



ADOPTED
August 9, 2022
LAST AMENDED
August 2022

CITY OF NEWTON, KANSAS

Zoning Regulations

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ARTICLE I - GENERAL PROVISIONS

I.1 Title.

This Code shall be known as, referred to, and cited as the "Zoning Ordinance" for the City of Newton, Kansas.

I.2 Authority.

This Ordinance is adopted under the authority granted by K.S.A. 12-741 et. seq. of the Kansas Statutes and amendments thereto.

I.3 Purpose.

The purpose of this Ordinance is to promote the comfort, health, safety, morals, prosperity, aesthetics, and general welfare of the citizens residing in the community of Newton, by dividing such city into zones or districts and prescribing regulations and restrictions on the location and use of buildings and the use of land within each district or zone.

I.4 Intent.

It is the general intent of this Ordinance to:

- 1.4-1. Regulate the use of all structures and land in the community.
- 1.4-2. Regulate lot coverage, population density and distribution, and the location and size of all structures.
- 1.4-3. Secure safety from fire, flooding, panic, and other dangers.
- 1.4-4. Provide adequate light, air, sanitation, and drainage.
- 1.4-5. Further the appropriate use of land and conservation of natural resources.
- 1.4-6. Obtain the wise use, conservation, development, and protection of the City's water, soil, wetland, woodland, and wildlife resources, and attain a balance between land uses and the ability of the natural resource base to support and sustain such uses.
- 1.4-7. Prevent overcrowding and avoid undue population concentration and urban sprawl.
- 1.4-8. Stabilize and protect the natural beauty.
- 1.4-9. Lessen congestion in and promote the safety and efficiency of the streets and highways.
- 1.4-10. Facilitate the adequate provision of public facilities and utilities. To guide future growth and development and encourage the most orderly and beneficial development of the City.

1.4-11. To bring about the gradual conformity of uses of land to the zoning set forth in this Ordinance, and to minimize the conflicts among uses of land and buildings.

1.4-12. In addition, it is intended to provide for the administration and enforcement of this Ordinance and to provide penalties for its violation.

I.5 Abrogation and Greater Restrictions.

1.5-1. Public Provisions: The provisions of this Zoning Ordinance are not intended to interfere with, abrogate, or annul any other City rule, regulation, statute, or other provision of law. Where any provision of this Ordinance imposes restrictions different from those imposed by any other statute, rule, regulations or other provision of law, whichever provisions are more restrictive, or impose higher standards, shall control.

1.5-2. Private Provisions: The provisions of this Zoning Ordinance are not intended to abrogate any easement, covenant or any other private agreement, or restriction, provided that, where the provisions of this Zoning Ordinance are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of this Zoning Ordinance shall govern.

I.6 Interpretation.

In their interpretation and application, the provisions of this Ordinance shall be liberally construed in favor of the City, and shall not be construed to be a limitation or repeal of any other power granted by the Kansas Statutes.

I.7 Severability and Non-liability.

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

I.8 Reservations and Repeals.

Upon the adoption of this Zoning Ordinance, the Zoning Ordinance of 1976, adopted October 20, 1976, as amended, is hereby repealed.

I.9 Savings Provision.

This Zoning Ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing Zoning Ordinance, or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the City under any section or provision existing at the time of adoption of this Ordinance, or as vacating or annulling any rights obtained by any person, firm, or corporation, by lawful action of the City, except as shall be expressly provided for in this Ordinance.

I.10 Amendments.

- 1.10-1. Authority: For the purpose of promoting and protecting the public health, safety and general welfare, the City of Newton may from time to time, in the manner hereinafter set forth, amend, change, supplement, or revise the regulations imposed in the districts, the district boundary lines, and the Zoning Map.
- 1.10-2. Initiation of Amendments: Amendments may be proposed by the Governing Body, the Planning Commission, or the owner(s) of the property affected.
- 1.10-3. Form of Application: Applications shall be made on forms provided by the Planning Department and shall be filed in duplicate with the Planning Commission. The application shall be in such form and contain such information as shall be prescribed from time to time by the Planning Commission, but shall in all instances contain the following information:
 - A. The applicant's name and address.
 - B. If affecting a change in the regulations, the precise wording of any proposed amendment to these Regulations and a statement indicating the reasons for the proposed change and why the existing language or provision is inadequate.
 - C. If affecting a change in the Zoning Map:
 - 1) The legal description and street address of the property proposed to be reclassified.
 - 2) The name and address of the owner or owners of said property.
 - 3) The present zoning classification and existing uses of the property proposed to be reclassified.
 - 4) The area of the property proposed to be reclassified.
 - 5) An ownership list certified by a registered abstractor which shall include the names and addresses of all owners of record of any property located within 200 feet of the outer limits of said area which the applicant proposes to have reclassified when the project is located within the City of Newton. In the county, a list of all owners of record of real property located within at least 1,000 feet of the area proposed to be altered shall be provided.
 - a) Such application shall be accompanied by a three-hundred-dollar (\$300.00) fee, except for proposals initiated by a governmental body or the Planning Commission.

1.10-4. Procedure for Consideration of Amendment:

- A. Holding Public Hearings: Upon receipt of an application for zoning amendment, the Planning Commission shall hold a public hearing at a reasonable time and place, but not later than sixty (60) days from the date upon which the application was filed with the Planning Commission.
- B. Notice of Hearing: The Planning Commission shall hold at least one public hearing on the proposed amendment, twenty (20) days' notice of the time and place of which shall be published in the official City newspaper stating the date, time, and place of the hearing and shall describe such proposal in general terms. If the proposed amendment would change the zoning classification of any property, or the boundaries of any zoning district, such notice shall contain the legal description and street address or general street location of such property, its present zoning classification, and the proposed classification. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least twenty (20) days before the hearing to all owners of record of real property within the area to be altered and to all owners of record of real property located within at least 200 feet of the area proposed to be altered for regulations of a city and to all owners of record of real property located within at least 1,000 feet of the area proposed to be altered for regulations of a county. If a city proposes a zoning amendment to property located adjacent to or outside the city's limits, the area of notification of the city's action shall be extended to at least 1,000 feet in the unincorporated area. Such notice is sufficient to permit the Planning Commission to recommend amendments to zoning ordinances which affect only a portion of the land described in the notice or which give all or any part of the land described a zoning classification or lesser change than that set forth in the notice. The Planning Commission may give such additional notice to other persons as it may from time to time provide by its rules.
- C. Conduct of Hearing: The hearing shall be conducted, and a record of the proceedings shall be preserved in such a manner and according to such procedures as the Planning Commission may from time to time prescribe by rule. Any interested person or party may appear and be heard at the hearing in person by agent or by attorney. The Planning Commission may request a report on any proposed amendment from any governmental official or agency, or any other person, firm, or corporation. If such a report is made, a copy thereof shall be made available to the applicant and any other interested person in the offices of the Planning Commission.
- D. Findings of Fact and Recommendation of the Planning Commission:

Within sixty (60) days after the close of a public hearing on a proposed amendment, the Planning Commission shall submit a report to the City Governing Body. A copy of the report shall be filed with the City Clerk and with the office of the City Planner and such copies shall be kept available for public inspection. A vote either for or against an amendment by a majority of all the Planning Commissioners present constitutes a recommendation of the Planning Commission; whereas a vote either for or against an amendment by less than a

majority of all of the Planning Commissioners present constitutes a "failure to recommend." Such report shall contain findings based upon the evidence presented and a recommendation as to whether the proposed amendment should be adopted. The report submitted to the City Governing Body shall be accompanied by a copy of the record of the hearing on the proposed amendment.

- 1) Amendments to Change Zoning Districts: When a proposed amendment would result in a change of the zoning classification of any specific property, the report of the Planning Commission shall contain statements as to the present classification, the classification under the proposed amendment, the character of the neighborhood, the zoning and land uses of the properties nearby and findings to the following:
 - a) Whether the change in classification would be consistent with the intent and purpose of these Regulations, with the City's adopted Comprehensive Plan and other adopted City policies, programs, ordinances, rules, and regulations
 - b) Whether every use that would be permitted on the property if it were reclassified would be compatible with the uses permitted on other property in the immediate vicinity; and whether the subject property is suitable for the uses to which it has been restricted.
 - c) Whether adequate sewer and water facilities, and all other needed public services, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified.
 - d) Whether the proposed amendment would correct an error in the application of these Regulations.
 - e) Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions; and whether the proposed amendment provides a disproportionately great loss to the individual landowners relative to the public gain.
- 2) Amendments to Text: When a proposed amendment would result in a change in the text of these Regulations, but would not result in a change of zoning classification of any specific property, the report of the Planning Commission shall contain a statement as to the effect of such proposed amendment and findings as to the following:
 - a) Whether such change is consistent with the interest and purpose of these Regulations.
 - b) The areas which are most likely to be directly affected by such change and in what way they will be affected.

