special use permit may be granted for a period of up to two years, with renewals for a period of up to five years, provided that a special use permit for communications facilities for wireless services shall be for a term of not less than ten years.
- E. Applications for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within article 10 of this chapter, and the city shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

(Code 2008, ch. 16, § 8.1.4.050; Ord. No. 960, § 6(8.1.4.050), 7-9-2015; Ord. No. 984, § 26, 9-21-2017)

8.1.4.055 Testing And Research Facilities, Laboratories

- A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- B. The initial special use permit may be granted for a period of up to two years, with renewals for a period of up to five years.
- C. The planning commission and governing body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.

(Code 2008, ch. 16, § 8.1.4.055; Ord. No. 960, § 6(8.1.4.055), 7-9-2015)

8.1.4.060 Temporary Uses Of Land For Commercial Or Industrial Purposes

- A. Special use permits for temporary uses of land for commercial or industrial purposes may be granted for a period not to exceed two years, subject to renewal for one or more periods of time not to exceed a maximum of two years for each renewal.
- B. If a building or structure is constructed on said land in connection with the approved temporary use, and such structure is not otherwise permitted in that district, the building or structure shall be temporary and, along with any stored equipment or material, shall be removed on or before the expiration date of the special use permit.
- C. This provision shall not be used as a means of seeking approval for occupations which are not permitted as accessory uses in residential districts under WCC 4.2.2.

(Code 2008, ch. 16, § 8.1.4.055; Ord. No. 960, § 6(8.1.4.060), 7-9-2015)

ARTICLE 9 SIGNS

DIVISION 9.1 PURPOSE, DEFINITIONS, PROHIBITED SIGNS

DIVISION 9.2 REGULATIONS APPLICABLE TO ALL DISTRICTS

DIVISION 9.3 REGULATIONS APPLICABLE TO SPECIFIC DISTRICTS

DIVISION 9.4 SIGN STANDARDS APPLICABLE TO NEW AND EXISTING MULTI-TENANTED OFFICE BUILDINGS, MULTI-TENANTED RETAIL BUILDINGS, AND MULTI-TENANTED COMPLEXES

DIVISION 9.1 PURPOSE, DEFINITIONS, PROHIBITED SIGNS

9.1.1 General Regulations

9.1.2 Statement Of Purposes And Objectives

9.1.3 Definitions

9.1.4 Prohibited Signs

9.1.1 General Regulations

Signs shall be permitted in the various districts in accordance with the following regulations, which shall apply to all signs that are visible from beyond the lot line. Signs not authorized by the provisions of this article are not authorized.

(Code 2008, ch. 16, § 9.1.1; Ord. No. 991, § 1(9.1.1), 6-14-2018)

9.1.2 Statement Of Purposes And Objectives

The governing body declares that the purpose of this article is to protect, preserve, and promote the health, safety, general welfare, and beauty of the city, by regulating the location, size, placement, physical materials, and illumination of signs. The city further

intends to regulate signage in order to promote economic development and protect property values from the effect of visual blight, and to promote the rights of individuals to convey messages through temporary signs, while preventing the unrestricted proliferation of signs, both permanent and temporary. The city finds that certain signs, by their quantity, size, placement, appearance, or other characteristics, can create a hazard to traffic by blocking the view of and distracting motorists and others, particularly with respect to signs in the rights-of-way of the city. The city further finds that the rights-of-way of the city are subject to ongoing street, sidewalk, and other infrastructure and utility construction and repair, and are subject to digging, excavation, and other construction activities at any time. The city also finds that the rights-of-way are widely used for such subsurface purposes as fiber optic lines, natural gas lines, and other structures, and placing signs or other structures in the rights-of-way could interfere with or damage such structures. The city finds that the use of the rights-of-way is also subject to statutory and other legal rights and interests, including, but not limited to, use of the rights-of-way by certain utilities or other providers of goods or services to the public. The city intends to promote the substantial governmental goals of safety and aesthetics, but not to impair protected Constitutional rights, including freedom of speech.

(Code 2008, ch. 16, § 9.1.2; Ord. No. 991, § 1(9.1.2), 6-14-2018)

9.1.3 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animated sign means any device such as flashing, blinking, rotating, or moving action intended to attract the attention of the public to an establishment or to a sign.

Awning means a temporary shelter, supported entirely from the exterior wall of a building, and composed of a non-rigid material, except for a rigid, stationary supporting framework.

Back-lighted sign means a sign with concealed illumination, which provides backlighting that silhouettes the message.

Banner means a temporary sign printed on fabric or other pliant material.

Billboard means an outdoor freestanding panel or advertising structure which stands over three feet above ground or above grade at its base and which advertises a product or service, relays a message to the public, or carries an advertising message.

Building means a roofed and walled structure.

Building, multi-tenanted, means a building, or a group of two or more attached buildings

under unified control or ownership, housing two or more tenants.

Business facade means the architectural front of a building, relating to a particular business, lying between the ground level of the pedestrian walkway and the lowest level of the roofline.

Complex means a group of two or more buildings with two or more tenants, developed in a related manner and under unified control and ownership.

Detached sign means any sign located on the ground or on a structure or support located on the ground and not attached to any building.

Directional sign means any sign directing traffic to a location or event.

Dissolve means a mode of message transition on an EMC accomplished by varying the light intensity or pattern, where the first message gradually appears to dissipate and lose legibility simultaneously with the gradual appearance and legibility of the second message.

Electronic message center (EMC) means a sign that utilizes computer-generated messages or some other electronic means of changing copy, including LED, LCD or similar displays.

Externally illuminated sign means any sign which is partially or completely illuminated by a light source which is shielded so that the light source is external to the sign and not visible.

Facade means the principal face or front of a building.

Fade means a mode of message transition on an EMC accomplished by varying the light intensity, where the first message gradually reduces intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.

Flashing sign means any sign which is internally or externally illuminated by flashing, flowing, alternating or blinking lights.

Ground sign means a freestanding sign, not more than five feet in height, supported by uprights, braces, columns, poles, or other vertical members which are not attached to the building.

Height of sign means the vertical distance, measured from the average grade of the sign foundation or point of sign support to the highest point on the sign. The average grade shall be determined by deriving the average elevation of property extending 15 feet from all sides of the proposed sign location.

Identification sign means a sign giving the name and address of a building, business, development or establishment. Such signs may be wholly or partially devoted to a readily recognizable symbol.

Illuminated channel cut letter signage means dimensional lettering with internal illumination.

Internally illuminated sign means any sign (other than illuminated channel cut letter signage) illuminated by diffused light through a translucent material so that the light source is not directly discernable.

Memorial sign or tablet means a sign cut into a masonry or rock surface that is a part of a building, or a bronze, or similar material, tablet inset into such building.

Monument sign means a freestanding sign made of brick, natural stone materials, concrete, metal, wood, or plastic, which harmonizes with the architecture of the building or complex it serves, and is constructed of materials consistent with the building. The monument sign copy area must be attached in a continuous fashion to a proportionate base. The proportionate base must be continuous and the width of the base must be at least one half of the width of the widest part of the sign.

Nonconforming sign means any advertising structure or sign which has been erected and maintained prior to such time as it came within the purview of this article and any amendments thereto, and which fails to conform to all applicable regulations and restrictions of this article, or a nonconforming sign for which a special use permit has been issued.

Off-site sign means any sign which directs the attention of the public to any goods, merchandise, property (real or personal), business, service, entertainment, or amusement conducted, produced, bought, sold, furnished, or offered on any premises other than where the sign is located.

Parcel means a tract of land comprised of one or more lots or portions thereof zoned for a single dwelling or for a single business single business development under common ownership.

Permanent sign means any wall, monument or other sign that is fixed, lasting, stable, enduring, not subject to change, and generally opposed to temporary, but not always meaning perpetual.

Pole-mounted banner sign means a temporary sign printed on fabric or other pliant material, mounted to a streetlight or utility pole, typically within the city right-of-way.

Pole sign means a freestanding sign, more than five feet in height, supported by uprights, columns, poles, or other vertical members which are not attached to a building.

Portable sign means any sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to an A-frame or sandwich frame sign, balloons or other gas or air-filled objects used as commercial signs; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

Projecting sign means any sign extending more than one foot from the face of the building to which it is attached.

Public right-of-way means the area on, below, or above public streets, alleys, bridges, and parkways, and the area immediately adjacent thereto, that is, the dedicated roadway area.

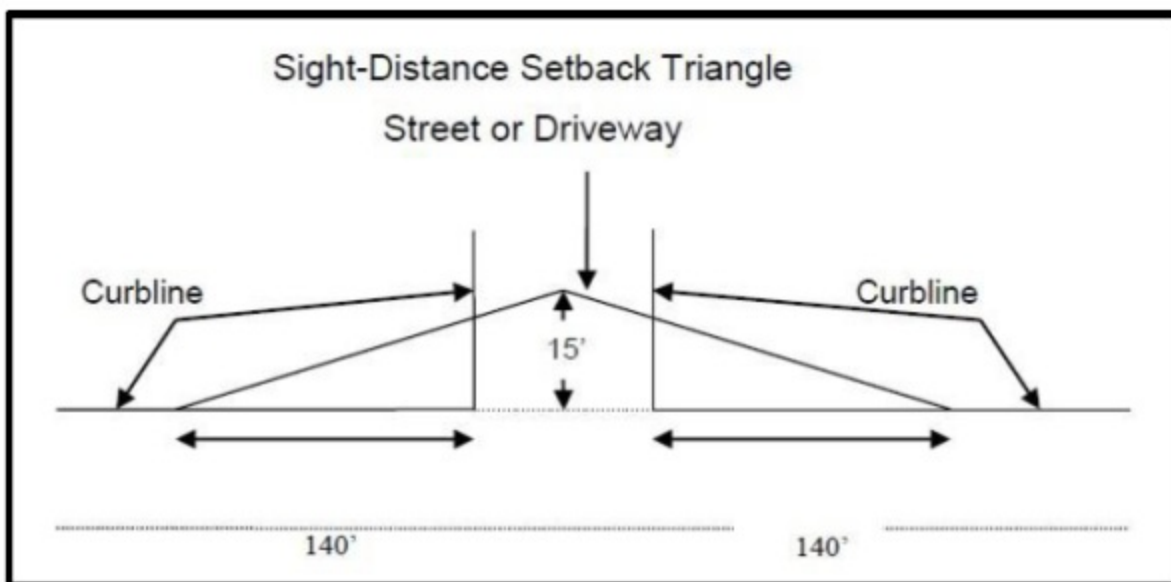
Roof means the cover of a building, including roofing and all other materials and construction (such as supporting members) necessary to carry and maintain it on the walls or uprights.

Roof sign means any sign constructed and maintained partially or wholly upon or over the roof eave of a building, or the eave of a false roof.

Scroll means a mode of message transition on an EMC where the message appears to move across the display surface.

Sight distance triangle means the two areas of all corner lots within the triangles formed by a short leg 15 feet in length and a long leg 140 feet in length, both distances measured along the curb line or edge of the pavement.

Sight-Distance Setback Triangle Street or Driveway



Sign means any posting, board, symbol, or other physical or material device which communicates or functions as an announcement, message, attracting device, declaration, demonstration, display, illustration, identification, description, insignia, symbol, or logo which is used to transmit a message, is used to advertise or promote, or which directs attention to any idea, cause, opinion, business, product, activity, service, place, institution, or person, or which functions as a device for solicitation, or anything on which a message is displayed. The term "sign" includes any supporting structure appurtenant thereto when the same is in public view.

Sign area calculation means the entire area within a single continuous perimeter enclosing all elements of a sign that form an integral part of the display including the perimeter border. Signs with more than one face shall be taken as one face only for purposes of determining size area only. Each sign shall have no more than two faces.

Sign maintenance means the normal care and minor repair necessary to retain a safe, attractive, uniformly lit (if applicable), and finished structure, brackets or surface. Repainting or repairing copy or logo shall be considered maintenance if the information, product or service remains the same and if the sign is to serve the identical establishment using the same business firm name as before the change.

Sign structure means the supports, uprights, braces and framework of a sign.

Structure means that which is built or constructed; an edifice or building of any kind.

Temporary sign means any sign that is intended for a temporary period of posting on public or private property, and is typically constructed from nondurable materials, including paper, cardboard, cloth, plastic, and/or wall board, and which may have a plastic, metal, or wooden support, or which does not constitute a structure subject to the city's building code or zoning provisions.

Tenant means one who holds or possesses a house, building, land or tenement by any right or title, whether in fee, for life, for years, at will, or otherwise.

Transition means a visual effect used on an EMC to change from one message to another.

Travel means a mode of message transition on an EMC where the message appears to move horizontally or vertically across the display surface.

Wall sign means any vertical sign attached flat against the surface of a wall, awning, or facade (other than a false roof facade), of a building, but not projecting horizontally from the vertical surface more than 12 inches or above the vertical surface.

Window sign means any sign which is displayed in, attached to or applied to the exterior or interior of any transparent glass or acrylic plastic surface that could be considered a window.

(Code 2008, ch. 16, § 9.1.3; Ord. No. 991, § 1(9.1.3), 6-14-2018; Ord. No. 1024, § 61, 2-10-2022)

9.1.4 Prohibited Signs

All signs not expressly permitted within this article or exempted herein are prohibited in the city. Such prohibited signs include, but are not limited to:

- A. Animated signs.
- B. Billboards.
- C. Electrically lighted signs that create a nuisance to neighboring property owners and/or the general public. A nuisance is defined as any electrically lighted sign which gives offense to or endangers life or health, causes pollution such as light pollution, obstructs the reasonable and comfortable use and enjoyment of the property of another, interferes with the rights of citizens whether in person, property, or enjoyment of property or comfort, annoys or causes trouble or vexation, is offensive or noxious, or works hurt, inconvenience, or damage. To constitute a nuisance, the interference must be both substantial and unreasonable.
- D. Electronic message centers (EMCs) with the exception of installations noted in WCC 9.3.1.E.
- E. Flashing or blinking signs, including excessive change in the color of the illumination.
- F. Off-site signs.
- G. Pole signs.
- H. Portable signs.
- I. Roof signs.
- J. Any sign attached to a tree, fence, or utility pole except warning signs issued and properly posted by the utility company having ownership or control of said utility pole, and also excepting any signs required by governmental or legal authority.
- K. Any illuminated awnings.