- c) Whether the proposed amendment is made necessary because of changed or changing conditions in the areas and zoning districts affected, and, if so, the nature of such changes or changing conditions

E. Action by the Governing Body:

- 1) Receipt of Planning Commission Report and Recommendation: The Governing Body shall act only after the Planning Commission has submitted either a recommendation of approval or disapproval, or a "failure to recommend."
- 2) Consideration of the Planning Commission Recommendation: The Governing Body shall consider the Planning Commission's recommendation at the next regularly scheduled Governing Body meeting for which the agenda item can be docketed, except that no recommendation on a zoning district amendment shall be considered by the Governing Body until fifteen (15) days after the close of the Planning Commission public hearing on such amendment.
- 3) Action by Governing Body: The Governing Body shall:
 - a) Approve the recommendation of the Planning Commission and adopt such recommendation by ordinance; or
 - b) Take no further action thereon; or
 - c) Disapprove the Planning Commission's recommendation and return such recommendation to the Planning Commission with a written statement specifying the basis for disapproval, and such recommendation shall be reconsidered by the Planning Commission at its next regularly scheduled meeting; or
 - d) Take such action as it deems appropriate in the event the Planning Commission submits a "failure to recommend" to the Governing Body as set forth in Section 1.10-4.G of these Regulations.
- 4) Reconsideration by Planning Commission: Within ten (10) days after receipt at a Planning Commission meeting of the Governing Body's statement specifying disapproval, the Planning Commission shall reconsider such recommendation and resubmit its original recommendation giving the reasons therefore, or submit new and amended recommendations.
- 5) Reconsideration by the Governing Body: The Governing Body, upon receipt of such recommendation, may adopt or may revise or amend and adopt such recommendation by ordinance, or it need take no action thereon. If the Planning Commission fails to deliver its recommendations to the Governing Body within ten (10) days after receipt of the Governing Body's statement specifying disapproval, the governing body shall consider

such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

- 6) Inaction by Governing Body: If a proposed amendment is considered by the Governing Body but not acted upon finally within 120 days of the date upon which the Planning Commission report and recommendation was considered, such proposed amendment shall be deemed to have been denied, unless the applicant for such amendment shall have consented to an extension of such period in time.
- 7) Protest: If a protest against the proposed amendment is filed in the office of the City Clerk within fourteen (14) days after the date of the conclusion of the Planning Commission public hearing pursuant to said publication notice, duly signed and acknowledged by the owners of twenty percent (20%) or more of any real property proposed to be rezoned or by the owners of twenty percent (20%) of the total area, excepting public street and ways, located within or without the corporate limits of the City and located within two hundred (200) feet of the boundaries within the City, and 1000 feet within the County, of the property proposed to be rezoned, then such amendment shall not be passed except by at least 3/4 vote of all the members of the Governing Body.

1.11 Scope of Controls.

- 1.11-1 Existing Permits: This Ordinance is not intended to abrogate or annul any building permit, certificate of occupancy, variance or special permit lawfully issued before the effective date of this ordinance, except as follows:
- A. If the applicable regulations of this ordinance or any amendments to the ordinance after issuance of a building permit, granting of a variance or issuance of a special permit make the proposed use under such building permit, variance or special permit nonconforming as to the Use and Bulk Regulations, and no substantial construction or substantial operations for nonbuilding uses have been undertaken on the structure or foundation, or conducted for the nonbuilding uses, within one hundred twenty (120) days after the effective date of the adoption of this ordinance and any amendments thereto, the building permit, special permit, or variance shall be invalid. If substantial construction or substantial operations have taken place and are continuing at the time, the proposed use may be completed.
 - B. Nothing herein shall prevent any holder of a variance from applying to the Board of Zoning Appeals for a variance, where appropriate under the currently existing law and facts.

1.12 Fees.

- 1.12-1 The applicant shall pay all fees associated with the filing or review of any application as listed in the official fee schedule, located at the Newton City Engineering Office.
- A. An application filing and/or review fee must be paid prior to any application being formally accepted by the City. Filing and/or review fees are non-refundable.
 - B. All other incidental costs associated with legal publication and recording of documents and plats shall be paid by the applicant.

ARTICLE II - ESTABLISHMENT OF DISTRICTS, ZONING MAP AND BOUNDARIES

2.1. Establishment of Districts.

For the purpose of these regulations, the Cities of Newton are hereby divided into the following districts, the respective symbol for each district being set forth opposite its title:

<u>Symbol</u>	<u>Title</u>
R-S	Single-family Suburban District
R-1	Single-family Dwelling District
R-T	Residential Traditional Dwelling District
R-2	Two-family Dwelling District
R-2A	Residential Dwelling District
R-3	Multi-family Dwelling District
R-3 (FMFD)	Flexible Multi-family Dwelling District
PUD	Planned Unit Development District
T-C	Tiny Home Community District
M-P	Mobile Home Park District
P-O	Professional Office District
C-T	Transitional Business District
C-1	Neighborhood Business District
C-2	General Business District
C-3	Central Business District
I-1	Light Industrial District
I-2	General Industrial District
I-3	Heavy Industrial District
F-P	Flood Plain Overlay District
H-D	Historic and Cultural Overlay Districts
AIR-1	Airport Zoning District

Each such district may be designated on the Zoning Map, in the Use and Bulk Tables, and elsewhere in the text of these regulations by symbol only.

2.2. Zoning Map.

2.2-1 General: The areas and boundaries of such districts are hereby established as shown on the Official Zoning Map, and said Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of these Regulations.

2.2-2 Zoning Map Changes: If in accordance with the provisions of these Regulations, changes are made in the district boundaries or on other matter portrayed on the Official Zoning Map, such changes shall be entered promptly after the amendment has been approved by the legislative body with an entry showing the nature of the change and the date.

2.3. District Boundaries on Zoning Map.

- 2.3-1 Where a district boundary is shown following a street, highway, right-of-way, railroad, or stream, the boundary shall be the center line of same.
- 2.3-2 Other Lines: If such boundary is shown as following a platted lot line or City limit line, the boundary shall be along said lot line or City limit line.
- 2.3-3 Variances: When physical or cultural features existing in the ground are at variance with those shown on the Official Zoning Map, the Board of Zoning Appeals shall interpret the district boundaries.

2.4. Annexed Land.

All requests or proposals for annexation to the City shall be considered only after the Planning Commission has submitted a zoning recommendation to the Governing Body in accordance with the amendment procedures herein contained. The Governing Body shall consider such recommendation promptly upon annexing the subject territory.

2.5. Lot Development.

Every building hereafter built shall be located on at least one lot, as herein defined, except in commercial and industrial districts. Each lot may be divided into two building sites provided each portion can meet all area, lot width, and setback regulations of the zoning district in which it is located. Each tract of land as herein defined may also support one principle building so long as it complies with all applicable zoning regulations. If more than one building site is desired, the land must be platted pursuant to the City Subdivision Regulations.

ARTICLE III - GENERAL REGULATIONS AND REGULATIONS FOR EACH DISTRICT

3.1 Use and Bulk Tables.

The general regulations affecting the use of buildings, structures and land and the bulk and arrangement of buildings and structures, and of materials and equipment occupying land in connection with non-building use thereof for each of the districts established by Article II are hereby established as set forth in this section.

3.1-1 Use Table: The accompanying table entitled "Table of Uses" shall be deemed to be a part of this section and is hereby adopted by reference.

3.1-2 Bulk Table: The accompanying tables entitled "Table of General Bulk Regulations-Residential" and "Table of General Bulk Regulations-Commercial" shall be deemed to be a part of this section and is hereby adopted by reference.

3.2 General Use Regulations.

3.2-1 Accessory Uses and Structures: Accessory uses, and structures shall be subject to setback requirements as prescribed in Section 3.2-1.B except as provided in this section. The following permitted accessory uses, and structures shall be allowed in any zoning district in connection with any permitted principal uses:

- A. No accessory structure shall be constructed prior to the construction of a primary structure unless the applicant owns an adjacent lot with an existing primary structure, or by Special Use Permit.
- B. Permitted accessory uses and structures include, but are not limited to, the following:
 - 1) A structure for storage incidental to a permitted use, provided no such structure that is accessory to a residential building shall exceed 200 square feet in gross floor area, the use shall be in keeping with the principal structure, and provided that no part of such structure is located in the front yard setback.
 - 2) A child's playhouse provided it shall not be more than 120 square feet in gross floor area and further that it not be located in the front yard setback.
 - 3) A detached garage or other accessory structure, provided that no part of such structure exceeds 800 square feet in gross floor area; or ten percent (10%) of the lot area, whichever is greater. The preceding requirement refers to any and all detached accessory structures.
 - 4) A private swimming pool and bathhouse, provided that a swimming pool shall be allowed within required rear and side yards subject to Section 3.2- 5.

- 5) Statuary, arbors, trellises, flagpoles, fences, walls and hedges shall be allowed within the required setback areas.
- 6) Signs, when permitted by Article XII of these Regulations and by the individual district regulations.
- 7) Off-street parking and loading spaces, as permitted by Article XI of these Regulations.
- 8) Restaurants, drug stores, gift shops, clubs, and lounges and newsstands, when located in a permitted hotel, motel, or office building.
- 9) Employee restaurants and cafeterias, when located in a permitted business, manufacturing or industrial building.
- 10) Storage as an accessory use, such as boats, boat trailers, camping trailers, motor homes, or converted buses or trucks shall be allowed: (a) within rear and side yards; and (b) within established front yards when placed upon a hard surface as defined in Article XI. Such uses shall not include the outdoor storage or parking in a residential district, or in a residential section of a PUD district, of mobile homes, or of commercial buses or tracks which exceed a three (3) ton manufacturer's hauling capacity rating.
- 11) Satellite dish antennas, except that such accessory structure shall not be allowed within established front yards.
- 12) One apartment in R-S, R-1, RT, and R2A districts when incorporated within an existing single-family residential structure. Such an accessory apartment shall be allowed on a special use permit basis, standards for which are prescribed in Article IV of this Ordinance.
- 13) One Accessory Dwelling Unit (ADU) in districts RS, R1, RT, and R2A, when located on the same lot as an existing single-family residential structure. ADUs shall be a maximum of 800 square feet or ten percent (10%) of the lot area, whichever is greater. "Tiny Homes" may be considered ADUs in the RT zoning district. ADUs shall only be allowed by Special Use Permit.
- 14) Wind Energy Conversion Systems (WECS) shall be allowed in any district on a special use permit basis, standards for which are presented in Article IV of this Ordinance.

C. Bulk Regulations Applicable to Accessory Structures and Uses:

- 1) No accessory structures or uses shall be located within a required or established front yard and accessory structures shall meet side and rear setbacks for the district in which they are located; and except that accessory structures which are less than 100 square feet in gross floor area shall be located no closer than three (3) feet from the side or rear lot line.
- 2) No accessory structure shall be located closer than ten (10) feet to a principal structure on the same lot; except that swimming pools shall be located no closer than seven (7) feet to a principal structure on the same lot.
- 3) All accessory structures and uses on corner lots shall be set back from the side street a distance not less than that required for the principal structure.
- 4) A garage, whether it is accessory (attached) or detached, shall maintain a twenty (20) foot setback when entered from a street side yard or alley.
- 5) The maximum sidewall height for all accessory structures shall not exceed twelve (12) feet, and shall contain no more than a single, ground level story, the attic of which shall be designed to carry loads for storage only.

D. Use Limitations:

- 1) Accessory structures and uses shall comply with the use regulations applicable in the zoning district in which they are located, but no accessory structure shall be constructed and occupied on any lot prior to the time of the completion of the construction of the principal structure to which it is accessory.
- 2) No accessory building shall be used for dwelling purposes except approved accessory apartments and accessory dwelling units.

3.2-2 Temporary Uses: The following temporary uses of land are permitted subject of the specific regulations and time limits which follow, and to the other applicable regulations of the district in which the use is permitted.

- A. Christmas tree sales in any commercial or industrial district for a period not to exceed sixty (60) days; display of such trees need not comply with the yard and setback requirements of these regulations provided that no tree shall be displayed within thirty (30) feet of the intersection of the curb line of any two streets.
- B. Contractors' office and equipment sheds (containing no sleeping or cooking accommodations) accessory to a construction project, and to continue only during the duration of such project.
- C. Real estate offices (containing no sleeping or cooking accommodations)

incidental to a new housing development to continue for no more than six (6) months, unless an extension is granted by the Board of Zoning Appeals.

- D. Seasonal sale of farm produce (including Christmas trees) grown on the premises on districts where permitted, to continue for not more than four (4) months per year; except that the time for the sale of produce under a special use permit in a flood plain district as provided in Section 4.5-2 shall be established by a permit. Structures incidental to such sale need not comply with the applicable front yard requirements if the structures are removed or moved back of the required front yard setback line at the end of the season during which they are use.
- E. Farmer's Markets to allow local farmers to sell fruit, vegetables, meats, cheeses, bakery, and other goods and products directly to consumers are allowed from April-October.

3.2-3 Home Occupation:

An accessory use which meets all of the following conditions:

A. Conditions for Approval:

- 1) No home occupation sales or deliveries shall generate vehicular traffic which is abnormal to a residential district, or which alters the character thereof, or creates the need for additional parking.
- 2) No parking is allowed in yard areas.
- 3) No alteration of the principal residential structure shall be made which changes its residential character.
- 4) The home occupation shall be subordinate to the residential use of the dwelling.
- 5) No mechanical or electrical equipment greater than one (1) horsepower shall be used on site for commercial purposes.
- 6) No outdoor storage of equipment or materials used in the home occupation shall be permitted.
- 7) The home occupation shall be conducted by and involve the employment of only the residents of the dwelling unit and not more than one non-resident.
- 8) All signage shall comply with Article XII of this Ordinance.

B. Permitted Home Occupations:

In particular, home occupations may include, but are not limited to:

- 1) Dressmaker, seamstress, tailor.
- 2) Music and dancing teaching limited to a single pupil at a time, except for occasional groups.
- 3) Artists, sculptors, authors, composers, photographers.
- 4) Professional office for lawyer, planner, engineer, architect, accountant, realtor, or similar use.
- 5) Office facility for salesman, sales representative, manufacturer's representative, when no wholesale, exchange of goods is transacted on the premises.
- 6) Home crafts.
- 7) Therapy, medical, and telehealth offices with a maximum of one session at a time.

C. Prohibited Home Occupations:

Home occupations shall not be deemed to include:

- 1) Automobile repair service.
- 2) Funeral Homes.
- 3) Restaurants.
- 4) Commercial stables, kennels or animal hospitals.
- 5) Renting of trailers, cars or other equipment.
- 6) Medical or dental clinics or hospitals with multiple clients at one time.
- 7) Retail or wholesale sales of antiques or used furniture and furnishings.
- 8) Manufacturing of goods.

3.2-4 Fences, Walls, and Hedges: May be located in required yards as follows:

A. Residential Districts:

- 1) They may be located in any front yard if not exceeding at any point four (4) feet in height above the elevation of the surface of the ground, and if no traffic hazard is presented as determined by the Director of Public Works.
- 2) They may be located in side or rear yards if not exceeding six (6) feet in height above the elevation of the surface of the ground; except that rear yard fences shall conform to established front yard setbacks if they are adjacent to a neighboring front yard. In no district shall fences be electrified. Barbed wire is prohibited in residential districts.

B. Commercial and Industrial Districts: They may be located in any yard if not exceeding eight (8) feet in height above the elevation of the surface of the ground. Barbed wire shall be allowed only in non-residential districts, installed at a height of greater than six feet above grade.

C. Fencing and wall materials shall be uniform, consistent, and neat in appearance, of materials compatible with the surrounding development, of material intended for this purpose, and shall be properly maintained during the life of the use.

3.2-5 Private Swimming Pools:

The swimming pool shall be walled or fenced by a detached wall or fence at least four (4) feet high and no closer to the perimeter walls of the pool than four (4) feet at any point, so as to prevent uncontrolled access by children from the street, or adjacent properties. The enclosure of the entire property upon which the pool is located by such wall or fence if compliance with this section.

3.2-6 Yard Projections: In any residential district, the following architectural features may project into any required yard setback:

A. Cornices, canopies, eaves or other architectural features may project a distance not exceeding three (3) feet, unless otherwise specified.

B. Bay windows, balconies, and chimneys may project a distance not exceeding three (3) feet in any side yard.

3.2-7 Averaging Setbacks: In any residential district, where the two adjacent residences have a front yard which is less or greater than the least front yard depth prescribed elsewhere in this Ordinance, the required depth of the front yard on such lot shall be modified. In such case, this shall not be less than the average depth of said existing front yards on the two lots immediately adjoining. However, in no case shall the depth of the front yard be less than ten (10) feet and need not exceed fifty (50) feet. In no event shall the depth of a front yard of a corner lot be less than twenty-five (25) feet.