(Code 2008, ch. 16, § 9.1.4; Ord. No. 942, § 1; Ord. No. 991, § 1(9.1.4), 6-14-2018; Ord. No. 1024, § 62, 2-10-2022)

DIVISION 9.2 REGULATIONS APPLICABLE TO ALL DISTRICTS

[9.2.1 Sign Permit](#)

[9.2.2 Signs Exempt From Permit Requirement](#)

[9.2.3 Exceptions To Permit Process](#)

- [9.2.4 Traffic Hazards](#)
- [9.2.5 Maintenance And Inspection](#)
- [9.2.6 Public Rights-Of-Way](#)
- [9.2.7 Temporary Signs](#)
- [9.2.8 Sign Area Calculations](#)
- [9.2.9 Setback](#)
- [9.2.10 Permanent Signs Secured](#)
- [9.2.11 Projecting Signs](#)
- [9.2.12 Wall Signs](#)
- [9.2.13 Illuminated Signs](#)
- [9.2.14 Obscene Materials](#)
- [9.2.15 Substitution Of Messages](#)

9.2.1 Sign Permit

- A. Except as provided herein, or as may be provided by other ordinances or resolutions of the city, it shall be unlawful for any person to erect, install, alter, move or replace any new or existing sign without first obtaining a permit and making payment of the sign permit fee as established in the city master fee schedule on file in the city clerk's office. A permit is not required for ordinary maintenance and repair of a sign, nor is a permit or fee required to post temporary signs.
- B. Any person desiring to erect a sign for which a permit is required shall submit to the building official an application upon a form to be provided by the city that shall contain the following information:
 - 1. Name, address, and telephone number of the applicant;
 - 2. Location of the building, structure, or lot to which or upon which the sign is to be attached or erected;
 - 3. Position of the sign in relation to nearby building or structures, streets and sidewalks;
 - 4. Drawing of the sign, showing elevation or elevations of the sign at a scale of one half inch to the foot, or larger, showing the sign, including structural supports, height to bottom of the sign, as well as material, color, and lighting;
 - 5. Length of time the sign will be displayed;
 - 6. Written consent of the owner of the building, structure or land to which or on which the sign is to be erected; and
 - 7. Such other information as the building official shall require showing full compliance with this and all other laws and ordinances of the city.
- C. It shall be the duty of the building official, upon filing of an application for a sign

permit, to review the application and to conduct such other investigation as is necessary to determine the accuracy of the application and reach a decision within 14 days of the application being completed and filed with the city. If it shall appear that the applicant has provided the information requested in the application, and that the proposed sign will comply with the ordinances of the city, the building official shall forward the sign permit to the planning commission for a review of the sign. The building official shall record and maintain all documents pertaining to sign permits. Notwithstanding the above, signs may be approved as part of a comprehensive site plan review or otherwise as part of a zoning procedure provided that any such signs meet the criteria set forth herein.

- D. If the building official determines that the proposed sign is not in compliance with all requirements of this chapter or any other laws or any other ordinances of the city, the building official shall not issue the requested permit, and shall notify the applicant of such denial and the reason therefor within 14 days of the application being completed and filed with the city.
- E. If the building official finds that a sign meets the criteria herein for approval, and is not a type of sign that requires specific planning commission approval, then the building official shall issue a permit.
- F. Any applicant aggrieved by a decision of either the building official shall be entitled to an appeal to have said decision reviewed by the governing body. Said appeal must be taken within 30 days of the decision from which an appeal is taken. The governing body shall hear such appeal at the earlier of its next regularly scheduled meeting or the passage of 20 days from the decision from which an appeal is taken.
- G. All rights and privileges acquired under the provisions of this article, or any amendments thereto, are revocable at any time by the city for cause, and all such permits shall contain this provision.

(Code 2008, ch. 16, § 9.2.1; Ord. No. 991, § 1(9.2.1), 6-14-2018)

9.2.2 Signs Exempt From Permit Requirement

The following signs are exempt from the permit process and are not subject to this division:

- A. Street markers, traffic signs, warning signs, and other appropriate or mandatory signs displayed by the city or other governmental subdivision in the exercise of the police power to ensure the public health, safety, and welfare;
- B. Any sign required by the city's building or fire codes or other governmental authority;
- C. Official notice by public officers or employees in the performance of their duties; and

- D. Signs required or specifically authorized by statute or ordinance, or otherwise required by law.

(Code 2008, ch. 16, § 9.2.2; Ord. No. 991, § 1(9.2.2), 6-14-2018; Ord. No. 1024, § 64, 2-10-2022)

9.2.3 Exceptions To Permit Process

The following types of signs are exempt from permit requirements but must be in conformance with all other requirements of this division:

- A. Temporary signs;
- B. Memorial signs or tablets not in excess of four square feet;
- C. Name plate signs for single-family dwellings; and
- D. In the district zoned for retail sales, temporary window signs which do not exceed ten percent of the area of the window in which the sign is placed.

(Code 2008, ch. 16, § 9.2.3; Ord. No. 991, § 1(9.2.3), 6-14-2018)

9.2.4 Traffic Hazards

No sign shall be constructed at the intersection of any street in such a manner as to obstruct the free and clear vision of motorists, or any location where, by reason of the position, shape or color, said sign may interfere with obstruct the view or be confused with any authorized traffic signal or device.

(Code 2008, ch. 16, § 9.2.4; Ord. No. 991, § 1(9.2.4), 6-14-2018)

9.2.5 Maintenance And Inspection

All signs now or hereinafter erected shall at all times be kept in good repair and structurally safe. Any sign which may be at any time deemed to be in disrepair or unsafe by the building official shall be removed and costs of the removal paid by the owner.

(Code 2008, ch. 16, § 9.2.5; Ord. No. 991, § 1(9.2.5), 6-14-2018)

9.2.6 Public Rights-Of-Way

With the exception of city pole-mounted banner signs, no sign, including any part of a sign or sign structure, shall be located within the public right-of-way, except approved directional and traffic control signs, or except as permitted under the regulations herein. No sign, or sign structure, shall be erected or maintained over, across, or upon any sidewalk or street except as provided herein or otherwise as required or permitted by

law.

(Code 2008, ch. 16, § 9.2.6; Ord. No. 991, § 1(9.2.6), 6-14-2018)

9.2.7 Temporary Signs

A. The city enacts the ordinance from which this article is derived to establish reasonable regulations for the posting of informational signs on public and private property. Recognizing that temporary signs, left completely unregulated, can become a threat to public safety as a traffic hazard, and a detriment to property values as an aesthetic nuisance, the city intends to:

1. Protect the rights of all individuals to convey their message through temporary signs and at the same time recognize the right of the public to be protected against the unregulated proliferation of signs;
2. Further the objectives of the city's comprehensive plan;
3. Protect the health, safety, and welfare;
4. Reduce traffic and pedestrian hazards;
5. Protect property values by minimizing the possible adverse effects and visual blight caused by signs;
6. Promote economic development; and
7. Ensure the fair and consistent enforcement of the temporary sign regulations specified hereinafter.

B. Temporary signs may be posted on property in all zoning districts of the city, subject to the following requirements:

1. The total square footage per parcel for temporary signage in any district, in the aggregate, shall not exceed 18 square feet, with no individual sign exceeding six square feet. The area of a sign is to be calculated as set forth above.
2. Signs shall not exceed three feet in height measured from the average grade at the base of the sign.
3. No sign shall obstruct or impair access to a public sidewalk, public or private street or driveway, traffic control sign, bus stop, fire hydrant, or any other type of street furniture, or otherwise create a hazard, including a tripping hazard.
4. No sign shall be illuminated or painted with light reflecting paint.
5. A sign shall only be posted with the consent of the property owner or occupant.

6. A temporary sign may be posted for a period of up to 90 days, at which time the sign shall be removed or replaced.
 7. Signs shall not be posted on trees, utility poles, and other similar structures within the rights-of-way.
- C. The removal or replacement of temporary signs shall be governed by the following regulations:
1. The person who posted or directed the posting of the sign is responsible for the removal or replacement of that sign.
 2. If the person does not remove or replace the sign in accordance with these regulations, then the property owner or occupant of the building or lot where the sign is posted is responsible for the sign's removal or replacement.
 3. If the building official finds that any sign is posted in violation of these regulations on public property, the building official is authorized to remove any such signs. If the building official finds that any sign is posted in violation of these restrictions on private property, the building official shall give written notice to the person who has posted or directed the posting of the sign. If that person fails to remove or replace the sign so as to comply with the standards herein within 72 hours after such notice, such sign may be removed by the building official.

(Code 2008, ch. 16, § 9.2.7; Ord. No. 991, § 1(9.2.7), 6-14-2018)

9.2.8 Sign Area Calculations

- A. The area for monument signs shall include the sign panel but not the sign base on which it is mounted or the structural elements or frames that form the perimeter of the panel.
- B. If a wall sign is contained within a panel, the sign area calculation shall be the area of the panel. If the sign consists of individual letters, symbols, or words, either painted or mounted on the wall, the area shall be the smallest rectangular figure that can encompass all of the letters, words, logos, or symbols.

(Code 2008, ch. 16, § 9.2.8; Ord. No. 991, § 1(9.2.8), 6-14-2018)

9.2.9 Setback

No sign, except approved directional signs, shall be placed within the required sight-distance setback triangle (see diagram in WCC 9.1.3), unless specifically authorized by the planning commission.

(Code 2008, ch. 16, § 9.2.9; Ord. No. 991, § 1(9.2.9), 6-14-2018)

9.2.10 Permanent Signs Secured

Permanent signs shall be secured fastened to the ground or to some other substantial supporting structure so that there is virtually no danger that either the sign or the supportive structure may be moved by the wind or other forces of nature and cause injury to persons or property. Sign structures may be required to have a building permit, at the discretion of the building official.

(Code 2008, ch. 16, § 9.2.10; Ord. No. 991, § 1(9.2.10), 6-14-2018)

9.2.11 Projecting Signs

- A. No sign projecting at right angles from a building wall shall extend over a street, alley, sidewalk, or other property, or within 18 inches of the curb line or automobile parking area, except for signs over privately owned sidewalks. No projecting sign shall be so constructed that the lowest overhanging part thereof is less than nine feet above the level of any private sidewalk.
- B. Projecting signs shall be securely attached to the building or structure by bolts, anchors and guys or non-corrosive metals or plated metals.

(Code 2008, ch. 16, § 9.2.11; Ord. No. 991, § 1(9.2.11), 6-14-2018)

9.2.12 Wall Signs

- A. Any wall sign:
 - 1. Shall not project or extend more than 12 inches from the face of the wall surface, or 18 inches above the awning, provided that the awning is at least a minimum of 18 inches below the parapet.
 - 2. Shall not exceed 20 square feet in area.
 - 3. Shall not extend above, below or beyond the wall surface on which mounted.
 - 4. Must be placed only on flat wall areas where the sign touches the wall surface continuously on all sides.
- B. Wall surfaces shall not be leased for outdoor advertising to persons other than the tenant.

(Code 2008, ch. 16, § 9.2.12; Ord. No. 991, § 1(9.2.12), 6-14-2018)

9.2.13 Illuminated Signs

Illuminated signs shall not constitute a traffic hazard. Lighting shall be directed away and shielded from normal traffic view.

(Code 2008, ch. 16, § 9.2.13; Ord. No. 991, § 1(9.2.13), 6-14-2018)

9.2.14 Obscene Materials

Obscene signs, flags, banners, or any sign of any type are prohibited. The term "obscene" means any material that:

- A. The average person, applying contemporary community standards, would find that, taken as a whole, appeals to the prurient interest; and
- B. The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- C. The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(Code 2008, ch. 16, § 9.2.14; Ord. No. 991, § 1(9.2.14), 6-14-2018)

9.2.15 Substitution Of Messages

Subject to the landowner's consent, a noncommercial message of any type may be substituted for any duly permitted or allowed commercial message or duly permitted or allowed noncommercial message, provided that the sign or sign structure is legal without consideration of the message content. This substitution of message may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This section does not create a right to increase the total amount of signage on a parcel or land use, nor does it affect the requirement that a sign structure or mounting device be properly permitted. This provision does not allow for the substitution of an off-site commercial message in place of an on-site commercial message.

(Code 2008, ch. 16, § 9.2.15; Ord. No. 991, § 1(9.2.15), 6-14-2018)

DIVISION 9.3 REGULATIONS APPLICABLE TO SPECIFIC DISTRICTS

[9.3.1 Residential Districts R-1\(A\), R-1\(B\), R-1\(C\), R-1\(D\), R-1\(E\)](#)

[9.3.2 Office And Professional Districts; C-O](#)

[9.3.3 Retail And Business Districts; CP-1, C-1, P-1](#)

[9.3.4 Planned Commercial Districts](#)

9.3.1 Residential Districts R-1(A), R-1(B), R-1(C), R-1(D), R-1(E)

The following signs shall be permitted in residential districts:

- A. Non-illuminated temporary signs not requiring a permit, as described in WCC 9.2.7.
- B. Building address numbers visible from the public right-of-way shall not exceed eight inches in height, and/or numbers painted on the curb not to exceed four inches in height.
- C. Ground signs for the purpose of guiding pedestrian and vehicular traffic to parking lots shall be permitted, provided that such signs do not identify tenants.
- D. Each church, school, and other public building, single or multi-tenanted, allowed in the residential district, shall be allowed one non-illuminated, or externally illuminated sign, not to exceed five feet in height, along the frontage of each public street abutting the property. The copy on the sign may be changed from time to time, provided that the structure of the sign is not changed from that approved. Signs in such areas shall be subject to review by the planning commission as set forth hereinabove.
 - 1. Buildings or complexes with less than 100 feet of street frontage shall be restricted to signs not exceeding 20 square feet in area per face, and be limited to two faces per sign.
 - 2. Buildings with more than 100 feet of street frontage shall not exceed 30 square feet of area per face and be limited to two faces per sign, and one non-illuminated wall sign, not to exceed 15 feet in area.
- E. Places of worship or religious observation and schools allowed in the residential district shall be permitted one electronic message center (EMC). EMCs shall be submitted to the planning commission for specific approval. Details, including siting, materials, size, display brightness (measured at 35 feet and at the property lines), display type, frequency of message transitions, and method of method transition shall be submitted.
 - 1. EMCs shall be sited, detailed, and programmed so as not to be a nuisance or hazard to pedestrians, motorists, or neighbors.
 - a. *Brightness.* Brightness on electronic message boards shall be limited to no more than 0.3 footcandle over ambient lighting conditions when measured at a distance of 35 feet. EMCs shall be equipped with a sensor or other device that automatically determines the ambient illumination and programmed to automatically dim according to ambient light conditions.
 - b. EMCs shall be limited to zero footcandles over ambient conditions when measured at the property lines.
 - 2. Permitted EMCs shall be monument signs only. All requirements of monument signs shall apply. The area of the electronic display shall not

exceed 12 square feet per face, and be limited to two faces per sign. The total area of the sign shall not exceed 30 square feet per face, and be limited to two faces per sign.

3. No more than one EMC installation is permitted per property.
4. On all EMCs, only the static display of messages is permitted with at least 15 seconds between changes in display and no more than one second for transitions. Messages shall be changed only through dissolving or fading transition methods. No scrolling, travelling, flashing, or animated transitions are allowed.
5. EMCs shall be placed so that the sign face is perpendicular to the street they are addressing. On corner lots, the applicant shall indicate which street the sign will be addressing.
6. EMCs shall be set back 150 feet from adjacent property lines parallel to the sign face, and 15 feet from the right-of-way perpendicular to the sign face.