- 3.2-8 Unpaved Storage Areas: Periodic watering of unpaved storage areas may be required by the city.
- 3.2-9 All driveways shall be paved the entire length of the driveway unless taking access from an unpaved street/alley.
- 3.2-10 Every building hereafter erected or moved shall be on a lot adjacent to a paved, public street with adequate access for servicing and fire protection.
 - A. An exception may be granted when all adjoining properties are fully developed and the only access for the lot requesting to construct a new building is unpaved.

3.3 District Specific Regulations.

(See accompanying Table of Uses)

- 3.3-1 R-S Single-family Suburban District: The following district regulations shall apply to property in the R-S zoning district:
 - A. Allowable uses in this district are included in the “Table of Uses”. Any other use, determined by the Administrative Official to be of the same general character as primary and accessory allowed uses in this zone, shall also be allowed.
- 3.3-2 R-1 Single-family Dwelling District:
The following district regulations shall apply to property in the R-1 zoning district:
 - A. Allowable uses in this district are included in the “Table of Uses”. Any other use, determined by the Administrative Official to be of the same general character as primary and accessory allowed uses in this zone, shall also be allowed.
- 3.3-3 R-T Single-family Residential District: The purpose of the R-T zone is to accommodate “Traditional Neighborhood” lot design within the City. These lots are typically narrow and include alley access. It is anticipated that this zoning will be utilized within the core areas of the city primarily in areas of infill.

The following district regulations shall apply to property in the R-T zoning district:
 - A. Rear loaded alley access is required on Open Alleys. Front-loaded garages shall be discouraged, and approval by the Administrative Official is required for front loaded garage structures.
 - B. Front-loaded garages, whether accessory (attached) or detached, shall maintain a thirty (30) foot setback from the Right of Way.

C. Allowable uses in this district are included in the "Table of Uses". Any other use, determined by the Administrative Official to be of the same general character as primary and accessory allowed uses in this zone, shall also be allowed.

D. Duplex Residential units shall adhere to the Residential Design Standards found in Article X.

3.3-4 R-2 Two-family Dwelling District:

The following district regulations shall apply to property in the R-2 zoning district:

A. Allowable uses in this district are included in the "Table of Uses". Any other use, determined by the Administrative Official to be of the same general character as primary and accessory allowed uses in this zone, shall also be allowed.

B. Duplex Residential units shall adhere to the Residential Design Standards found in Article X.

3.3-5 R-2A Residential Dwelling District:

The purpose of the R-2A zone is to promote and encourage the efficient development of single-family detached and attached and duplex residences in a variety of densities.

The following district regulations shall apply to property in the R-2A zoning district:

A. Private alleys or shared parking agreements may be considered. Access and maintenance agreements shall be required to be filed if a private alley or shared parking area is to be utilized.

B. Front-loaded garages, whether accessory (attached) or detached, shall maintain a thirty (30) foot setback from the Right of Way.

C. No curb cuts within five (5) feet of the property line unless there is a shared drive. Maximum driveway width shall not exceed the width of the garage.

D. Allowable uses in this district are included in the "Table of Uses". Any other use, determined by the Administrative Official to be of the same general character as primary and accessory allowed uses in this zone, shall also be allowed.

E. Duplex Residential units shall adhere to the Residential Design Standards found in Article X.

3.3-6 R-3 Multi-family Dwelling District:
The following district regulations shall apply to property in the R-3 zoning district:

- A. Allowable uses in this district are included in the "Table of Uses". Any other use, determined by the Administrative Official to be of the same general character as primary and accessory allowed uses in this zone, shall also be allowed.
- B. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods.
- C. Duplex, Triplex, and Quadplex Residential units shall adhere to the Residential Design Standards found in Article X.
- D. Multi-family Residential units shall adhere to the Commercial Design Standards found in Article X.

3.3-7 R-3 (FMFD) Flexible Multi-family Dwelling District:

- A. *See Article VIII for Flexible Multi-Family regulations.*
- B. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods.
- C. Duplex, Triplex, and Quadplex Residential units shall adhere to the Residential Design Standards found in Article X.
- D. Multi-family Residential units shall adhere to the Commercial Design Standards found in Article X.

3.3-8 PUD Planned Unit Development:

See Article V for PUD regulations.

3.3-9 M-P Manufactured Home Park District:

See Article VII for Manufactured Home Park regulations.

3.3-10 T-C Tiny Home Community District:

The purposed of the Tiny Home Community District is to permit tiny homes in a community atmosphere. The following district regulations shall apply to property in the T-C zoning district: See Article VI for Tiny Home Community regulations.

3.3-11 P-O Professional Office District:

The following district regulations shall apply to property in the P-O zoning district:

- A. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods.
- B. Areas used for the collection of trash or refuse shall be enclosed or screened with opaque material
- C. When adjacent to a residential district, all structures shall be 25' from the shared property line.
- D. Allowable uses in this district are included in the "Table of Uses". Any other use, determined by the Administrative Official to be of the same general character as primary and accessory allowed uses in this zone, shall also be allowed.
- E. Duplex, Triplex, and Quadplex Residential units shall adhere to the Residential Design Standards found in Article X.
- F. Multi-family Residential units and Commercial Development shall adhere to the Commercial Design Standards found in Article X.

3.3-12 C-T Transition Business District:

The following district regulations shall apply to property in the C-T zoning district:

- A. Allowable uses in this district are included in the "Table of Uses". Other uses not specifically permitted in any other district but deemed acceptable by the Administrative Official and the City, shall also be allowed.
- B. Setbacks and lot requirements are included in the Setbacks and lot requirements are included in the "Table of General Bulk Area Regulations-Non-residential".

C. Additional Regulations can be found in the following Articles:

- 1) Article IX, Commercial / Industrial Development Procedures
- 2) Article X, Duplex, Triplex, and Quadplex Residential units shall adhere to the Residential Design Standards.
- 3) Article X, Multi-family Residential units and Commercial Development shall adhere to the Commercial Design Standards
- 4) Article XI, Parking and Loading Requirements
- 5) Article XII, Sign Regulations
- 6) Article XVIII, Landscape, Screening, and Buffering Requirements.
- 7) Article XIX, Outdoor Lighting

D. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods.

E. All retail sales and service establishments and accessory storage and servicing of goods shall be within completely enclosed buildings.

F. No production of goods is permitted, and all processing and servicing of goods shall be limited to 49% of the floor area and in no event more than 1000 square feet.

G. When adjacent to a residential district, all structures must maintain a 25- foot setback from their common property line.

H. Outdoor areas accessory to any use and used for the deposit and collection of trash and refuse shall be enclosed or screened with opaque structural or vegetative material in such a manner as not to be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed so as to prevent trash or refuse from blowing onto other areas of the site or onto adjacent properties or public streets or spaces.

3.3-13 C-1 Neighborhood Business District:

The following district regulations shall apply to property in the C-1 zoning district:

- A. Allowable uses in this district are included in the “Table of Uses”. Other uses not specifically permitted in any other district but deemed acceptable by the Administrative Official and the City, shall also be allowed.
- B. Setbacks and lot requirements are included in the Setbacks and lot requirements are included in the “Table of General Bulk Area Regulations-Non-residential”.
- C. Additional Regulations can be found in the following Articles:
 - 1) Article IX, Commercial / Industrial Development Procedures
 - 2) Article X, Duplex, Triplex, and Quadplex Residential units shall adhere to the Residential Design Standards.
 - 3) Article X, Multi-family Residential units and Commercial Development shall adhere to the Commercial Design Standards
 - 4) Article XI, Parking and Loading Requirements
 - 5) Article XII, Sign Regulations
 - 6) Article XVIII, Landscape, Screening, and Buffering Requirements.
 - 7) Article XIX, Outdoor Lighting
- D. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods.
- E. All retail sales and service establishments and accessory storage and servicing of goods shall be within completely enclosed buildings.
- F. No production of goods is permitted, and all processing and servicing of goods shall be limited to 49% of the floor area and in no event more than 1000 square feet.
- G. Outside storage areas that are visible from any public right of way shall be screened with a wall, solid fence, or sight obscuring plant material not less than six (6) feet in height.
- H. When adjacent to a residential district, all structures shall be 25’ from the

shared property line.

- I. Outdoor areas accessory to any use and used for the deposit and collection of trash and refuse shall be enclosed or screened with opaque structural or vegetative material in such a manner as not to be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed so as to prevent trash or refuse from blowing onto other areas of the site or onto adjacent properties or public streets or spaces.