(Code 2008, ch. 16, § 9.3.1; Ord. No. 991, § 1(9.3.1), 6-14-2018)

9.3.2 Office And Professional Districts; C-O

The following signs shall be permitted in office and professional districts:

- A. Any sign allowed in the residential districts.
- B. Each building or complex, single or multi-tenanted, shall be allowed one non-illuminated or indirectly illuminated monument sign, not to exceed five feet in height, along the frontage of each dedicated public street abutting the property. Such sign shall identify only the name of the building or complex and list the tenants housed therein.
 1. Buildings or complexes with less than 100 feet of street frontage shall be restricted to signs not exceeding 20 square feet in area per face, and be limited to two faces per sign.
 2. Buildings or complexes with more than 100 feet of street frontage shall not exceed 30 square feet area per face and be limited to two faces per sign.
- C. In addition to the monument signs, each business or commercial establishment shall be permitted one non-illuminated, illuminated channel cut letter, or indirectly illuminated wall, projecting, or awning sign along the frontage of each dedicated public street abutting the property. The total area of each sign shall not exceed ten percent of the area of the business facade on which it is placed, and the facade must be continuous with the tenant's gross leasable floor area.

- D. In addition to the wall, projecting, or awning sign referenced in this section, each business or commercial establishment shall be permitted window signage, the area of which will be calculated against the gross allowable wall sign area.

(Code 2008, ch. 16, § 9.3.2; Ord. No. 991, § 1(9.3.2), 6-14-2018)

9.3.3 Retail And Business Districts; CP-1, C-1, P-1

The following signs shall be permitted in retail and business districts:

- A. Any sign allowed in the residential districts and the office and residential districts.
- B. Each building or complex, single or multi-tenanted, shall be allowed one non-illuminated or indirectly illuminated, monument sign, not to exceed five feet in height along the frontage of each dedicated public street abutting the property. Such sign shall identify only the name of the building or complex and list the tenants housed therein.
 - 1. Buildings or complexes with less than 100 feet of street frontage shall be restricted to signs not exceeding 20 square feet in area per face and limited to two faces per sign.
 - 2. For multi-tenanted retail buildings or complexes, with eight or more storefronts or tenant spaces, the owner may double the allowable area for one street frontage by either doubling the area of the sign, not to exceed five feet in height, or by doubling the number of signs on one street frontage.
- C. In addition to the monument signs, each business or commercial establishment shall be permitted one non-illuminated, illuminated channel cut letter, or indirectly illuminated wall, projecting, or awning sign. The total area of each sign shall not exceed ten percent of the area of the business facade on which it is placed, and the facade must be continuous with the tenant's gross leasable floor area. Business establishments having frontage on more than one dedicated public street may have the aforementioned wall or awning sign on each frontage.
- D. Ground signs specifically for the purpose of guiding and directing vehicular traffic shall be permitted in parking districts.
- E. Notwithstanding any other provisions herein, in any district zoned for retail sales, a tenant or property owner may have an additional temporary sign for cumulative periods not to exceed 14 days in any calendar year, and such sign shall be no larger than 32 square feet. A no-fee permit shall be required for such additional temporary sign.

(Code 2008, ch. 16, § 9.3.3; Ord. No. 991, § 1(9.3.3), 6-14-2018)

9.3.4 Planned Commercial Districts

Signs shown on the approved final development plan or approved amended development plan shall be permitted in planned commercial districts.

(Code 2008, ch. 16, § 9.3.4; Ord. No. 991, § 1(9.3.4), 6-14-2018)

DIVISION 9.4 SIGN STANDARDS APPLICABLE TO NEW AND EXISTING MULTI-TENANTED OFFICE BUILDINGS, MULTI-TENANTED RETAIL BUILDINGS, AND MULTI-TENANTED COMPLEXES

[9.4.1 Site Plan Review](#)

[9.4.2 Compliance](#)

[9.4.3 Nonconforming Signs](#)

[9.4.4 Permit Fees](#)

[9.4.5 Appeal](#)

9.4.1 Site Plan Review

Nothing in this division is intended to supersede the plan review process provided in the city's ordinances and regulations. The development of consistent graphics to avoid confusion, to comply with health and safety concerns, and to avoid visual clutter and pollution may be considered as part of the plan review process. However, nothing in the plan review shall be construed to override the requirements set forth herein.

(Code 2008, ch. 16, § 9.4.1; Ord. No. 991, § 1(9.4.1), 6-14-2018; Ord. No. 1024, § 65, 2-10-2022)

9.4.2 Compliance

- A. The standards shall be within the regulations set out by this division.
- B. Such standards shall run with all leases or sales of portions of the development. The sale, subdivision, or other partition of the site does not exempt the project or portions thereof from complying with these regulations.
- C. With respect to projects which require a plan review, sign permits shall not be issued until after approval of the design standards by the planning commission as part of the plan review process. A copy of the approved sign standards shall be kept on file in the office of the city clerk for reference in the issuance of sign permits.
- D. The planning commission shall follow the additional criteria set forth herein.

(Code 2008, ch. 16, § 9.4.2; Ord. No. 991, § 1(9.4.2), 6-14-2018)

9.4.3 Nonconforming Signs

All existing nonconforming signs which existed as of 2008 may remain and, further, provided that no changes in the basic structure, source of illumination, location of appearance shall be made in such signs and, further, provided that if the business to which the sign is related should move to another site, which move creates in effect an off-site advertising sign, then such device shall be removed or otherwise brought into full conformance with this article.

(Code 2008, ch. 16, § 9.4.3; Ord. No. 991, § 1(9.4.3), 6-14-2018)

9.4.4 Permit Fees

Sign permit fees are calculated as shown on the appropriate fee schedule at the office of the city clerk. If any sign is installed or placed on any property prior to receipt of a sign permit, the specified permit fee shall be doubled. However, payment of the doubled permit fee shall not relieve any person of any other requirements or penalties of this section.

(Code 2008, ch. 16, § 9.4.4; Ord. No. 991, § 1(9.4.4), 6-14-2018)

9.4.5 Appeal

Any person aggrieved by the terms of this section may seek an appeal before the governing body within 30 days of the decision by the city building official by which the person is aggrieved. The governing body shall meet and decide the appeal at the earlier of its next regularly-scheduled meeting or the passage of 20 days from the appeal being filed, unless the applicant shall request or agree to a continuance of the matter. The status quo shall be maintained during any approval or appeal process.

(Code 2008, ch. 16, § 9.4.5; Ord. No. 991, § 1(9.4.5), 6-14-2018)

ARTICLE 10 COMMUNICATION FACILITIES FOR WIRELESS SERVICES

10.1 Statement Of Intent

10.2 Definitions

10.3 Overall Policy

10.4 Application Approval Authority

10.5 Application Process And Requirements

10.6 Location Of Communications Facilities

10.7 Building And Design Standards For Communications Facilities

10.8 Denial Of Application

10.9 Emergencies And Disasters

10.10 Interpretation

10.1 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; ensure an integrated, comprehensive review of environmental impacts of communications facilities, and promote the public health, safety, security, and general welfare of the city.

(Code 2008, ch. 16, § 10.1; Ord. No. 984, § 27(10.1), 9-21-2017; Ord. No. 1024, § 66, 2-10-2022)

10.2 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

A. *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.

B. *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

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 USC 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.

C. *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 article.

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 WCC 10.4.A, and means the governing body for all applications pursuant to WCC 10.4.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 "base station" does not mean a tower or equipment associated with a tower; and 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 definition or that was not previously approved under the applicable zoning or siting process. The term "base station" includes a non-tower support structure; for example, a building, church steeple, water tower, sign, streetlight, 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. The term "communications facility" 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:

- A. Collocation of new transmission equipment;
- B. Removal of transmission equipment; or
- C. Replacement of transmission equipment.

Eligible support structure means any tower or base station, provided that it is existing at the time the relevant application is filed.

Existing means the following: 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 or utilizes stealth technology.

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:

A. Height.

1. 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.
2. 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.
3. 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 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 (title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96).

B. Width/girth.

1. 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.
2. 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.

C. New equipment cabinets.

1. For any eligible support structure, the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets.
2. 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 ten percent larger in height or overall volume than any other ground cabinets associated with the structure.

D. Any excavation or deployment outside the current site.

E. Defeating the stealth technology or concealment elements of the eligible support structure.

F. Not complying with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided that this limitation does not apply to any Modification that is noncompliant only in a manner that would not exceed the thresholds identified in subsections A through D of this definition.

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 "transmission equipment" 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.

- A. *Monopole* means a tower consisting of a single pole, constructed without guy wires and ground anchors.
- B. *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 those terms are defined in 47 USC 332(c)(7)(C), including commercial mobile services as defined in 47 USC 332(d), provided to personal mobile communication devices through communications facilities or any fixed or mobile wireless services provided using communications facilities.

(Code 2008, ch. 16, § 10.2; Ord. No. 984, § 27(10.2), 9-21-2017; Ord. No. 1024, § 67, 2-10-2022)

10.3 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 building, design 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, in a competitively neutral, nondiscriminatory manner.
- F. Protect the public health, safety and welfare.

(Code 2008, ch. 16, § 10.3; Ord. No. 984, § 27(10.3), 9-21-2017)

10.4 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 subsection C.1 of this section for timeframe.)
2. New small cell/DAS facilities on an existing tower, utility pole or streetlight in the public right-of-way. This provision is also applicable when the existing tower, utility pole or streetlight is replaced by a tower, utility pole or streetlight that is not a substantial change from the original. (See subsection C.1 of this section for timeframe.)
3. New antenna (including small cell/DAS facilities) on an existing tower or base station that does not incur a substantial change to the tower or base station and that:
 - a. Is permitted by right in the underlying zoning district; and
 - b. Meets applicable building, design, and performance standards. (See subsection C.1 of this section for timeframe.)
4. New antenna (including small cell/DAS facilities) on an existing tower or base station that incurs a substantial change to the tower or base station and that:
 - a. Is permitted by right in the underlying zoning district; and
 - b. Meets applicable building, design, and performance standards. (See subsection C.2 of this section for timeframe.)
5. New tower permitted by right in the underlying zoning district that meets applicable building, design, and performance standards. (See subsection C.3 of this section for timeframe.)
6. New tower or utility pole for small cell/DAS facilities in the public right-of-way, subject to the issuance of a right-of-way permit pursuant to WCC chapter 13. (Sees subsection C.3 of this section 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 that is not permitted by right in the underlying zoning district. (See subsection C.2 of this section for timeframe.)
2. Any other application for placement, installation or construction of

transmission equipment that does not constitute an eligible facilities request. (See subsection C.2 of this section for timeframe.)

3. New tower that is not permitted by right in the underlying zoning district. (See subsection C.3 of this section for timeframe.)

C. Application timeframe.

1. A final decision shall be issued for applications under subsections A.1, A.2, and A.3 of this section within 60 calendar days.
2. A final decision shall be issued for applications under subsections A.4, B.1 and B.2 of this section within 90 calendar days.
3. A final decision shall be issued for applications under subsections A.5, A.6 or B.3 of this section within 150 calendar days.
4. The timeframes set forth in subsections C.1 through C.3 of this section 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 state statutes, 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.

10.5 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 an application is filed for a communications facility, the applicant will pay a nonrefundable application fee as determined in the current version of the governing body resolution 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. A site plan or preliminary development plan, and if applicable, any other special use permit submission requirements set forth in this chapter, as amended, and specifically as amended by Ordinance No. 960, division 1.6 of this chapter and the subsections thereto, division 8.1 of this chapter and the subsections thereto, or as otherwise required by or provided for within the city's zoning ordinance.
 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. An affidavit from the applicant stating that it conducted a thorough analysis of available collocation opportunities within the applicable search ring.
 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. The applicant shall note all specific colors and materials to be used.

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 this chapter and the city's manual of infrastructure standards. 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 this chapter.
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., 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 first class mail, postage prepaid, to the owners of record of all property within 200 feet of the proposed location. The notice shall provide:
 - a. A city-issued case number (if available);
 - b. A description of the proposed facility;
 - c. The location of the proposed facility;
 - d. A plan sheet showing the proposed location and the facility improvements; and
 - e. 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 city case number, 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.
14. Any other information to satisfy the performance standards set forth for the applicable zoning district as required by this chapter and the city's manual of infrastructure standards 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.

(Code 2008, ch. 16, § 10.5; Ord. No. 984, § 27(10.5), 9-21-2017)

10.6 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 streetlights) 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.

(Code 2008, ch. 16, § 10.6; Ord. No. 984, § 27(10.6), 9-21-2017)

10.7 Building And Design 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. While tower height shall be controlled based on the specific context consistent with the provisions of this article and this chapter, in no case shall towers or antennas exceed the following:
 - a. 150 feet in the commercial zoning districts;
 - b. 130 feet in the commercial overlay zoning districts;
 - c. 100 feet in all residential districts;
 - d. No more than 20 feet above the top of a building when mounted on the roof or include a stealth on-building design in the commercial or commercial overlay districts.

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 an arterial thoroughfare street; 40 feet along a collector street; and 20 feet along a local street as defined within WCC chapter 13.
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.
3. *Antennas.*
 - a. *Design on towers.* Antenna bridges and platforms on towers are not allowed. Antennas on towers may be:
 - (1) Internal;
 - (2) A panel of slim-line design mounted parallel with the tower;
 - (3) A design deemed by the approval authority to be less obtrusive or stealth than the designs described above; or
 - (4) 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:

- (1) 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.
- (2) Antennas which are architecturally compatible to the building architecture may locate on nonresidential buildings less than three stories or 35 feet in height.
- (3) Antennas and/or accessory facilities installed or located in a commercial overlay district shall comply with the applicable architectural, building, design, screening and similar standards established for the particular commercial overlay district.
- (4) 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.
- (5) Accessory facilities for antennas may be permitted on the roof so long as they are screened from view and so long as they are screened, constructed, and colored in conformity with and to otherwise match the structure to which they are attached, provided that ground-mounted accessory facilities shall otherwise fully comply with the provisions of this section.

c. *Color and finish.* Antennas and visible accessory facilities shall be colored and finished in a manner consistent with the tower or 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 or 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 the commercial zoning districts, commercial overlay districts, and planned business districts (CP-1) set forth in this chapter shall meet the setback requirements for other types of commercial structures of a similar size that are allowed by right in the zoning districts in which the facilities are located. In the event the proposed 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, planned residential cluster development zoning districts, and planned multifamily residential zoning districts shall meet the greater of the maximum setback requirements for the applicable 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.
3. In addition to the above setback requirements set forth in subsection C.1 of this section regarding commercial and commercial overlay districts, towers shall have a minimum setback of 200 feet from any surrounding property which is shown as residential, unless such tower:
 - a. Does not exceed the height requirement for other types of commercial structures in the district in which the tower is located;
 - b. Is a utility pole or streetlight or a monopole similar in size thereof;
or
 - c. 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 streetlights shall not be subject to the setback requirements in subsections C.1 through C.3 of this section, provided that such small cell/DAS facilities on utility poles or streetlights placed within the right-of-way shall comply with the city's requirements and permits for the use of the public right-of-way as set

forth with WCC chapter 13 and in the city's manual of infrastructure standards.