3.3-14 C-2 General Business District:

The following district regulations shall apply to property in the C-2 zoning district:

- A. Allowable uses in this district are included in the "Table of Uses". Other uses not specifically permitted in any other district but deemed acceptable by the Administrative Official and the City, shall also be allowed.
- B. Setbacks and lot requirements are included in the Setbacks and lot requirements are included in the "Table of General Bulk Area Regulations-Non-residential".
- C. Additional Regulations can be found in the following Articles:
 - 1) Article IX, Commercial / Industrial Development Procedures
 - 2) Article X, Duplex, Triplex, and Quadplex Residential units shall adhere to the Residential Design Standards.
 - 3) Article X, Multi-family Residential units and Commercial Development shall adhere to the Commercial Design Standards
 - 4) Article XI, Parking and Loading Requirements
 - 5) Article XII, Sign Regulations
 - 6) Article XVIII, Landscape, Screening, and Buffering Requirements.
 - 7) Article XIX, Outdoor Lighting
- D. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods.
- E. Outside storage areas that are visible from any public right of way shall be screened with a wall, solid fence, or sight obscuring plant material not less than six (6) feet in height.

- F. When adjacent to a residential district, all structures shall be 25' from the shared property line.
- G. Outdoor areas accessory to any use and used for the deposit and collection of trash or refuse shall be enclosed or screened with opaque structural or vegetative material in such a manner as not to be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed so as to prevent trash or refuse from blowing onto other areas of the site or onto adjacent properties or public streets or spaces.
- H. Exercise runs shall be enclosed on four (4) sides by a sight obscuring, unpierced fence or wall at least five (5) feet in height.

3.3-15 C-3 Central Business District:

The following district regulations shall apply to property in the C-3 zoning district:

- A. Allowable uses in this district are included in the "Table of Uses". Other uses not specifically permitted in any other district but deemed acceptable by the Administrative Official and the City, shall also be allowed.
- B. Setbacks and lot requirements are included in the Setbacks and lot requirements are included in the "Table of General Bulk Area Regulations-Non-residential".
- C. Additional Regulations can be found in the following Articles:
 - 1) Article IX, Commercial / Industrial Development Procedures
 - 2) Article X, Duplex, Triplex, and Quadplex Residential units shall adhere to the Residential Design Standards.
 - 3) Article X, Multi-family Residential units and Commercial Development shall adhere to the Commercial Design Standards
 - 4) Article XI, Parking and Loading Requirements
 - 5) Article XII, Sign Regulations
 - 6) Article XVIII, Landscape, Screening, and Buffering Requirements.
 - 7) Article XIX, Outdoor Lighting

- D. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods.
- E. Outside storage areas that are visible from any public right of way shall be screened with a wall, solid fence, or sight obscuring plant material not less than six (6) feet in height.
- F. When adjacent to a residential district, all structures shall be 25' from the shared property line.
- G. All retail sales and service establishments and accessory storage and servicing of goods shall be within completely enclosed buildings.

3.3-16 I-1 Light Industrial District:

The following district regulations shall apply to property in the I-1 zoning district:

- A. Allowable uses in this district are included in the "Table of Uses". Other uses not specifically permitted in any other district but deemed acceptable by the Administrative Official and the City, shall also be allowed.
- B. Setbacks and lot requirements are included in the "Table of General Bulk Area Regulations-Non-residential".
- C. Additional Regulations can be found in the following Articles:
 - 1) Article IX, Commercial / Industrial Development Procedures
 - 2) Article X, Commercial / Industrial Design Standards
 - 3) Article XI, Parking and Loading Requirements
 - 4) Article XII, Sign Regulations
 - 5) Article XVIII, Landscape, Screening, and Buffering Requirements.
 - 6) Article XIX, Outdoor Lighting
- D. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods.

- E. Outside storage areas that are visible from any public right of way shall be screened with a wall, solid fence, or sight obscuring plant material not less than six (6) feet in height.
- F. Outdoor areas accessory to any use or used for the deposit and collection of trash shall be enclosed or screened with structural or vegetative material in such a manner as not to be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed to prevent trash or refuse from blowing onto other areas of the site or onto adjacent properties or public street spaces.

3.3-17 I-2 General Industrial District:

The following district regulations shall apply to property in the I-2 zoning district:

- A. Allowable uses in this district are included in the “Table of Uses”. Other uses not specifically permitted in any other district but deemed acceptable by the Administrative Official and the City, shall also be allowed.
- B. Setbacks and lot requirements are included in the “Table of General Bulk Area Regulations-Non-residential”.
- C. Additional Regulations can be found in the following Articles:
 - 1) Article IX, Commercial / Industrial Development Procedures
 - 2) Article X, Commercial / Industrial Design Standards
 - 3) Article XI, Parking and Loading Requirements
 - 4) Article XII, Sign Regulations
 - 5) Article XVIII, Landscape, Screening, and Buffering Requirements.
 - 6) Article XIX, Outdoor Lighting
- D. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods. See Section 18.9 G. for additional requirements related to compatibility.

- E. Outside storage areas that are visible from any public right of way shall be screened with a wall, solid fence, or sight obscuring plant material not less than six (6) feet in height.
- F. Outdoor areas accessory to any use or used for the deposit and collection of trash shall be enclosed or screened with structural or vegetative material in such a manner as not to be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed to prevent trash or refuse from blowing onto other areas of the site or onto adjacent properties or public street spaces.

3.3-18 I-3 Heavy Industrial District:

The purpose of the I-3, Heavy Industrial District, is to allow for more intense industrial uses to be placed in appropriate locations within the city. The following district regulations shall apply to property in the I-3 zoning district:

- A. Allowable uses in this district are included in the “Table of Uses”. Other uses not specifically permitted in any other district but deemed acceptable by the Administrative Official and the City, shall also be allowed.
- B. Setbacks and lot requirements are included in the “Table of General Bulk Area Regulations-Non-residential”.
- C. Additional Regulations can be found in the following Articles:
 - 1) Article IX, Commercial / Industrial Development Procedures
 - 2) Article X, Commercial / Industrial Design Standards
 - 3) Article XI, Parking and Loading Requirements
 - 4) Article XII, Sign Regulations
 - 5) Article XVIII, Landscape, Screening, and Buffering Requirements.
 - 6) Article XIX, Outdoor Lighting
- D. Where a site adjoins a residential district, a physical barrier not less than six (6) feet in height shall be located on the common property line, except in a required front yard. The barrier may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods.
- E. Outside storage areas that are visible from any public right of way shall be screened with a wall, solid fence, or sight obscuring plant material not less than six (6) feet in height.

F. Outdoor areas accessory to any use or used for the deposit and collection of trash shall be enclosed or screened with structural or vegetative material in such a manner as not to be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed to prevent trash or refuse from blowing onto other areas of the site or onto adjacent properties or public street spaces.

3.3-19 F-P Flood Plain Overlay District:
See Article XV for floodplain regulations.

3.3-20 H-D Historic and Cultural Overlay District:
See Article XVI for Historic and Cultural Overlay District regulations.

3.3-21 AIR-1 Airport Zoning District:
See Article XVII for Airport Zoning District regulations.

3.4 Table of Uses.

PP=Primary Permitted
PA=Primary Accessory
SU=Special Use Permit

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
RESIDENTIAL																
Single-family dwellings	PP	PP	PP	PP	PP	PP			PP							
Townhome dwellings			PP	PP	PP	PP			PP				PP			
Two-family dwellings			PP	PP	PP	PP			PP				PP			
Multi-family dwellings						PP			PP				PP			
Mobile homes/ manufactured homes (see district regulations)							PP									
Residential- design manufactured homes (see district regulations)	PP	PP	PP	PP	PP		PP									
Tiny home dwelling			SU				PP	PP								

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Lodging, rooming and fraternity houses						PP										
Flexible Multi-family developments (see Art VIII)						PP										
Apartments above first floor													PP			

CIVIC AND COMMERCIAL

Accessory Apartment	SU	SU	SU		SU											
Accessory Dwelling Unit	SU	SU	SU		SU											
Accessory parking and loading areas subject to Article XI	PA	PA	PA	PA	PA	PA										
Accessory signs subject to Article XII	PA	PA	PA	PA	PA	PA										
Accessory storage of retail goods to be sold or delivered to customers on the premises, provided such goods to be stored and served within completely enclosed building										PA	PA	PA				
Agricultural uses in floodplain	SU	SU	SU	SU	SU	SU					SU	SU		SU	SU	PP
Animal hospitals and dog kennels												SU		PP	PP	PP

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Any public building erected on land used by any department of the City, county, state, or federal government	SU	SU	SU	SU	SU	SU			PP		PP	PP	PP	PP	PP	PP
Any type of commercial recreation, including baseball fields, swimming pools, skating rinks, golf driving ranges and similar open air facilities, provided such establishments shall be at least 200 feet away from any residential district.												PP				
Any wholesale business, storage garages, and commercial greenhouses.												PP				