5. All towers, antennas, and accessory structures shall meet the required setbacks of the applicable zoning district. In addition to complying with the district regulations, the tower and antenna shall be set back from the property lines a distance equal to the height of the tower or antenna, provided that the city or approval authority shall not impose nor shall this provision be interpreted to require a greater setback or fall-zone requirement for a tower, antenna, or communication facility than for other types of commercial structures of a similar size. A lesser setback may be approved with the special use permit, upon demonstration by a licensed structural engineer registered in the state that the fall zone of the tower, antenna, or communication facility is within the radius of the setback.
- 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 applicable 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 WCC division 10.9.
- F. *Parking areas and drives.* All parking areas and drives associated with a communications facility shall comply with WCC 10.9, provided that the applicable 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 applicable approval authority. The landowner or provider shall be responsible for maintenance of the screening. The applicable 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 the provisions of this chapter for the applicable zoning district and use. The landscape plan shall be sealed by a professional landscape architect, unless waived by the applicable 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 this chapter for the applicable zoning district and use 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 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 applicable 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-way; 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 (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.* Not less than 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 check list 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, Environmental Protection Agency, and/or 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.

(Code 2008, ch. 16, § 10.7; Ord. No. 984, § 27(10.7), 9-21-2017)

10.8 Denial Of Application

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 is contrary to the previously stated purpose of a specific zoning or land use designation, fails to comply with the city's land development code, and/or creates an unacceptable risk to the public health, safety, and welfare.
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 article or any other applicable city code or with any applicable federal or state law.

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. Such notice shall be made within the applicable timeframe set forth in WCC division 10.4.

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.

(Code 2008, ch. 16, § 10.8; Ord. No. 984, § 27(10.8), 9-21-2017)

10.9 Emergencies And Disasters

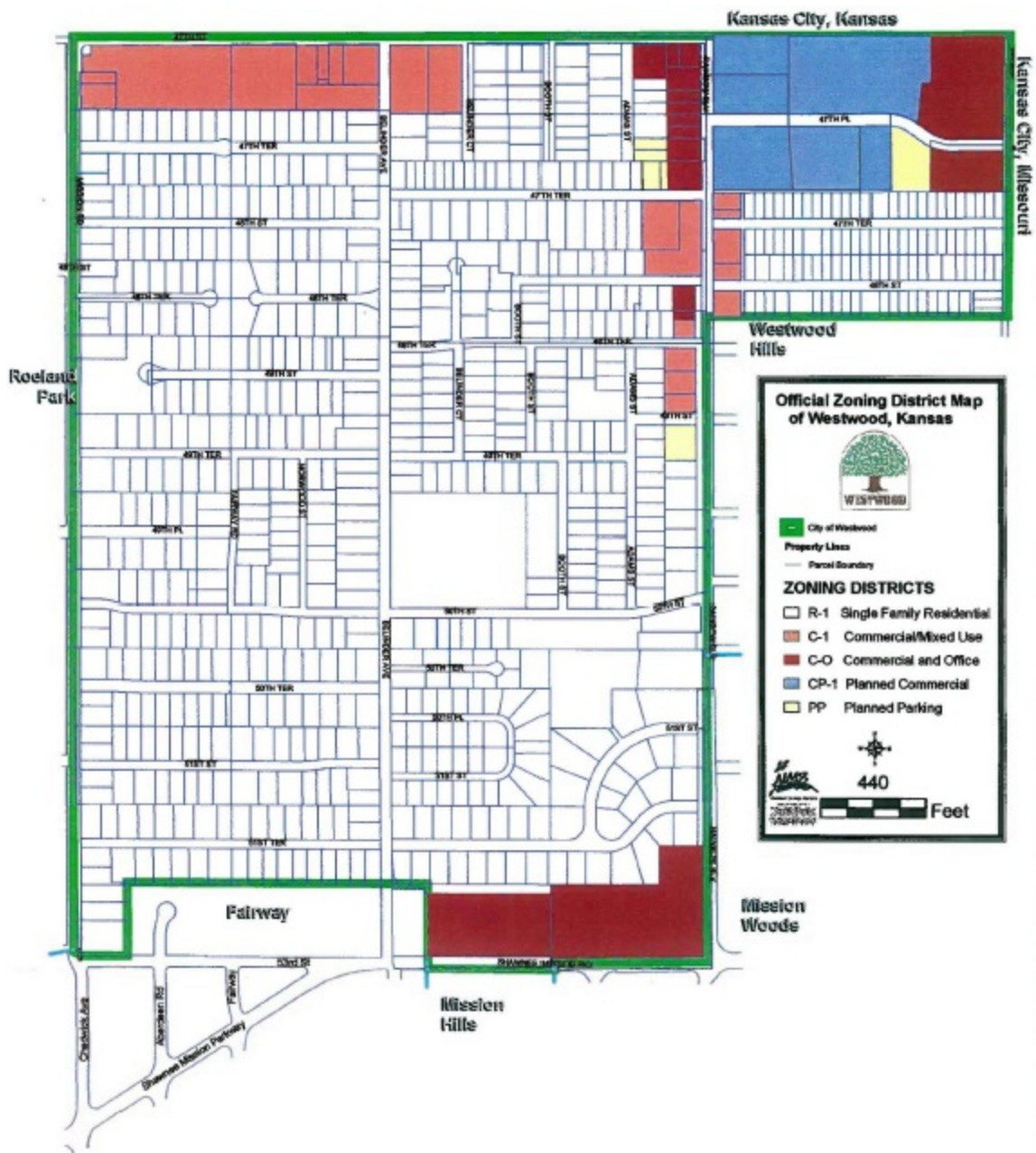
In the event of a declared emergency or disaster, the city administrator, or his or her designee, or the building official may authorize any temporary towers, base stations, transmission equipment or accessory equipment necessary to temporarily restore wireless services.

(Code 2008, ch. 16, § 10.9; Ord. No. 984, § 27(10.9), 9-21-2017)

10.10 Interpretation

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.

[Zoning District Map](#)



[Overlay District Map](#)

APPENDIX A CHARTER ORDINANCES

[CHARTER ORDINANCE NO 15](#)

[CHARTER ORDINANCE NO 16](#)

[CHARTER ORDINANCE NO 17](#)

[CHARTER ORDINANCE NO 18](#)

[CHARTER ORDINANCE NO 19](#)

Editor's note—Printed herein are the Charter Ordinances of the city. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Any provisions regarding the title, enactment date, severability, repealer, transitional language, ratification date, publication date or effective date of the ordinance have been omitted. Obvious misspellings and punctuation errors have been corrected without notation. The style used for headings and catchlines have been made uniform and consistent with those appearing in the Code. The same system of capitalization and expression of numbers in text has been used as it appears in the Code of Ordinances. Additions made for clarity, such as consistent state statute citations and catchline modifications, are indicated by brackets.

CHARTER ORDINANCE NO 15

A charter ordinance exempting the City of Westwood, Kansas, from K.S.A. 12-4203(a) and 12-4207 and providing substitute and additional provisions on the same subject, relating to service or complaints and notices to appear filed with the Westwood municipal court.

Be it ordained by the governing body of the City of Westwood, Kansas:

Sec. 1. [Authority.]

The City of Westwood, Kansas, by the power vested in it by article 12, section 5, of the Constitution of the State of Kansas. Hereby elects to make inapplicable to it and exempts itself from K.S.A. 12-4203(a) and 12-4207 relating to service of complaints filed in the municipal court, which enactment applies to said city but not uniformly to all cities and provides substitute and additional provisions on the same subject as hereinafter provided. Such referenced provisions are part of the Kansas Code of Procedure for Municipal Courts, an enactment of the legislature which is applicable to the City of Westwood but not uniformly applicable to all cities.

Sec. 2. Complaint; service; notice to appear or warrant; failure to issue.

A copy of the complaint shall be served, together with a notice to appear or a warrant, by a law enforcement officer or, in the case of a complaint together with a notice to appear, by a law enforcement officer, building official, property maintenance official or

other enforcement official upon the accused person, and forthwith, the complaint shall be filed with the municipal court, except that a complaint may be filed initially with the municipal court, and if so tiled, a copy of the complaint shall forthwith be delivered to the city attorney.

Sec. 3. Notice to appear; service.

Notices to appear shall be served upon the accused person by delivering a copy to him or her personally, or by leaving it at the dwelling house of the accused person or unusual place of abode with some person of suitable age and discretion then residing therein; or by mailing it to the last known address of said person. A complaint and notice to appear may be served by any law enforcement officer, building official, property maintenance official or other enforcement official within the state and, if mailed, shall be mailed by a Westwood law enforcement officer or the clerk of the municipal court. No provisions of this Charter Ordinance shall be construed to empower other officials with powers of arrest, search, detention or other powers of law enforcement officers, except as provided by law. Upon service by mail, the law enforcement officer or court clerk shall execute a verification to be filed with a copy of the notice to appear. Said verification shall be deemed sufficient if in substantially the following form:

The undersigned here certifies that on the _____ day of _____, 20____, a copy of the complaint and notice to appear was mailed to _____ at _____

(Signature of law enforcement officer or clerk of the municipal court).

CHARTER ORDINANCE NO 16

A charter ordinance exempting the City of Westwood, Kansas, from the provisions of The Water Pollution Control Act, K.S.A. 12-3101 through K.S.A. 12-3107, and providing substitute and additional provisions relating to the establishment, operation, maintenance, improvement, and regulation of sewer systems, including, but not limited to, stormwater and surface water drainage systems and flood protection works, and to the issuance of bonds for the purpose of paying for the property and improvements necessary for all aspects of the management of these systems.

Whereas, the City of Westwood, Kansas by the power vested in it by article 12, section 5 of the Constitution of the State of Kansas, may exempt itself from the provisions of a statutory enactment that is not uniformly applicable to all cities, and may adopt substitute and additional provisions thereto; and

Whereas, the Water Pollution Control Act, K.S.A. 12-3101 et seq., is applicable to the city, but not uniformly applicable to all cities;

Now, therefore, be it ordained by the governing body of the City of Westwood, Kansas:

Sec. 1. [Authority.]

The City of Westwood, Kansas (the City), by virtue of the powers vested in it by article 12, section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself and make inapplicable to it sections 12-3101, 12-3102, 12-3103, 12-3104, 12-3105, 12-3106, and 12-3107 of the Kansas Statutes Annotated, which apply to the city, acting as a city of the third class, and which are not uniformly applicable to all cities, and the city hereby provides further substitute and additional provisions as set forth herein.

Sec. 2. Definitions.

For the purpose of this Charter Ordinance, the following words and phrases shall have the meaning ascribed to them in this section:

- A. "Person" shall mean any person, firm, corporation, association, partnership, political unit, or organization.
- B. "Sewer," "sewer system," and "sewer systems" shall mean surface water and storm sewers that exist at the time this Charter Ordinance is adopted or that are hereafter established and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to, pumping stations; enclosed storm sewers; outfall sewers; surface drains; street, curb and alley improvements associated with stormwater or surface water improvements; natural and manmade wetlands; channels; ditches; rivers; streams; other storm water conveyances; detention and retention facilities; and other flood control facilities and works for the collection, conveyance, pumping, treating, controlling, managing and disposing of water carried pollutants or stormwater or surface water.
- C. "Stormwater customer" shall mean the owner of any real property served or benefited, whether voluntarily or involuntarily, by the function of any sewer, sewer system, or sewer systems, which captures, controls, conveys, discharges, manages, or regulates the flow or water quality of stormwater and surface waters within and from the city, or is served or benefited by the administration, activities and operation of the stormwater management program of the city. This service or benefit shall include, but not be limited to, capturing, controlling, conveying, discharging, improving, managing and regulating the flow and water quality of stormwater and surface water from a property or from other properties situated at higher or lower elevations that might otherwise be subservient in right, and the administrative, planning, technical, regulatory and enforcement actions necessary to provide these services and/or benefits.

- D. "Stormwater management program" shall mean all aspects of work necessary to perform and provide stormwater and surface water services in the city, including, but not limited to, administration, planning, engineering, operations, maintenance, best management practices, control measures, public education, citizen participation, regulation and enforcement, protection, and capital improvement of sewer systems and facilities, plus such non-operating expenses as reserves and bond debt service coverage associated with provision of the stormwater management program.

Sec. 3. Sewer systems; powers of the city.

The city shall have all powers necessary or convenient to plan, study, design, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, protect, manage, and regulate and enforce the proper use of a sewer system or sewer systems, including the powers that the city may, from time to time, establish by way of ordinances and/or resolutions adopted by the governing body of the city and including, but not by way of limitation, the following powers:

- A. To impose service, user, impact, in lieu of construction, buy in and plan review and inspection fees, special assessments, system development and other charges and/or taxes on stormwater customers. The method of calculating and fixing these charges and/or taxes shall be as established by regular ordinances or by rules and regulations heretofore or hereafter adopted;
- B. To provide that charges and/or taxes authorized in subparagraph (A) above may be certified by the city clerk to the county clerk of Johnson County, Kansas, to be placed on the tax roll for collection, subject to the same penalties and to be collected in like manner as taxes;
- C. To use the proceeds of the charges and/or taxes authorized in subparagraph above, together with any other available revenues, to pay the costs of the stormwater management program, including, but not limited to, the costs to plan, study, design, engineer and operate the stormwater management program and to plan, study, design, engineer, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, manage, protect, acquire real or personal property by purchase, lease, donation, condemnation, or otherwise for, and regulate and enforce the use of a sewer system or sewer systems;
- D. To use and to pledge the proceeds of the charges and/or taxes authorized in subparagraph (A) above, and any available taxes, to pay the principal and interest on general obligation or revenue bonds heretofore or hereafter issued; and pending the issuance of the general obligation bonds or revenue bonds to issue temporary financing for these purposes;
- E. To contract with agencies of the federal government, the State of Kansas, other states, counties, cities, drainage districts, public bodies of the state, or other

states, or with any person to jointly plan, study, design, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, protect, acquire real or personal property by purchase, lease, donation, condemnation, or otherwise for a sewer system or sewer systems; regulate the use of a sewer system or sewer systems; and to plan, study, design, engineer, operate, administer, maintain, and manage the stormwater management program;

- F. To contract with agencies of the federal government, the State of Kansas, other states, counties, cities, drainage districts, public bodies of the state, or other states, or with any person for receiving and treating storm or surface water from outside the limits of the city;
- G. To carry out the stormwater management program, including, but not limited to, the power to plan, study, engineer, design, administer, manage, maintain, and operate the stormwater management program and to plan, study, design, engineer, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, manage, protect, acquire real or personal property by purchase, lease, donation, condemnation, or otherwise for and regulate the use of sewer system or sewer systems within or outside the city;
- H. To borrow money and to apply for and accept advances, loans, grants, contributions, or any other form of financial assistance from the federal government, the State of Kansas, other states, counties, cities, drainage districts, or any other public body for the purposes of this act, and the city may, when contracting with the federal government for financial assistance, include in any contract the conditions imposed pursuant to federal law as the city may deem reasonable and appropriate;
- I. To, under the authority granted herein, establish a stormwater and surface water utility to be accounted for as a separate enterprise fund or special revenue fund of the city, as deemed reasonable and appropriate by the governing body of the city; and
- J. To utilize any mechanism deemed reasonable and appropriate by the governing body of the city to deliver billings to stormwater customers for services.

Sec. 4. Rules and regulations authorized; billing and collection of charges and/or taxes.

The city shall have the power by ordinance or resolution to adopt rules and regulations that shall relate to the management and operation of its stormwater management program and sewer system or sewer systems; the method of calculating and fixing the charges and/or taxes applicable to properties served by the sewer system or sewer systems or activities associated therewith; security for the payment thereof, and methods and rules of collection; and the disposition of the revenue therefrom. In the event any person by the city's sewer system or sewer systems shall neglect, fail or refuse to pay service fees fixed by the governing body of the city, as authorized by rules

and regulations adopted under the authority of this section and if a billing system has been established for the delivery and collection of service fees, the city may take any action authorized by law to collect any fees that are due and owing.

Sec. 5. Issuance of sewer system revenue bonds; requirements.

- A. The governing body of the city shall have the power to use any unencumbered municipal revenues or to issue revenue bonds from time to time in its discretion, without an election, to finance the planning, altering, enlarging, extending, improving, constructing, and reconstructing of a sewer system or sewer systems under this Charter Ordinance. These bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the city derived from or held in connection with its sewer system or sewer systems; provided, however, that payment of these bonds, both as to principal and interest, may be further secured by a pledge of other unencumbered municipal revenues and of any loan, grant or contribution from the federal government, the State of Kansas, other states, counties, cities, drainage districts, public bodies of the state or other states or any person.
- B. Bonds issued under this section shall constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this Charter Ordinance are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.
- C. Bonds issued under this section shall be authorized by ordinance or resolution of the governing body and may be issued in one or more series and shall bear such date or dates, be payable on demand or mature at such time or times, bear interest at such rate or rates, not exceeding the maximum rate of interest prescribed by K.S.A. 10-1009, be in such denomination or denominations, be in such form, have such rank or priority, be executed in such manner, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by such ordinance or resolution.
- D. Pending the issuance of revenue bonds authorized by this Charter Ordinance, the governing body of the city may issue revenue anticipation bonds of the city for the purpose of providing interim financing for a project, these revenue anticipation bonds being payable from revenue bonds issued to provide permanent financing for activities authorized by this Charter Ordinance and the income, proceeds, revenues and funds of the city derived from or held in connection with its sewer system or sewer systems.

Sec. 6. Powers supplemental and additional.

The power granted herein with respect to the stormwater management program, including, but not limited to, the power to plan, study, design, engineer, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate, maintain, manage, protect, acquire real or personal property by purchase, lease, donation, condemnation, or otherwise for, and regulate the use of a sewer system or sewer systems and to issue bonds shall be supplemental to and not amendatory of the provisions of all other laws heretofore or hereafter in force and shall not be construed to limit the city's authority under the provisions of any other laws.

CHARTER ORDINANCE NO 17

A charter ordinance exempting the City of Westwood, Kansas, from the provisions of K.S.A. 15-201, relating to the election of officers, their terms of office, transitions to November elections, the filling of governing body vacancies, and nomination petition; repealing certain provisions of Charter Ordinance No. 6 and providing substitute and additional provisions on the same subject; and repealing any provisions in conflict herewith.

Whereas, City of Westwood Charter Ordinance No. 6, passed on December 12, 1968, established in section 2 and section 5 the election cycle and terms of office which is a spring election cycle falling on even-[numbered] years only;

Whereas, sections 2 and 5 of Westwood Charter Ordinance No. 6 have remained unchanged since their enactment and were unaffected by Charter Ordinance Nos. 6A, 7, 9, and 14 amending certain other sections of Charter Ordinance No. 6;

Whereas, the Kansas Legislature passed HB 2104, which became law on July 1, 2015, requiring among other things that all municipal elections be moved from the spring, or April election cycle, to a November of odd-[numbered] years election cycle with elections in even years permissible for the purpose of staggering, requiring establishment by ordinance the terms of office of elected officials, and related to governing body terms of office and election of officers; and

Whereas, the City of Westwood desires to enact certain changes to Charter Ordinance No. 6, section 2 and section 5 pertaining to election cycles, terms of office and election of officers and provide additional provisions on the same, in order to comply with the changes enacted by HB 2104.

Be it ordained by the governing body of the City of Westwood, Kansas:

Sec. 1. [Authority.]

The City of Westwood, Kansas, by the power vested in it by article 12, section 5 of the Kansas Constitution hereby elects to and does exempt itself and make inapplicable to it the provisions of K.S.A. 15-201, which applies to this city, but is a part of this enactment which does not apply uniformly to all cities.

Sec. 2. [Governing body elections, terms.]

The first four sentences of Charter Ordinance No. 6, entitled are hereby repealed, and replaced by the following provisions:

Sec. 2. On the first Tuesday in April of 2016, there shall be elected a mayor and two council members for a term of 45 months. On the Tuesday succeeding the first Monday in November of 2017 and every four years thereafter, there shall be elected three council members for a term of four years. The terms of council members elected in the April 2014 election shall expire in January 2018 when the three council members elected in the November 2017 election take office. On the Tuesday succeeding the first Monday in November of 2019 and every four years thereafter, there shall be elected a mayor and two council members for terms of four years. The mayor and council members, with the exception of those elected in April 2016 who shall hold their office for a term of 45 months, shall hold their offices for four years or until their successors are elected, qualify and are sworn in.

Sec. 3. [Scheduling of elections.]

Section 5 of Charter Ordinance No. 6 is hereby repealed and amended to read as follows:

Sec. 5. Commencing in 2017, the general election of city officers shall be held on the Tuesday succeeding the first Monday in November. Succeeding elections shall be held every two years thereafter for all such governing body positions whose terms have expired.

CHARTER ORDINANCE NO 18

A charter ordinance exempting the City of Westwood, Kansas, from the provisions of L. 2015, chapter 88, section 71, relating to the filling of governing body vacancies.

Whereas, the City of Westwood has previously established procedures for the filling of governing body vacancies; and

Whereas, the City of Westwood desires to exempt itself from the provisions of L. 2015, chapter 88, section 71, relating to the filling of governing body vacancies.

Be it ordained by the governing body of the City of Westwood, Kansas:

Sec. 1. [Authority; exemption.]

The City of Westwood, Kansas, by virtue of the power vested in it by article 12, section 5 of the Constitution of the State of Kansas, hereby elects and does exempt itself and make inapplicable to it L. 2015, chapter 88, section 71, relating to the filling of governing body vacancies, which enactment applies to this city, but does not apply uniformly to all cities.

Sec. 2. [Charter ordinances to control.]

The City of Westwood, Kansas shall continue to follow previously enacted Charter Ordinances and the provisions of the Code of the City of Westwood, Kansas, in particular chapter 1, article 2, 1-209, relating to the filling of vacancies of the governing body.

CHARTER ORDINANCE NO 19

A charter ordinance of the City of Westwood, Kansas exempting the city from the provisions of K.S.A. 15-204, and 15-301 and providing for substitute and additional provisions through the enactment of the following articles and sections of the Westwood City Code: 1-206, 1-301 through 1-305, and 1-307 to allow for the creation of a city administrator.

Whereas, the governing body of the city desires to utilize professional staff through the position of a city administrator to govern the day to day activities of the city;

Whereas, the governing body deems it necessary and advisable to exempt itself from the non-uniform statutory provisions stated within K.S.A. 15-204 and 15-301 to allow for the creation and operation of the city administrator position;

Therefore, be it ordained by the governing body of the City of Westwood, Kansas:

Sec. 1. [Powers of mayor and city administrator; appointive offices for the city.]

The city, by virtue of the powers vested in it by article 12, section 5, of the Constitution of the State of Kansas, hereby enacts the following substitute provisions of the Westwood Municipal Code Sections 1-206, 1-301 through 1-305, and 1-307, (replacing K.S.A. 15-204, 15-301) amending such sections in their entirety to provide as follows:

1-206. Powers of the mayor.

The mayor shall preside at all meetings of the governing body. The mayor shall have the tie-breaking vote on all questions when the members present are equally divided. The mayor shall:

- (a) Take care that the ordinances of the city are complied with;
- (b) Sign the commissions and appointments of all officers elected or appointed;
- (c) Endorse the approval of the governing body on all official bonds;
- (d) From time to time communicate to the city council such information and recommend such measures as he or she may deem advisable;

Have the power to approve or veto any ordinance as the laws of the state shall prescribe. (K.S.A. 301:302, 305:306, 308:309; Code 1983, § 1-205)

1-301. Appointive officers.

The mayor, by and with the consent of the council, and after receiving recommendation from the city administrator, may appoint a city clerk, city treasurer, city attorney, municipal judge, city prosecutor, chief of police and public works director. Such officers shall hold their respective offices for an indefinite term and may be removed by a majority vote of the total membership elected or appointed to the council, and may be suspended at any time by the city administrator. All such appointments shall be entered on the journal of proceedings of the governing body.

(C.O. No. 9, Sec. 3; K.S.A. 15-204; Code 2008)

1-302. Appointment of city administrator.

The mayor, by and with the consent of the council, shall appoint a city administrator.

1-303. Employees.

- (a) The city administrator shall have authority to hire all employees other than the appointive officers identified in 1-301, or such authority may be delegated to the respective department heads.
- (b) The salary ranges of employee held offices shall be fixed by Resolution and the compensation of nonemployee held offices shall be fixed by agreement.
- (c) The department head or authorized representative of any department within the city shall conduct a pre-employment investigation of all persons applying for or seeking a position as an employee of the city within such respective department. The Westwood Police Department shall aid the department head or authorized representative in fulfilling the requirements of this subsection by supplying any requested information it may possess regarding the person seeking employment to the requesting department head or authorized representative.

(Code 1970, § 1-209; Code 2008; Ord. No. 601, § 1; Ord. No. 665)

1-304. Removal.

- (a) The city administrator may be removed either by the mayor, with the approval of a majority of the city council, or by the city council alone if at least four vote in favor of removal. If requested by the city administrator, the mayor and the city council shall grant the city administrator a public hearing within 30 days following notice of such removal. During the interim, the mayor, with the approval of a majority of the city council, may suspend the city administrator from duty, but shall continue their salary for two calendar months following the final removal date; provided, however, that if the city administrator shall be removed for acts of dishonesty or acts of moral turpitude, such salary shall not

be continued.

- (b) Subject to personnel system regulations, and after receiving a recommendation from the city administrator, all other appointive officers may be removed either by the mayor, with the approval of a majority of the city council, or by the city council alone if at least four members vote in favor of removal. For good cause, the city administrator may suspend at any time any appointed officer.
- (c) Employees, other than appointed officers, may be removed by the city administrator upon recommendation of the respective department heads pursuant to the personnel policy adopted by the city council by resolution. (K.S.A. 15-204; Code 2008)

1-305. Vacancy in office.

Whenever a vacancy occurs in any appointive office for whatever reason, the vacancy shall be filled by the mayor, with the consent of the council and after receiving recommendation from the city administrator. (K.S.A. 15-2009; Code 1983, § 1-304)

1-307. City administrator; powers and duties.

- (a) Appoint and suspend or remove all city employees and recommend to the governing body the appointment and removal of all appointive officers provided for by or under this chapter, except as otherwise provided by law, this chapter or personnel rules adopted pursuant to this chapter. The city administrator may authorize any administrative officer subject to the administrator's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency; direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law; attend all city council meetings. The city administrator shall have the right to take part in discussion but shall not vote; see that all laws, provisions of this chapter and acts of the city council, subject to enforcement by the city administrator or by officers subject to the administrator's direction and supervision, are faithfully executed;
- (b) Prepare and submit the annual (or biennial) budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;
- (c) Submit to the city council and make available and accessible to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year and provide information needed by the council for its annual evaluation of performance;
- (d) Make available and accessible such other reports as the city council may require concerning operations;
- (e) Keep the city council fully advised as to the financial condition and future needs

of the city;

- (f) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;
- (g) Provide staff support services for the mayor and council members;
- (h) Assist the council to develop long-term goals for the city and strategies to implement these goals;
- (i) Encourage and provide staff support for partnerships with community organizations and for regional and intergovernmental cooperation and equitable programming;
- (j) Promote partnerships among council, staff, and community members in developing public policy and building a sense of community; and
- (k) Perform such other duties as are specified in this chapter or may be required by the city council.

CODE COMPARATIVE TABLE 1970 CODE

This table gives the location within this Code of those sections of the 1970 Code which are included herein. Sections of the 1970 Code not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature.

<i>Code 1970 Section</i>	<i>Section this Code</i>
1-205	1-307
1-209	1-303
1-304	1-3A05
1-305	1-3A06
1-306	1-3A07
1-307	1-3A08
3-201	3-201
3-207	3-103
5-316	5-117
6-303	7-304
6-304	7-304
7-203	8-310
7-401	8-502
7-406	8-503
7-408	8-505
7-409	8-506
7-413	8-501
7-414	8-507
9-101	10-101
9-102	10-102
9-103	10-103
9-104	10-104
9-105	10-105
9-108	10-106

9-111	10-108

CODE COMPARATIVE TABLE 1983 CODE

This table gives the location within this Code of those sections of the 1983 Code which are included herein. Sections of the 1983 Code not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature.

<i>Code 1983 Section</i>	<i>Section this Code</i>
1-110	1-114
1-113	1-117
1-205	1-206
1-206	1-207
1-211	1-208
1-212	1-210
1-304	1-305
1-316	1-3A02
1-318	1-3A04
3-105	3-203
3-106	3-204
7-302	11-302
7-303	11-303
9-104	9-106
9-105	9-107

CODE COMPARATIVE TABLE 1993 CODE

This table gives the location within this Code of those sections of the 1993 Code which are included herein. Sections of the 1993 Code not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature.