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Automatic car washes -Must be in conjunction with a service station and shall not exceed facilities for washing more than one automobile at any one time. -Water generated by this facility shall ward adjacent properties. -Shall be equipped with a sand trap.											PP	PP	PP			
Automobile service stations, parking lots											PP	PP	PP			
Automobile wrecking yards, salvage yards and scrap processing yards.															SU	PP
Automobiles, trucks, repair garages, body and fender shops, but not within 50 feet of any residential district.												PP				
Barber Shops and Beauty Parlors											PP	PP	PP			
Bed-and-Breakfast Facility	SU	SU	SU	SU	SU								PA			
Building material														PP	PP	PP

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Building materials sales yard but not within 75 feet of any residential district.												PP				
Buildings and Uses customarily incidental to a permitted use									PA	PA						
Carpenter, electrical, plumbing and heating shop, furniture upholstering, and similar enterprises, but not within 50 feet of any residential district.												PP	PA			
Cemeteries	SU	SU	SU	SU	SU	SU										
Childcare centers	SU	SU	PP	PP	PP	PP			PP		PP	PP	PP			
Chimneys, monuments, spires, church steeples, radio and television antennas may be erected to a height not to exceed sixty (60) feet.	PA	PA	PA	PA	PA	PA			PP		PP	PP	PP			
Churches and other places of worship	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP			
Clothes Cleaning										PP	PP	PP	PP			
Clubs and lodges.												PP	PP			
Contractor's office														PP	PP	PP

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Customary accessory uses for Mobile Home Subdivisions and structures located on the same lot with the principal use including tennis courts, swimming pools, garden houses, lawn/utility houses, barbecue ovens, and fireplaces, but which do not include uses unrelated to the principal use or any activity commonly conducted for gain.							PP	PP								
Day Care Homes	PP	PP	PP	PP	PP	PP			PP							
Dog kennels														SU	SU	PP
Drug Stores											PP	PP	PP			
Establishments such as hairstyling shops which perform personal services on the premises.										PP	PP	PP	PP			
Financial institutions									PP	PP	PP	PP	PP			
Flower shops.										PP	PP	PP	PP			
Government buildings.									PP		PP	PP	PP			
Grain Elevators															PP	PP
Grocery Stores											PP	PP	PP			

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Group Residential.	SU	SU	SU	SU	SU	SU			SU							
Health clubs, when activity conducted within an enclosed building.										PP						
Historical sites and structures	PP	PP	PP	PP	PP	PP		PP	PP	PP	PP	PP	PP	PP	PP	PP
Home occupations	PA	PA	PA	PA	PA	PA										
Hospitals, sanitariums, rest homes, and nursing homes	SU	SU	SU	SU	SU	SU			SU	SU	SU	SU	PP			
Hotels and motels.												PP	PP			
Ice cream parlors											PP	PP	PP			
Institutions of higher learning.									PP							
Libraries, schools, and museums	PP	PP	PP	PP	PP	PP			PP							
Light assembly operations, provided there is not outside storage and the off-street parking requirement is met.													PP			
Light manufacturing operations, providing that such use is not noxious or offensive by reason or vibration or noise beyond the confines of the building or emission of dust, fumes,														PP	PP	PP

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
gas, odor, or smoke.																
Liquor stores											PP	PP	PP			
Manufacture and Assembly of roofing and asphaltic materials & products including storage and processing of asphalt for use in such manufacture and assembly, and recycling of roofing materials, and indoor and outdoor storage of raw and finished products and materials.																PP
Manufacturing or fabrication establishments which are not noxious or offensive by reason of vibration, noise, dust, fumes, gas, odor or smoke.															PP	PP

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Medical and Dental diagnostic laboratories, with the exclusion of offices or facilities in which on-site health care treatment of patients is provided.									PP	PP	PP	PP	PP			
Medical offices or clinical facilities in which on-site health care treatment of patients is provided.									SU	SU	SU	SU	SU			
Mobile home sales yard														PP	PP	PP
Office, Professional, Governmental, and Business, with the exclusion of offices in which on-site health care treatment of patients is provided.									PP	PP	PP	PP	PP			
Other uses which may be noxious or offensive by reason of the emission of odor, dust, smoke, gas, noise or vibration.															SU	PP
Petroleum refining.															SU	PP
Print shops.										PP						

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Private recreational facilities such as golf courses, tennis and swimming clubs.	SU	SU	SU	SU	SU	SU										
Public and private schools							PP	PP	PP	PP	PP	PP	PP			
Public or private parking lots providing such land lies within three hundred (300) feet of a commercial, professional office, or industrial district.	SU	SU	SU	SU	SU	SU			PP	PP	SU	SU	PP			
Public parks and playgrounds	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP
Publishing, job printing, lithographing, etc., but not within 100 feet of any residential district.									PP			PP	PP			
Ready-mix concrete and asphalt mix plants.															SU	PP
Recreational facilities												PP	PP			
Restaurants										PP	PP	PP	PP			
Restaurants (excluding drive-in or drive-thru restaurants)										PP	PP	PP	PP			

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Rights-of-way, appurtenances for public utilities and railroads	PP	PP	PP	PP	PP	PP			PP							
Social halls, meeting rooms, convention and catering facilities whether commercial or nonprofit.									PP	PP	PP	PP	PP			
Specialty food shops.										PP	PP	PP	PP			
Storage garages														PP	PP	PP
Storage of bulk oil, gas and explosives.															SU	PP
Storage structures and offices														PA	PA	PP
Subordinate buildings and uses normally appurtenant to single-family residential uses, such as garages, tool sheds, swimming pools and other recreational structures and equipment.	PA	PA	PA	PA	PA	PA										
Supermarkets											PP	PP	PP			
Telephone exchanges.									PP	PP						

	RS	R1	RT	R2	R2A	R3	M-P	TC	PO	CT	C1	C2	C3	I-1	I-2	I-3
Wand and automatic car washes; -shall not exceed facilities for washing more than five (5) automobiles at any one time. -Water generated by this facility shall not run toward adjacent properties, either through the air or on the ground. -Shall be equipped with a sand trap.												PP	PP	PP	PP	PP
Warehouses														PP	PP	PP

3.5 Table of General Bulk Regulations.

Yard modifications:

- 3.5-1. Rear yards on irregularly shaped lots must contain at least 1625 square feet, with no part of the principal building lying within fifteen (15) feet of the rear lot line.
- 3.5-2. In any residential district, the required rear yard of a regularly shaped corner lot may be halved at the owner's option if the street side yard requirement is met, and the other side yard is at least equal to the normally required rear yard.
- 3.5-3. All buildings located in any commercial or industrial district and adjacent to a residential district must maintain at least a twenty-five (25) foot setback from its common property line.

RESIDENTIAL	RS	R1	RT	R2	R2A	R3	R3 (F)	PUD	MP	TC
Density									8 units per acre	12 units per acre
Single- family detached minimum lot size (square feet)	20,000	6,000	3,000	6,000	3,000	6,000	2 acres minimum		3,000 sf (min. 35' wide) per mobile home spot	
Townhome Single-family attached	NP	NP	Max 2 attached 3,000 SF per unit	Max 2 attached 3,000 SF per unit	Max 3 attached 3,000 SF per exterior unit 1,000 SF per interior unit	Permitted			NP	NP
Duplex (two-family) minimum square feet/ dwelling unit	NP	NP	3,500 per unit	3,500 per unit	3,500 per unit	3,500 per unit			NP	NP
Multi- Family minimum square feet/dwelling unit	NP	NP	NP	NP	NP	10,000 for the first 4 units or less and 2,000 per unit thereafter	***		NP	NP
Non-residential Uses minimum lot size (square feet)	20,000	6,000	6,000	6,000	6,000	6,000			10,000	10,000
Max Building Height	35'	35'	35'	35'	35'	35'			25'	25'
Lot Width at Building Line										
Single family detached, duplex, non-residential	100'	65'	33'	65'	35'	65'			35' per space	20' per space
Townhome-Interior			25'	25'	25'	25'				
Townhome-Exterior			15'	15'	15'	15'				
Multifamily						70'				
Setbacks										

Front Setback	50'	25'	25' porches allowed to extend 10' into setback	25' porches allowed to extend 10' into setback	25' porches allowed to extend 10' into setback	25' porches allowed to extend 10' into setback (excluding multi-family)			35'	25'
Side Setback-Single Family Detached, duplex, non-residential	15'	7' *	5' **	7' * ****	5' **	7' *			25'	25'
Side Setback-Townhome, exterior ****			5'	5'	5'	7'				
Street Side Setback	25'	15'	15'	15'	10'	15'			25'	25'
Setback from Centerline of alley (public or private)	15'	15'	15'	15'	15'	15'				15'
Rear Setback	35'	25'	5'	25'	5'	25'			25'	25'

*5 feet from side yard if platted prior to 07/01/50

** Side- Zero Lot Line setback:

A setback of less than 5 feet (zero lot line) is permitted on interior sides, provided a maintenance agreement is filed. The remaining side setback(s) shall be a minimum of 10 feet.