<i>Code 1993 Section</i>	<i>Section this Code</i>
1-111	1-115
1-112	1-116
1-204	1-205
1-208	1-209
1-306	1-307
1-319	1-3A05
1-320	1-3A06
1-321	1-3A07
1-322	1-3A08
1-501	1-502
1-603	1-604
--	1-605
1-605	1-606
1-606	1-607
1-607	1-608
1-609	1-610
1-610	1-611
1-613	1-614
1-614	1-615
2-122	2-118
2-408	2-406
2-409	2-407
2-410	2-408
2-411	2-409

2-412	2-410
2-413	2-411
2-414	2-412
2-502	2-504
2-503	2-505
2-504	2-506
2-505	2-507
2-506	2-508
3-102	3-201
3-111	3-103
3-113	3-104
3-115	3-102
--	3-206
4-205	4-1108
4-301	8-1101
4-302	8-1102
4-303	8-1103
4-304	8-1104
4-305	8-1105
4-306	8-1106
4-307	8-1107
4-308	8-1108
4-309	8-1109
4-310	8-1110
4-312	8-1112
4-313	8-1113
4-314	8-1114
5-102	5-118
5-103	5-102
5-105	5-119

5-301	5-103
5-302	5-104
5-304	5-106
5-305	5-107
5-306	5-108
5-307	5-109
5-308	5-110
5-310	5-112
5-311	5-113
5-312	5-114
5-313	5-115
5-314	5-116
5-315	5-117
5-402	5-302
5-403	5-303
5-409	5-409
5-504	5-404
5-510	5-410
5-516	5-416
5-518	5-418
5-519	5-419
5-520	5-420
5-523	5-423
5-701	5-601
5-703	5-603
5-706	5-606
5-707	5-607
5-901	10-401
5-902	10-402
5-903	10-403

5-904	10-404
5-905	10-405
5-906	10-406
5-907	10-407
5-908	10-408
5-909	10-409
5-910	10-410
5-911	10-411
7-202	7-203
7-301	11-301
8-312	8-312
8-503	7-204
8-504	8-503
8-505	8-504
8-506	8-505
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14-113	14-207
14-114	14-208
14-115	14-209
14-116	14-210
14-117	14-211
14-118	14-212
14-119	14-213
14-120	14-214
14-121	14-215
14-122	14-216

CODE COMPARATIVE TABLE 2008 CODE

This table gives the location within this Code of those sections of the 2008 Code, as updated through September 21, 2017, which are included herein. Sections of the 2008 Code, as updated, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.

<i>Code 2008 Section</i>	<i>Section this Code</i>
1-3A01	1-3A01
1-3A02	1-3A02
1-3A04	1-3A04
1-3A05	1-3A05
1-3A06	1-3A06
1-3A07	1-3A07
1-3A08	1-3A08
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15-413	15-413
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15-417	15-417
15-418	15-418
15-420	15-103
Ch. 16, § 1.1.2	Ch. 16, § 1.1.2
Ch. 16, § 1.2.1	Ch. 16, § 1.2.1
Ch. 16, § 1.2.2	Ch. 16, § 1.2.2
Ch. 16, § 1.2.3	Ch. 16, § 1.2.3
Ch. 16, § 1.2.4	Ch. 16, § 1.2.4
Ch. 16, § 1.3.1	Ch. 16, § 1.3.1
Ch. 16, § 1.3.2	Ch. 16, § 1.3.2
Ch. 16, § 1.3.4	Ch. 16, § 1.3.4
Ch. 16, § 1.3.5	Ch. 16, § 1.3.5
Ch. 16, § 1.3.7	Ch. 16, § 1.3.7
Ch. 16, § 1.4.1	Ch. 16, § 1.4.1
Ch. 16, § 1.4.2	Ch. 16, § 1.4.2
Ch. 16, § 1.4.3	Ch. 16, § 1.4.3

Ch. 16, § 1.4.5	Ch. 16, § 1.4.4
Ch. 16, § 1.4.6	Ch. 16, § 1.4.5
Ch. 16, § 1.4.7	Ch. 16, § 1.4.6
Ch. 16, § 1.5.1	Ch. 16, § 1.5.1
Ch. 16, § 1.5.2	Ch. 16, § 1.5.2
Ch. 16, § 1.5.3	Ch. 16, § 1.5.3
Ch. 16, § 1.6.1	Ch. 16, § 1.6.1
Ch. 16, § 1.6.2	Ch. 16, § 1.6.2
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Ch. 16, § 1.6.4	Ch. 16, § 1.6.4
Ch. 16, § 1.6.5	Ch. 16, § 1.6.5
Ch. 16, § 1.6.6	Ch. 16, § 1.6.6
Ch. 16, § 1.6.7	Ch. 16, § 1.6.7
Ch. 16, § 1.6.8	Ch. 16, § 1.6.8
Ch. 16, § 1.6.9	Ch. 16, § 1.6.9
Ch. 16, § 1.6.10	Ch. 16, § 1.6.10
Ch. 16, § 1.6.11	Ch. 16, § 1.6.11
Ch. 16, § 1.6.12	Ch. 16, § 1.6.12
Ch. 16, § 1.6.13	Ch. 16, § 1.6.13
Ch. 16, § 1.6.14	Ch. 16, § 1.6.14
Ch. 16, § 1.6.15	Ch. 16, § 1.6.15
Ch. 16, § 1.6.16	Ch. 16, § 1.6.16
Ch. 16, § 1.6.17	Ch. 16, § 1.6.17
Ch. 16, § 1.6.18	Ch. 16, § 1.6.18
Ch. 16, § 1.6.19	Ch. 16, § 1.6.19
Ch. 16, § 1.6.20	Ch. 16, § 1.6.20
Ch. 16, § 1.6.21	Ch. 16, § 1.6.21
Ch. 16, § 1.6.22	Ch. 16, § 1.6.22
Ch. 16, § 1.6.23	Ch. 16, § 1.6.23

Ch. 16, § 1.6.24	Ch. 16, § 1.6.24
Ch. 16, § 1.6.25	Ch. 16, § 1.6.25
Ch. 16, § 1.6.26	Ch. 16, § 1.6.26
Ch. 16, § 1.6.27	Ch. 16, § 1.6.27
Ch. 16, § 1.6.28	Ch. 16, § 1.6.28
Ch. 16, § 1.6.29	Ch. 16, § 1.6.29
Ch. 16, § 1.6.30	Ch. 16, § 1.6.30
Ch. 16, § 1.6.31	Ch. 16, § 1.6.31
Ch. 16, § 1.6.32	Ch. 16, § 1.6.32
Ch. 16, § 1.8.1	Ch. 16, § 1.8.1
Ch. 16, § 1.8.2	Ch. 16, § 1.8.2
Ch. 16, § 1.8.3	Ch. 16, § 1.8.3
Ch. 16, § 1.8.4	Ch. 16, § 1.8.4
Ch. 16, § 2.1	Ch. 16, § 2.1
Ch. 16, § 2.2	Ch. 16, § 2.2
Ch. 16, § 2.3	Ch. 16, § 2.3
Ch. 16, § 3.1	Ch. 16, § 3.1
Ch. 16, § 3.2	Ch. 16, § 3.2
Ch. 16, § 3.3	Ch. 16, § 3.3
Ch. 16, § 3.4	Ch. 16, § 3.4
Ch. 16, § 3.5	Ch. 16, § 3.5
Ch. 16, § 3.5.1	Ch. 16, § 3.5.1
Ch. 16, § 3.5.2	Ch. 16, § 3.5.2
Ch. 16, § 3.5.3	Ch. 16, § 3.5.3
Ch. 16, § 3.5.4	Ch. 16, § 3.5.4
Ch. 16, § 3.5.5	Ch. 16, § 3.5.5
Ch. 16, § 3.6	Ch. 16, § 3.6
Ch. 16, § 3.7	Ch. 16, § 3.7
Ch. 16, § 3.8	Ch. 16, § 3.8
Ch. 16, § 3.9	Ch. 16, § 3.9

Ch. 16, § 3.10	Ch. 16, § 3.10
Ch. 16, § 3.11	Ch. 16, § 3.11
Ch. 16, § 4.1.1	Ch. 16, § 4.1.1
Ch. 16, § 4.1.2	Ch. 16, § 4.1.2
Ch. 16, § 4.2.1	Ch. 16, § 4.2.1
Ch. 16, § 4.2.2	Ch. 16, § 4.2.2
Ch. 16, § 4.2.3	Ch. 16, § 4.2.3
Ch. 16, § 4.2.4	Ch. 16, § 4.2.4
Ch. 16, § 4.2.5	Ch. 16, § 4.2.5
Ch. 16, § 4.2.6	Ch. 16, § 4.2.6
Ch. 16, § 4.2.7	Ch. 16, § 4.2.7
Ch. 16, § 4.2.8	Ch. 16, § 4.2.8
Ch. 16, § 4.2.9	Ch. 16, § 4.2.9
Ch. 16, § 4.3.1	Ch. 16, § 4.3.1
Ch. 16, § 4.3.2	Ch. 16, § 4.3.2
Ch. 16, § 4.3.3	Ch. 16, § 4.3.3
Ch. 16, § 4.3.4	Ch. 16, § 4.3.4
Ch. 16, § 4.3.5	Ch. 16, § 4.3.5
Ch. 16, § 4.3.6	Ch. 16, § 4.3.6
Ch. 16, § 4.3.7	Ch. 16, § 4.3.7
Ch. 16, § 4.3.8	Ch. 16, § 4.3.8
Ch. 16, § 4.3.9	Ch. 16, § 4.3.9
Ch. 16, § 4.3.10	Ch. 16, § 4.3.10
Ch. 16, § 4.3.11	Ch. 16, § 4.3.11
Ch. 16, § 4.3.12	Ch. 16, § 4.3.12
Ch. 16, § 4.3.13	Ch. 16, § 4.3.13
Ch. 16, § 4.4.1	Ch. 16, § 4.4.1
Ch. 16, § 4.4.2	Ch. 16, § 4.4.3
Ch. 16, § 4.4.3	Ch. 16, § 4.4.5

Ch. 16, § 5.1.1	Ch. 16, § 5.1.1
Ch. 16, § 5.2.1	Ch. 16, § 5.2.1
Ch. 16, § 5.3.1	Ch. 16, § 5.3.1
Ch. 16, § 5.3.2	Ch. 16, § 5.3.2
Ch. 16, § 5.3.3	Ch. 16, § 5.3.3
Ch. 16, § 5.3.4	Ch. 16, § 5.3.4
Ch. 16, § 5.3.5	Ch. 16, § 5.3.5
Ch. 16, § 5.3.6	Ch. 16, § 5.3.6
Ch. 16, § 5.3.7	Ch. 16, § 5.3.7
Ch. 16, § 5.3.8	Ch. 16, § 5.3.8
Ch. 16, § 5.4.1	Ch. 16, § 5.4.1
Ch. 16, § 5.4.2	Ch. 16, § 5.4.2
Ch. 16, § 5.4.2.1	Ch. 16, § 5.4.2.1
Ch. 16, § 5.4.3	Ch. 16, § 5.4.3
Ch. 16, § 5.4.4	Ch. 16, § 5.4.4
Ch. 16, § 5.4.5	Ch. 16, § 5.4.5
Ch. 16, § 5.4.6	Ch. 16, § 5.4.6
Ch. 16, § 5.4.7	Ch. 16, § 5.4.7
Ch. 16, § 5.5.1	Ch. 16, § 5.5.1
Ch. 16, § 5.5.2	Ch. 16, § 5.5.2
Ch. 16, § 5.5.3	Ch. 16, § 5.5.3
Ch. 16, § 5.6.1	Ch. 16, § 5.6.1
Ch. 16, § 5.6.2	Ch. 16, § 5.6.2
Ch. 16, § 5.6.3	Ch. 16, § 5.6.3
Ch. 16, § 5.6.4	Ch. 16, § 5.6.4
Ch. 16, § 5.6.5	Ch. 16, § 5.6.5
Ch. 16, § 6.1.1	Ch. 16, § 6.1.1
Ch. 16, § 6.2.1	Ch. 16, § 6.2.1
Ch. 16, § 6.2.2	Ch. 16, § 6.2.2
Ch. 16, § 6.3.1	Ch. 16, § 6.3.1

Ch. 16, § 6.3.2	Ch. 16, § 6.3.2
Ch. 16, § 6.3.3	Ch. 16, § 6.3.3
Ch. 16, § 6.3.4	Ch. 16, § 6.3.4
Ch. 16, § 6.3.5	Ch. 16, § 6.3.5
Ch. 16, § 6.4.1	Ch. 16, § 6.4.1
Ch. 16, § 6.4.2	Ch. 16, § 6.4.2
Ch. 16, § 6.4.3	Ch. 16, § 6.4.3
Ch. 16, § 6.4.4	Ch. 16, § 6.4.4
Ch. 16, § 6.4.5	Ch. 16, § 6.4.5
Ch. 16, § 7.1.1	Ch. 16, § 7.1.1
Ch. 16, § 7.1.2	Ch. 16, § 7.1.2
Ch. 16, § 7.1.3	Ch. 16, § 7.1.3
Ch. 16, § 7.1.4	Ch. 16, § 7.1.4
Ch. 16, § 7.1.5	Ch. 16, § 7.1.5
Ch. 16, § 7.2.1	Ch. 16, § 7.2.1
Ch. 16, § 7.2.2	Ch. 16, § 7.2.2
Ch. 16, § 7.2.3	Ch. 16, § 7.2.2
Ch. 16, § 7.2.4	Ch. 16, § 7.2.3
Ch. 16, § 7.2.5	Ch. 16, § 7.2.4
Ch. 16, § 7.2.6	Ch. 16, § 7.2.5
Ch. 16, § 7.2.11	Ch. 16, § 7.2.6
Ch. 16, § 7.2.12	Ch. 16, § 7.2.7
Ch. 16, § 7.2.13	Ch. 16, § 7.2.8
Ch. 16, § 7.2.14	Ch. 16, § 7.2.9
Ch. 16, § 7.2.15	Ch. 16, § 7.2.10
Ch. 16, § 7.2.16	Ch. 16, § 7.2.11
Ch. 16, § 7.2.17	Ch. 16, § 7.2.12
Ch. 16, § 7.2.18	Ch. 16, § 7.2.13
Ch. 16, § 7.2.19	Ch. 16, § 7.2.14

Ch. 16, § 7.2.26	Ch. 16, § 7.2.15
Ch. 16, § 7.3	Ch. 16, Art. 7, Div. 7.3
Ch. 16, § 7.3.1	Ch. 16, § 7.3.1
Ch. 16, § 7.3.2	Ch. 16, § 7.3.2
Ch. 16, § 7.4	Ch. 16, Art. 7, Div. 7.4
Ch. 16, § 7.4.1	Ch. 16, § 7.4.1
Ch. 16, § 7.4.2	Ch. 16, § 7.4.2
Ch. 16, § 7.4.3	Ch. 16, § 7.4.3
Ch. 16, § 7.5	Ch. 16, Art. 7, Div. 7.5
Ch. 16, § 7.5.1	Ch. 16, § 7.5.1
Ch. 16, § 7.5.2	Ch. 16, § 7.5.2
Ch. 16, § 8.1.1	Ch. 16, § 8.1.1
Ch. 16, § 8.1.2	Ch. 16, § 8.1.2
Ch. 16, § 8.1.3	Ch. 16, § 8.1.3
Ch. 16, § 8.1.4.010	Ch. 16, § 8.1.4.010
Ch. 16, § 8.1.4.015	Ch. 16, § 8.1.4.015
Ch. 16, § 8.1.4.020	Ch. 16, § 8.1.4.020
Ch. 16, § 8.1.4.025	Ch. 16, § 8.1.4.025
Ch. 16, § 8.1.4.030	Ch. 16, § 8.1.4.030
Ch. 16, § 8.1.4.035	Ch. 16, § 8.1.4.035
Ch. 16, § 8.1.4.040	Ch. 16, § 8.1.4.040
Ch. 16, § 8.1.4.045	Ch. 16, § 8.1.4.045
Ch. 16, § 8.1.4.050	Ch. 16, § 8.1.4.050
Ch. 16, § 8.1.4.055	Ch. 16, § 8.1.4.055
Ch. 16, § 8.1.4.060	Ch. 16, § 8.1.4.060
Ch. 16, § 9.1.1	Ch. 16, § 9.1.1
Ch. 16, § 9.1.2	Ch. 16, § 9.1.2
Ch. 16, § 9.1.3	Ch. 16, § 9.1.3
Ch. 16, § 9.1.4	Ch. 16, § 9.1.4