*** Side- Zero Lot Line setback:

A setback of less than 7 feet (zero lot line) is permitted on interior sides, provided a maintenance agreement is filed. The remaining side setback(s) shall be a minimum of 14 feet.

**** Zero lot line setbacks may be utilized to permit common walls between attached townhome dwellings subject to all applicable building and fire codes.

^ A density bonus not to exceed a factor of one hundred twenty-five percent (125%) of the number of dwellings otherwise permitted by the provisions of the R- 3 District.

COMMERCIAL	PO		CT	C1	C2	C3		I1	I2	I3
Single-family detached minimum lot size (square feet)	6,000 SF		NA	NA	NA	NA		NA	NA	NA
Townhome Single-family attached	Permitted		NA	NA	NA	NA		NA	NA	NA
Duplex (two-family) minimum square feet/ dwelling unit	3,500 SF per dwelling unit		NA	NA	NA	none		NA	NA	NA
Multi-Family minimum square feet/dwelling unit	10,000 SF for the first 4 units or less and 2,000 per dwelling unit thereafter		NA	NA	NA	none		NA	NA	NA
Nonresidential Uses minimum lot size (square feet)	10,000 SF		6,500 SF	6,500 SF	6,500 SF	none		none	none	none
Max Building Height	Residential, 35'	Other, 50'	50'	50'	none	none		none	none	none
Lot Width at Building Line Minimum	Townhome: minimum exterior lot width 25'; minimum interior lot width 15', SF detached 65', MF 70', duplex 65'	65'	50'	50'	50'	none		75'	75'	75'
Setbacks										
Front Setback	25'	25'	25'	25'	25'	none		25'	35'	50'^
Side Setback	7**+	***	***	***	***	none		15'	15'	25'^
Street Side Setback	15'	15'	15'	15'	15'	15'		15'	15'	25'^
Rear Setback	20'	25'	20'	20'	20'	Residential, 15'	Other, none	30'	35'	50'^
Maximum Lot Coverage by Principal and Accessory Structures	none	50%	70%	70%	70%	Residential, none	Other, 90%	none	none	none

+ 5 feet from side yard if platted prior to 07/01/50

** 15 feet from street side yard if corner lot

*** same as front yard setback if corner lot

^ setback to be doubled when adjacent to a residential use or residential zone

ARTICLE IV - SPECIAL USE PERMITS

4.1. General Considerations.

4.1-1 Delegation of Power:

The Governing Body is hereby authorized to decide whether special use permits shall be granted subject to the general and specific standards contained in the Ordinance; to grant special use permits with such conditions or restrictions as are appropriate to protect the public interest and to secure compliance with this Ordinance; and to deny requests which fail to satisfy the standards and requirements contained herein and which are not in harmony with the purposes and interest of this Ordinance and the health, safety, and welfare of the community. The Governing Body shall decide whether special use permits shall be granted only after having received a recommendation from the Board of Zoning Appeals. In no event shall a special use permit be granted where the proposed use is not authorized by the terms of this Ordinance, or where the standards listed in 4.3. of this Article are not found to exist.

4.1-2 Variances:

The Board of Zoning Appeals shall not grant any variance of the applicable provisions of these regulations after such special use permit has been granted by the Governing Body; provided, however, that after the granting of a special use permit, the Board may grant a bulk variance for other than minimum lot area only if the Planning Commission, upon review of the proposed site plan, recommends such variance as desirable to promote proper use of the site.

4.1-3 Conditions and Guarantees:

Prior to the granting of any special use permit the Planning Commission or Governing Body may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special permit use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and conditions herein. In all cases in which a special use permit is granted, the Planning Commission may recommend, or Governing Body may require such evidence and guarantees as may be deemed necessary to ensure that the conditions stipulated are being and will be fully complied with.

4.2. Procedures.

4.2-1 Application:

A written application for a special use permit shall be filed with the Administrative Official and shall include a statement indicating the section of the Ordinance under which the permit is sought, the grounds upon which it is requested, and sufficient evidence to show that the use will conform to the standards set forth in Section 4.3. The application shall be accompanied by an area map and a site plan of the subject property.

4.2-2 Fees: Every application for a special use permit shall be subject to a filing fee.

4.2-3 Site Plan: All applicants for a special use permit shall submit with their application ten (10) copies of a development plan for the property which shall include the following:

A. A site plan showing:

- 1) Approximate size and locations of all buildings.
- 2) Access from streets.
- 3) Parking arrangements and number of spaces.
- 4) Interior drives and service areas.
- 5) Landscaped areas.
- 6) All proposed signs.

B. Location map showing development and zoning of adjacent property within one hundred (100) feet.

C. The full legal description of the boundaries of said development area.

D. A description of the general character of all buildings.

4.2-4 Hearing: Upon receipt of the formal application and all accompanying material, the City Planner shall call a public hearing for the next scheduled meeting of the Board of Zoning Appeals, provided, however, that notice must be published in a newspaper of general circulation at least twenty (20) days prior to the date set for hearing. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least twenty (20) days before the hearing to all owners of record of real property within the area to be altered and to all owners of record of real property located within at least 200 feet of the area proposed to be altered for regulations of a

city and to all owners of record of real property located within at least 1,000 feet of the area proposed to be altered for regulations of a county. If a city proposes a zoning amendment to property located adjacent to or outside the city's limits, the area of notification of the city's action shall be extended to at least 1,000 feet in the unincorporated area. The Planning Commission shall submit a recommendation to the Governing Body within thirty (30) days after the close of the public hearing. Reference Ordinance 4821-13 for special exceptions.

- 4.2-5 Findings: In making a recommendation to the Governing Body, the Planning Commission shall specify the particular grounds relied upon and their relation to the proposed use and shall make affirmative findings that the proposed use conforms with the general standards set forth in Section 4.3 of this Article. In no case shall an exception be granted if the proposed use will constitute a nuisance or a public health or safety hazard to adjacent properties or to the community at large.
- 4.2-6 Action by Governing Body: The Governing Body shall consider the Planning Commission's recommendation at the next regularly scheduled Governing Body meeting for which the agenda item can be docketed. The Governing Body may adopt or may revise or amend and adopt such recommendation by resolution. If the Governing Body fails to act upon a recommendation within 120 days from the receipt thereof, the application shall be deemed to have been denied.
- 4.2-7. Period of Validity of Special Use Permit: A special use permit shall expire automatically, without revocation by the City, unless a building permit to effectuate such specially permitted use is obtained within twelve (12) months after such permit is obtained by the applicant, or if no building permit is required, unless substantial evidence of use is filed with the Zoning Administrator within the twelve(12) months period after such permit is obtained. A special use permit shall expire if the specially permitted use shall cease or be abandoned for more than twelve (12) months.

4.3. Standards for Issuance of Special Use Permits.

- 4.3-1 Generally: Before any permit shall be granted the Planning Commission shall make written findings certifying that adequate provision has been made for the following:
- A. The proposal is in keeping with the character of the neighborhood.
 - B. The zoning uses of nearby properties.
 - C. The suitability of the property for the uses to which it is restricted.
 - D. The extent to which the change will detrimentally affect nearby property.
 - E. The length of time the property has been vacant as zoned.

- F. The gain to the public health, safety and welfare made possible by the loss in value of the plaintiff's property compared to the hardship imposed on the plaintiff if their request were denied.
- G. Accessibility of the property to police, fire, refuse collection and other municipal services; adequacy of ingress and egress to and within the site; traffic flow and control; and the adequacy of off-street parking and loading areas.
- H. Utilities and services, including water, sewer, drainage, gas, and electricity, with particular reference to location, availability, capacity and compatibility.
- I. The location, nature, and height of buildings, walls, fences, and other improvements; their relation to adjacent property and uses; and the need for buffering or screening.
- J. The adequacy of required yard and open space requirements and sign provisions.
- K. The general compatibility with adjacent properties, other properties in the district, and the general safety, health, comfort, and general welfare of the community.
- L. The standards and requirements as prescribed in Section 4.5 of this Article.

4.4. Uses Permitted by Special Use Permit.

See Table of Uses Regulations - Section 3.4 of this Ordinance.