Ch. 16, § 9.2.1	Ch. 16, § 9.2.1
Ch. 16, § 9.2.2	Ch. 16, § 9.2.2
Ch. 16, § 9.2.3	Ch. 16, § 9.2.3
Ch. 16, § 9.2.4	Ch. 16, § 9.2.4
Ch. 16, § 9.2.5	Ch. 16, § 9.2.5
Ch. 16, § 9.2.6	Ch. 16, § 9.2.6
Ch. 16, § 9.2.7	Ch. 16, § 9.2.7
Ch. 16, § 9.2.8	Ch. 16, § 9.2.8
Ch. 16, § 9.2.9	Ch. 16, § 9.2.9
Ch. 16, § 9.2.10	Ch. 16, § 9.2.10
Ch. 16, § 9.2.11	Ch. 16, § 9.2.11
Ch. 16, § 9.2.12	Ch. 16, § 9.2.12
Ch. 16, § 9.2.13	Ch. 16, § 9.2.13
Ch. 16, § 9.2.14	Ch. 16, § 9.2.14
Ch. 16, § 9.2.15	Ch. 16, § 9.2.15
Ch. 16, § 9.3.1	Ch. 16, § 9
Ch. 16, § 9.3.2	Ch. 16, § 9.3.2
Ch. 16, § 9.3.3	Ch. 16, § 9.3.3
Ch. 16, § 9.3.4	Ch. 16, § 9.3.4
Ch. 16, § 9.4.1	Ch. 16, § 9.4.1
Ch. 16, § 9.4.2	Ch. 16, § 9.4.2
Ch. 16, § 9.4.3	Ch. 16, § 9.4.3
Ch. 16, § 9.4.4	Ch. 16, § 9.4.4
Ch. 16, § 9.4.5	Ch. 16, § 9.4.5
Ch. 16, § 10.1	Ch. 16, § 10.1
Ch. 16, § 10.2	Ch. 16, § 10.2
Ch. 16, § 10.3	Ch. 16, § 10.3
Ch. 16, § 10.4	Ch. 16, § 10.4
Ch. 16, § 10.5	Ch. 16, § 10.5
Ch. 16, § 10.6	Ch. 16, § 10.6

Ch. 16, § 10.7	Ch. 16, § 10.7
Ch. 16, § 10.8	Ch. 16, § 10.8
Ch. 16, § 10.9	Ch. 16, § 10.9
Ch. 16, § 10.10	Ch. 16, § 10.10

CODE COMPARATIVE TABLE CHARTER ORDINANCES

This table gives the location within this Code of those Charter ordinances which are included herein. Charter ordinances not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature.

<i>Charter Ordinance</i>	<i>Date</i>	<i>Section</i>	<i>Section this Code</i>
Chartr. Ord. No. 6	12-12-1968	2	1-209
		--	6-104
Chartr. Ord. No. 9		3	1-301
		--	9-104
Chartr. Ord. No. 12		2	9-112
Chartr. Ord. No. 13		--	1-204
Chartr. Ord. No. 15	2-14-2008	--	App. A
Chartr. Ord. No. 16	6-13-2013	--	App. A
Chartr. Ord. No. 17	11-12-2015	--	6-103
		--	6-106
		--	App. A
Chartr. Ord. No. 18	11-12-2015	--	App. A
Chartr. Ord. No. 19	5-12-2022	1(1-206)	1-206
		1(1-301)	1-301
		1(1-302)	1-302
		1(1-303)	1-303
		1(1-304)	1-304
		1(1-305)	1-305
		1(1-307)	1-307
		--	App. A

CODE COMPARATIVE TABLE LEGISLATION

This table gives the location within this Code of those ordinances which are included herein. Ordinances not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature.

<i>Legislation</i>	<i>Date</i>	<i>Section</i>	<i>Section this Code</i>
Ord. No. 1		Rule 4	1-307
Ord. No. 2		6	1-3A04
Ord. No. 121		3	7-304
		4	7-304
Ord. No. 268		1	11-301
Ord. No. 283		2	8-501
		4	8-507
Ord. No. 308		--	1-502
Ord. No. 325		--	8-501
Ord. No. 339		1	5-103
		2	5-101
		3	5-104
		5	5-106
		6	5-107
		8	5-109
		10	5-111
		11	5-112
		12	5-113
		13	5-114
		14	5-115
Ord. No. 397		1	5-301
		2	5-302
		3	5-303
Ord. No. 422		1	8-602

		2	8-603
		3	8-601
Ord. No. 512		1	8-504
Ord. No. 548		1	5-108
Ord. No. 551		--	14-202
Ord. No. 557		--	12-206
Ord. No. 559		14	2-210
Ord. No. 564		--	1-203
Ord. No. 582		--	14-202
Ord. No. 596		--	5-415
		--	5-417
Ord. No. 598		--	3-104, 3-105
		--	5-401
		--	5-404--5-406
		--	5-408--5-413
		--	5-416
		--	5-418--5-421
		--	5-423
		--	11-302, 11-303
		6.15-1	10-109
Ord. No. 599		12	2-118
Ord. No. 601		1	1-303
Ord. No. 603		--	14-202
		1	14-205
		2	14-205
		3	14-206
		4	14-207
		6	14-208
		7	14-209
		8	14-210

		9	14-211
		10	14-212
		11	14-213
		12	14-214
		13	14-214
		14	14-214
		15	14-215
Ord. No. 611		--	14-202
Ord. No. 613		1	5-601
		2	5-602
		3	5-603
		4	5-604
		5	5-605
		6	5-606
		7	5-607
Ord. No. 618		1-4	14-216
Ord. No. 620		--	14-202
Ord. No. 622		1	7-301
		2	7-302
		4	7-305
Ord. No. 629		--	14-202
Ord. No. 637		1	8-311
		2	8-312
		3	8-313
Ord. No. 638		--	14-202
Ord. No. 639		--	8-201
Ord. No. 642		--	14-202
Ord. No. 661		--	1-210
Ord. No. 665		--	1-303
Ord. No. 674		--	1-3A04

Ord. No. 683		--	14-202
Ord. No. 689		--	14-202
Ord. No. 697		--	14-202
Ord. No. 700		1	10-401
		2	10-402
		3	10-403
		4	10-404
		5	10-405
		6	10-406
		7	10-407
		8	10-408
		9	10-409
		11	10-410
		12	10-411
Ord. No. 702		--	12-206
Ord. No. 720		2	7-203
Ord. No. 727		1	5-110
Ord. No. 732		1	10-301
		2	10-302
		3	10-303
		4	10-304
		5	10-305
Ord. No. 734		2	5-101
Ord. No. 741		1	8-801
		2	8-802
		3	8-803
		4	8-804
Ord. No. 744		1	8-701
		2	8-702

		3	8-703
		4	8-705
		7	8-708
		8	8-709
		10	8-712
Ord. No. 745		1	11-102--11-108
		3	11-201--11-208
Ord. No. 747		1	11-209
Ord. No. 755		3	8-509
Ord. No. 756		1	8-901
Ord. No. 765		2	14-303
Ord. No. 766		--	12-206
Ord. No. 770		1	5-105
Ord. No. 773		--	14-203
Ord. No. 776		1, 4-401	8-1401
		1, 4-402	8-1405
		1, 4-403	8-1406
		1, 4-404	8-1407
		1, 4-405	8-1408
		1, 4-406	8-1402
		1, 4-407	8-1410
		1, 4-408	8-1411
Ord. No. 777		1	5-105
Ord. No. 782		--	5-801--5-812
Ord. No. 792		4-40	8-1201
		4-40.1	8-1202
		4-40.2	8-1203
		4-40.3	8-1204
		4-41	8-1205, 8-1206
		4-41.1	8-1207, 8-1208

		4-42	8-1209
		4-43	8-1210
		4-44.1	8-1211
		4-44.2	8-1212
		4-44.3	8-1213
		4-44.4	8-1214
		4-44.5	8-1215
		4-44.6	8-1216
Ord. No. 827		1	1-612
Ord. No. 828		--	14-202
Ord. No. 830		1	8-501
		2	8-511
Ord. No. 842		--	14-202
Ord. No. 845		--	14-202
Ord. No. 850		1	8-1601
		2	8-1602
Ord. No. 856		1	5-401
		2	5-402
		3	5-403
		4	5-405
		5	5-406
		--	5-408
		6	5-411
		7	5-412, 5-413
		8	5-414
		9	5-415
		10	5-421
		11	5-422
Ord. No. 860		1	3-213

		2	3-304
		--	3-403
Ord. No. 865		1	9-112
Ord. No. 869		3	15-201
		5	15-203
		6	15-204
		7	15-205
		8	15-206
		9	15-207
		10	15-208
		11	15-209
Ord. No. 877		1	14-101
Ord. No. 878		1	14-101
		2	14-102
		3	14-103
		4	14-104
		5	14-105
Ord. No. 879		1	11-101
Ord. No. 880		1	14-204
Ord. No. 883		1	8-1701--8-1706
		--	8-1708
Ord. No. 888		1	11-101
Ord. No. 894		--	8-501--8-503
		--	8-503--8-509
		--	8-511
Ord. No. 899		1	14-101
Ord. No. 900		1	11-101
Ord. No. 903		--	8-501--8-509
		--	8-511
Ord. No. 911		1	14-101

Ord. No. 912		1	11-101
Ord. No. 913		--	8-501--8-508
		--	8-511
Ord. No. 915		1	Ch. 16, § 4.3.10
Ord. No. 916		1	14-101
Ord. No. 917		1	11-101
Ord. No. 918		--	1-110
Ord. No. 920		1	Ch. 16, § 3.3
		2	Ch. 16, § 5.3.2
		3	Ch. 16, § 5.3.3
		4	Ch. 16, § 5.3.6
		5	Ch. 16, § 5.3.7
		6	Ch. 16, § 5.3.8
		8	Ch. 16, § 7.1.1
		9	Ch. 16, Art. 7, Div. 7.4
		--	Ch. 16, Art. 7, Div. 7.5
		10	Ch. 16, § 7.5.1
		11	Ch. 16, § 7.5.2
Ord. No. 921		--	8-508
Ord. No. 929		1	11-101
Ord. No. 933		--	14-202
Ord. No. 934		--	14-202
Ord. No. 937		1	14-101
Ord. No. 938		1	
Ord. No. 942		1	Ch. 16, § 9.1.4
Ord. No. 944		--	1-210
Ord. No. 953		1	14-101
Ord. No. 954		1	11-101
Ord. No. 960	7-9-2015	1(1.6.1)	Ch. 16, § 1.6.1

		1(1.6.2)	Ch. 16, § 1.6.2
		1(1.6.3)	Ch. 16, § 1.6.3
		1(1.6.4)	Ch. 16, § 1.6.4
		1(1.6.5)	Ch. 16, § 1.6.5
		1(1.6.6)	Ch. 16, § 1.6.6
		1(1.6.7)	Ch. 16, § 1.6.7
		1(1.6.8)	Ch. 16, § 1.6.8
		1(1.6.9)	Ch. 16, § 1.6.9
		1(1.6.10)	Ch. 16, § 1.6.10
		1(1.6.11)	Ch. 16, § 1.6.11
		1(1.6.12)	Ch. 16, § 1.6.12
		1(1.6.13)	Ch. 16, § 1.6.13
		1(1.6.14)	Ch. 16, § 1.6.14
		1(1.6.15)	Ch. 16, § 1.6.15
		1(1.6.16)	Ch. 16, § 1.6.16
		1(1.6.17)	Ch. 16, § 1.6.17
		1(1.6.18)	Ch. 16, § 1.6.18
		1(1.6.19)	Ch. 16, § 1.6.19
		1(1.6.20)	Ch. 16, § 1.6.20
		1(1.6.21)	Ch. 16, § 1.6.21
		1(1.6.22)	Ch. 16, § 1.6.22
		1(1.6.23)	Ch. 16, § 1.6.23
		1(1.6.24)	Ch. 16, § 1.6.24
		1(1.6.25)	Ch. 16, § 1.6.25
		1(1.6.26)	Ch. 16, § 1.6.26
		1(1.6.27)	Ch. 16, § 1.6.27
		1(1.6.28)	Ch. 16, § 1.6.28
		1(1.6.29)	Ch. 16, § 1.6.29
		1(1.6.30)	Ch. 16, § 1.6.30
		1(1.6.31)	Ch. 16, § 1.6.31

		1(1.6.32)	Ch. 16, § 1.6.32
		3	Ch. 16, § 2.3
		4(6.3.1)	Ch. 16, § 6.3.1
		4(6.3.2)	Ch. 16, § 6.3.2
		4(6.3.3)	Ch. 16, § 6.3.3
		4(6.3.4)	Ch. 16, § 6.3.4
		4(6.3.5)	Ch. 16, § 6.3.5
		5(6.4.1)	Ch. 16, § 6.4.1
		5(6.4.2)	Ch. 16, § 6.4.2
		5(6.4.3)	Ch. 16, § 6.4.3
		5(6.4.4)	Ch. 16, § 6.4.4
		5(6.4.5)	Ch. 16, § 6.4.5
		6(8.1.1)	Ch. 16, § 8.1.1
		6(8.1.2)	Ch. 16, § 8.1.2
		6(8.1.3)	Ch. 16, § 8.1.3
		6(8.1.4.010)	Ch. 16, § 8.1.4.010
		6(8.1.4.015)	Ch. 16, § 8.1.4.015
		6(8.1.4.020)	Ch. 16, § 8.1.4.020
		6(8.1.4.025)	Ch. 16, § 8.1.4.025
		6(8.1.4.030)	Ch. 16, § 8.1.4.030
		6(8.1.4.035)	Ch. 16, § 8.1.4.035
		6(8.1.4.040)	Ch. 16, § 8.1.4.040
		6(8.1.4.045)	Ch. 16, § 8.1.4.045
		6(8.1.4.050)	Ch. 16, § 8.1.4.050
		6(8.1.4.055)	Ch. 16, § 8.1.4.055
		6(8.1.4.060)	Ch. 16, § 8.1.4.060
Ord. No. 961	8-13-2015	1	14-101
Ord. No. 962	8-13-2015	1	11-101
Ord. No. 966	11-12-2015	1	6-103

		2	6-106
Ord. No. 969	4-14-2016	1(7.5)	Ch. 16, Art. 7, Div. 7.5
		1(7.5.1)	Ch. 16, § 7.5.1
		1(7.5.2)	Ch. 16, § 7.5.2
Ord. No. 972	8-11-2016	1	14-101
Ord. No. 973	8-11-2016	1	11-101
Ord. No. 975	10-13-2016	1	14-202
Ord. No. 978	1-12-2017	2(6-107)	6-107
Ord. No. 980	6-8-2017	1	13-102
		2	13-103
		3	13-104
		4	13-106
		5	13-107
		6	13-109
		7	13-110
		8	13-111
		9	13-113
		10	13-114
		11	13-115
		12	13-117
		13	13-119
		14	13-120
		15	13-125
		16	13-128
		17	13-131
		18	13-134
		19	13-142
Ord. No. 982	7-13-2017	1	14-101
Ord. No. 983	7-13-2017	1	11-101

Ord. No. 984	9-21-2017	1	Ch. 16, § 1.6.4
		2	Ch. 16, § 1.6.5
		3	Ch. 16, § 1.6.6
		4	Ch. 16, § 1.6.13
		5	Ch. 16, § 1.6.15
		6	Ch. 16, § 1.6.17
		7	Ch. 16, § 1.6.19
		8	Ch. 16, § 1.6.29
		9	Ch. 16, § 1.6.32
		10	Ch. 16, § 2.1
		11	Ch. 16, § 2.3
		12	Ch. 16, § 3.3
		13	Ch. 16, § 4.2.1
		14	Ch. 16, § 4.2.6
		15	Ch. 16, § 4.2.9
		16	Ch. 16, § 4.3.1
		17	Ch. 16, § 5.1.1
		18	Ch. 16, § 5.2.1
		19	Ch. 16, § 5.3.4
		20	Ch. 16, § 6.3.2
		21	Ch. 16, § 6.4.2
		22	Ch. 16, § 8.1.1
		23	Ch. 16, § 8.1.2
		24	Ch. 16, § 8.1.4.025
		25	Ch. 16, § 8.1.4.045
		26	Ch. 16, § 8.1.4.050
		27(10.1)	Ch. 16, § 10.1
		27(10.2)	Ch. 16, § 10.2
		27(10.3)	Ch. 16, § 10.3
		27(10.4)	Ch. 16, § 10.4

		27(10.5)	Ch. 16, § 10.5
		27(10.6)	Ch. 16, § 10.6
		27(10.7)	Ch. 16, § 10.7
		27(10.8)	Ch. 16, § 10.8
		27(10.9)	Ch. 16, § 10.9
		27(10.10)	Ch. 16, § 10.10
Ord. No. 987	12-14-2017	1	5-402
		2	5-408
		4	5-410
Ord. No. 991	6-14-2018	1(9.1.1)	Ch. 16, § 9.1.1
		1(9.1.2)	Ch. 16, § 9.1.2
		1(9.1.3)	Ch. 16, § 9.1.3
		1(9.1.4)	Ch. 16, § 9.1.4
		1(9.2.1)	Ch. 16, § 9.2.1
		1(9.2.2)	Ch. 16, § 9.2.2
		1(9.2.3)	Ch. 16, § 9.2.3
		1(9.2.4)	Ch. 16, § 9.2.4
		1(9.2.5)	Ch. 16, § 9.2.5
		1(9.2.6)	Ch. 16, § 9.2.6
		1(9.2.7)	Ch. 16, § 9.2.7
		1(9.2.8)	Ch. 16, § 9.2.8
		1(9.2.9)	Ch. 16, § 9.2.9
		1(9.2.10)	Ch. 16, § 9.2.10
		1(9.2.11)	Ch. 16, § 9.2.11
		1(9.2.12)	Ch. 16, § 9.2.12
		1(9.2.13)	Ch. 16, § 9.2.13
		1(9.2.14)	Ch. 16, § 9.2.14
		1(9.2.15)	Ch. 16, § 9.2.15
		1(9.3.1)	Ch. 16, § 9

		1(9.3.2)	Ch. 16, § 9.3.2
		1(9.3.3)	Ch. 16, § 9.3.3
		1(9.3.4)	Ch. 16, § 9.3.4
		1(9.4.1)	Ch. 16, § 9.4.1
		1(9.4.2)	Ch. 16, § 9.4.2
		1(9.4.3)	Ch. 16, § 9.4.3
		1(9.4.4)	Ch. 16, § 9.4.4
		1(9.4.5)	Ch. 16, § 9.4.5
Ord. No. 992	9-13-2018	1	14-101
Ord. No. 993	9-13-2018	1	11-101
Ord. No. 994	10-11-2018	2	1-307
Ord. No. 996	11-8-2018	1	14-217
Ord. No. 999	12-13-2018	1(2-101)	2-101
		1(2-102)	2-102
		1(2-103)	2-103
		1(2-104)	2-104
		1(2-105)	2-105
		1(2-106)	2-106
		1(2-108)	2-108
		1(2-110)	2-110
		1(2-111)	2-111
		1(2-112)	2-112
		1(2-113)	2-113
		1(2-114)	2-114
		1(2-115)	2-115
		1(2-116)	2-116
		1(2-117)	2-117
		1(2-118)	2-118
		1(2-119)	2-119
		1(2-120)	2-120

		1(2-121)	2-121
		1(2-201)	2-201
		1(2-204)	2-204
		1(2-205)	2-205
		1(2-206)	2-206
		1(2-207)	2-207
		1(2-208)	2-208
		1(2-209)	2-209
		1(2-210)	2-210
		1(2-211)	2-211
		1(2-401)	2-401
		1(2-402)	2-402
		1(2-403)	2-403
		1(2-404)	2-404
		1(2-405)	2-405
		1(2-406)	2-406
		1(2-407)	2-407
		1(2-408)	2-408
		1(2-409)	2-409
		1(2-410)	2-410
		1(2-411)	2-411
		1(2-412)	2-412
		1(2-501)	2-501
		1(2-502)	2-502
		1(2-503)	2-503
		1(2-504)	2-504
		1(2-505)	2-505
		1(2-506)	2-506
		1(2-507)	2-507

		1(2-508)	2-508
		1(2-601)	2-601
Ord. No. 1000	3-14-2019	1	Ch. 16, § 2.3
		2	Ch. 16, § 2.3
		3	Ch. 16, §§ 4.5.1--4.5.7
Ord. No. 1002	9-12-2019	1	14-101
Ord. No. 1003	9-12-2019	1	11-101
Ord. No. 1004	10-10-2019	1(5-1001)	5-1001
		1(5-1002)	5-1002
		1(5-1003)	5-1003
		1(5-1004)	5-1004
		--	5-1006
		1(5-1005)	5-1005
		--	5-1007
		2(8-901)	8-901
		2(8-902)	8-902
		2(8-903)	8-903
		2(8-904)	8-904
Ord. No. 1008	3-26-2020	1	1-701
		2	1-702
		3	1-703
		4	1-704
		5	1-705
		6	1-706
		7	1-707
Ord. No. 1009	3-11-2021	1(4-101)	4-101
		1(4-102)	4-102
		1(4-103)	4-103
		1(4-105)	4-105

Ord. No. 1010	3-11-2021	1(4-201)	4-201
		1(4-202)	4-202
Ord. No. 1011	3-11-2021	1(4-301)	4-301
		1(4-302)	4-302
Ord. No. 1012	3-11-2021	1(4-401)	4-401
		1(4-402)	4-402
Ord. No. 1013	3-11-2021	1(4-501)	4-501
		1(4-502)	4-502
Ord. No. 1014	3-11-2021	1(4-601)	4-601
		1(4-602)	4-602
Ord. No. 1015	3-11-2021	1(4-701)	4-701
		1(4-702)	4-702
Ord. No. 1016	3-11-2021	1(4-80)	4-802
		1(4-801)	4-801
Ord. No. 1017	3-11-2021	1(4-901)	4-901
		1(4-902)	4-902
		1(4-903)	4-903
Ord. No. 1018	3-11-2021	1(4-1001)	4-1001
		1(4-1002)	4-1002
Ord. No. 1019	4-8-2021	2	1-216
		--	6-105
Ord. No. 1020	7-8-2021	1	3-213
		2	3-304
Ord. No. 1021	8-12-2021	1(3-101)	3-101
		1(3-201)	3-201
		1(3-202)	3-202
		1(3-202A)	3-202A
		1(3-203)	3-203
		1(3-204)	3-204
		1(3-205)	3-205

		1(3-206)	3-206
		1(3-207)	3-207
		1(3-208)	3-208
		1(3-209)	3-209
		1(3-210)	3-210
		1(3-211)	3-211
		1(3-212)	3-212
		1(3-213)	3-213
		1(3-214)	3-214
		1(3-215)	3-215
		1(3-216)	3-216
Ord. No. 1024	2-10-2022	(37(4.4.1)	Ch. 16, § 4.4.1
		1(1.1.2)	Ch. 16, § 1.1.2
		3	Ch. 16, § 1.3.5
		4	Ch. 16, § 1.3.7
		5(1.4.2)	Ch. 16, § 1.4.2
		5(1.4.4)	Ch. 16, § 1.4.4
		5(1.4.6)	Ch. 16, § 1.4.6
		5(1.45.)	Ch. 16, § 1.4.5
		6	Ch. 16, § 1.5.1
		7	Ch. 16, § 1.5.2
		8	Ch. 16, § 1.5.3
		9	Ch. 16, § 1.6.4
		10	Ch. 16, § 1.6.5
		11	Ch. 16, § 1.6.15
		12	Ch. 16, § 1.6.16
		13	Ch. 16, § 1.6.17
		14	Ch. 16, § 1.6.20
		15	Ch. 16, § 1.8.4

		16	Ch. 16, § 2.2
		17	Ch. 16, § 2.3
		18	Ch. 16, § 3.2
		19	Ch. 16, § 3.3
		20	Ch. 16, § 3.4
		21	Ch. 16, § 3.8
		22	Ch. 16, § 4.1.1
		23	Ch. 16, § 4.1.2
		24	Ch. 16, § 4.2.1
		25	Ch. 16, § 4.2.3
		26	Ch. 16, § 4.2.8
		27	Ch. 16, § 4.3.1
		28	Ch. 16, § 4.3.2
		29	Ch. 16, § 4.3.4
		30	Ch. 16, § 4.3.5
		31	Ch. 16, § 4.3.6
		32	Ch. 16, § 4.3.7
		33	Ch. 16, § 4.3.8
		34	Ch. 16, § 4.3.9
		35	Ch. 16, § 4.3.10
		36	Ch. 16, § 4.3.11
		37(4.4.2)	Ch. 16, § 4.4.2
		37(4.4.3)	Ch. 16, § 4.4.3
		37(4.4.4)	Ch. 16, § 4.4.4
		37(4.4.5)	Ch. 16, § 4.4.5
		38	Ch. 16, § 4.5.2
		39	Ch. 16, § 4.5.3
		40	Ch. 16, § 5.3.1
		41	Ch. 16, § 5.3.3
		43	Ch. 16, §§ 5.3.4, 5.3.5

		44	Ch. 16, §§ 5.4.2, 5.4.2.1
		47	Ch. 16, § 6.2.2
		48	Ch. 16, § 6.3.1
		49	Ch. 16, § 6.3.2
		50	Ch. 16, § 6.3.3
		51	Ch. 16, § 6.3.5
		53	Ch. 16, § 6.4.1
		54	Ch. 16, § 6.4.2
		55	Ch. 16, § 6.4.4
		56	Ch. 16, § 6.4.5
		57	Ch. 16, § 7.1.3
		58	Ch. 16, § 7.1.5
		59(7.2.1)	Ch. 16, § 7.2.1
		59(7.2.2)	Ch. 16, § 7.2.2
		59(7.2.3)	Ch. 16, § 7.2.3
		59(7.2.4)	Ch. 16, § 7.2.4
		59(7.2.5)	Ch. 16, § 7.2.5
		59(7.2.6)	Ch. 16, § 7.2.6
		59(7.2.7)	Ch. 16, § 7.2.7
		59(7.2.8)	Ch. 16, § 7.2.8
		59(7.2.9)	Ch. 16, § 7.2.9
		59(7.2.10)	Ch. 16, § 7.2.10
		59(7.2.11)	Ch. 16, § 7.2.11
		59(7.2.12)	Ch. 16, § 7.2.12
		59(7.2.13)	Ch. 16, § 7.2.13
		59(7.2.14)	Ch. 16, § 7.2.14
		59(7.2.15)	Ch. 16, § 7.2.15
		59(7.2.16)	Ch. 16, § 7.2.16
		60	Ch. 16, Art. 7, Div. 7.4

		61	Ch. 16, § 9.1.3
		62	Ch. 16, § 9.1.4
		64	Ch. 16, § 9.2.2
		65	Ch. 16, § 9.4.1
		66	Ch. 16, § 10.1
		67	Ch. 16, § 10.2
Ord. No. 1026	5-12-2022	1(1-213)	1-214
		1(1-214)	1-215
		2(1-308)	1-308
		2(1-309)	1-309
		3(1-3A01)	1-3A01
		3(1-3A02)	1-3A02
		3(1-3A03)	1-3A04
		3(1-3A04)	1-3A05
		3(1-3A05)	1-3A06
		3(1-3A06)	1-3A07
		3(1-3A07)	1-3A08
		4(1-401)	1-401
		4(1-402)	1-402
		5(1-501)	1-501
		5(1-502)	1-502
		5(1-503)	1-504
		6(1-612)	1-612
		6(1-613)	1-614
		6(1-614)	1-615
Ord. No. 1027	5-12-2022	1	2-108
		2	2-210
Ord. No. 1028	5-12-2022	1(4-1101)	4-1101
		1(4-1102)	4-1102
		1(4-1103)	4-1103

		1(4-1104)	4-1104
		1(4-1105)	4-1105
		1(4-1106)	4-1106
		1(4-1107)	4-1107
		1(4-1108)	4-1108
		1(4-1109)	4-1109
		1(4-1110)(1)	4-1110
		1(4-1110)(2)	4-1110
		1(4-1111)	4-1111
Ord. No. 1029	5-12-2022	1(5-101)	5-101
		1(5-103)	5-103
		1(5-105)	5-105
		1(5-108)	5-108
		1(5-110)	5-110
		1(5-112)	5-112
		1(5-117)	5-117
		1(5-119)	5-119
		1(5-120)	5-120
		2(5-1101)	5-1101
		2(5-1102)	5-1102
		2(5-1103)	5-1103
		2(5-1104)	5-1104
		2(5-1105)	5-1105
Ord. No. 1030	8-11-2022	1	14-202
		2	14-104
Ord. No. 1031	10-13-2022	1	14-101
Ord. No. 1032	10-13-2022	1	11-101
Ord. No. 1035	8-10-2023	1	11-101
Ord. No. 1036	8-10-2023	1	14-101