4.5. Provisions for Particular Classes of Special Use Permit Uses.

4.5-1 Accessory Apartment in R-S and R-1 Districts: Before a permit shall be granted to allow the incorporation of an accessory apartment into an existing single-family dwelling, the Planning Commission shall make written findings certifying that the following provisions have been met:

- A. The structure into which the accessory apartment is to be incorporated shall be occupied by the current owner/applicant. The accessory apartment may be rented.
- B. The accessory apartment shall be incorporated within an existing structure such that a separate housekeeping unit is created which is attached to the existing unit by a common wall, floor or ceiling and not just a breezeway or porch; and such that the exterior single-family appearance of the structure, as viewed from the public right of way, is not altered.
- C. The accessory apartment unit shall be clearly subordinate to the existing unit and shall occupy no more than 45 percent of the entire floor area of the structure.

- D. The application shall comply with all requirements of this Article, Special Use Permits, and all requirements of this Ordinance which regulate uses in single-family residential districts.

4.5-2 Agricultural Uses in Flood Plain (FP) Zoning District:

Permitted Uses: The following uses, having a low flood damage potential, shall be permitted in an FP District (to the extent that they are not prohibited by any other ordinance) upon application to the Planning Commission and approval by the Governing Body of a Special Use Permit: Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.

4.5-3 Permitted Accessory Uses and Structures: The following accessory uses and structures shall be permitted subject to Section 3.2-1. of this Ordinance:

- A. A structure for storage of agricultural tools and implements required to perform the approved agricultural use at the site, provided that the structure shall not exceed 1600 square feet in gross floor area, and provided that the agricultural use shall exceed 40,000 square feet in minimum area.
- B. A temporary structure for sale of produce grown at the site, provided that such a structure shall be allowed only for a time period to be established by the special use permit.
- C. The gathering by the general public of unharvested produce at the site, provided that the allowed time for such accessory use shall be established by the special use permit.
- D. Exterior storage of agricultural tools and implements required to perform the agricultural use at the site, except that where such use is in or adjacent to a residential district, a solid fence, wall or obscuring plant material not less than six (6) feet in height shall screen the exterior accessory storage from the view of all adjacent public and private property.

4.5-4 Standards: Before any special use permit shall be granted for a permitted agricultural use in the FP district, the Planning Commission shall make written findings certifying that the requirements of Article IV, Special Use Permits, and Article XV, Flood Plain Zoning District, have been met.

4.5-5 Bed-and-Breakfast Facilities:

- A. Bed-and-Breakfast Facilities are hereby deemed to be compatible and appropriate property uses in R-S (Single-family Suburban Districts), R-1 (Single-family Dwelling Districts) and R-2 (Two-family Dwelling Districts), provided that such uses are made subject to reasonable limitations and conditions necessary to protect and preserve the residential character and use of properties that are now or may hereafter become located within the District.
- B. A special use permit may be granted for a property located in an R-S (Single-family Suburban District), R-1 (Single-family Dwelling District) zoning district for the purpose of the operation of a Bed-and-Breakfast Facility if the following requirements and criteria are satisfied: All requirements and procedures applicable to special use permits in general under the Zoning Ordinances shall also be applicable to special use permits for the operation of Bed-and-Breakfast Facilities.
- C. In addition to the requirements under the Zoning Ordinances for the submission of a site plan or development plan for the property, such site plan or development plan shall also include a floor plan illustrating the existing layout of all rooms and space within the residential structure, and any proposed alterations thereto, including an identification of the existing and proposed uses of each such room or space therein.
- D. Subject to the limitations set forth in this section, the permit shall specify the maximum number of sleeping units which the facility is permitted to maintain and make available to the general public for overnight guests of the Bed-and- Breakfast Facility, and the maximum number of bedrooms/sleeping units that can be maintained within the structure for any purpose, which determinations shall be based upon the following factors:
 - 1) The size of the structure and the number of rooms in the structure which can reasonably be used as sleeping rooms and restroom facilities for overnight guests without impairing the character of the dwelling as a single- family structure and without overcrowding, taking into consideration the number of regular, residential occupants of the structure; and
 - 2) The extent of the parking accommodations that can be made available to overnight guests, taking into consideration the normal parking needs of the regular, residential occupants of the structure and of the neighborhood.
- E. Unless special circumstances or unique characteristics of the property are specifically found to exist, no Bed-and-Breakfast Facility may be permitted for more than four sleeping units that may be provided or used for public accommodation. The number of overnight guests housed in the facility at any given time (not including the number of regular, residential occupants of the structure), may not exceed the number of permitted sleeping units multiplied by three.
- F. The special use permit shall designate the minimum number of off-street parking

spaces which must be provided and the maximum number of off-street parking spaces which may be provided. In setting such limitations, consideration shall be given to the following:

- 1) The extent to which reliance upon on-street parking may cause congestion or inconvenience to the neighborhood; and
 - 2) The extent to which off-street parking accommodations may detract from or impair the residential character of the neighborhood.
- G. On-site meal service at any Bed-and-Breakfast Facility that is provided for compensation of any kind shall be limited to meal service to the overnight guests of the Facility and to occasional special events. No on-site meal service may be provided to the general public on any ongoing, regular or regularly scheduled basis.
- H. No Bed-and-Breakfast Facility shall operate in the nature of a rooming house, lodging house or apartment whereby sleeping units are provided for on-going occupancy by any person or persons for compensation of any kind. It shall not be a violation of this provision for a Bed-and-Breakfast Facility to have an occasional guest who stays for an extended period not in excess of sixty days. However, no more than one sleeping unit at a Bed- and-Breakfast Facility may be in occupancy at any given time by a person or persons staying in excess of one week, and the overall, predominant character of the guest-stays shall be in the nature of short-term stays of three nights or less.
- I. Every Bed-and-Breakfast Facility operating under a special use permit is required to maintain a log recording the name and address of each overnight guest, the date(s) each such guest was lodged at the Facility, and an identification of the unit occupied by each such guest within the Facility. Every such Bed-and-Breakfast Facility must also maintain a log recording the dates and other identifying information regarding any on-site meal service provided at the Facility to persons other than overnight guests, including the nature of the occasion or event giving rise to such meal service, the names and addresses of the hosts or sponsors thereof, and the total number of guests so served. All such logs shall be maintained on-site at all times and shall be available for inspection at any time upon request by any officer or agent of the City authorized to enforce the provisions of this Ordinance. Any such log entries shall be preserved for a period of not less than three years.
- J. A special use permit for the operation of a Bed-and-Breakfast Facility may be revoked or may be modified and/or made subject to additional, special conditions, upon a finding by the governing body that such Facility has been operated in violation of the intent, terms or conditions of this Ordinance. Proceedings in this regard may be initiated by the governing body, the Planning Commission, the Zoning Administrator, or by the owners of three or more properties located within the same zoning district as the Bed-and- Breakfast Facility or located within two-hundred feet of the Facility.

- K. The Planning Commission shall conduct a public hearing upon any such complaint with not less than fifteen days notice thereof given in writing to the owners and operators of the Facility and given by publication in the official newspaper of the City. Upon the conclusion of such hearing, the Planning Commission shall enter and transmit to the governing body its findings and recommendations. The governing body shall receive and consider such findings and recommendations at its next regularly scheduled meeting which is not less than seven days following the date the Planning Commission enters such findings and recommendations.

4.5-6 Health Care Facilities

- A. Requirements and Criteria. A special use permit, or a special use permit exemption as hereinafter provided, may be granted for the location and operation of a “health care facility” as defined in the Zoning Ordinances within any zoning classification as to which any such particular health care facility may be located pursuant to the “Table of General Bulk Regulations” in Article III of the Zoning Ordinances, provided that the following requirements and criteria are satisfied and pursuant to the procedures set forth below.
- 1) All requirements and procedures applicable to special use permits in general under Article IV of the Zoning Ordinances shall also be applicable to special use permits for the operation of a health care facility except as specifically provided otherwise herein.
 - 2) In addition to the general requirements for the submission of a site plan or development plan for the property, such site plan or development plan shall also include a floor plan illustrating the layout of all rooms and space within the structure or structures on the property, including as to existing structures any proposed alterations thereto, including an identification of the existing and proposed uses of each such room or space therein, and including a specific identification of the nature and extent of any accommodations for the overnight stay of any patients of the health care facility.
 - 3) An application for the special use permit shall include the disclosure of the nature of the health care services to be provided, specifically including whether and to what extent any portion of the facility would constitute a “hospital facility” or an “ambulatory surgical care facility” as those terms are defined in the Zoning Ordinances.
 - 4) If the Zoning Administrator, the City Manager or Administrator and the City Attorney concur that the application clearly indicates that no part of the proposed facility would constitute a “hospital facility” or an “ambulatory surgical care facility,” and if all other requirements and restrictions under the Zoning Ordinances are satisfied, then the Zoning Administrator shall issue a special use permit exemption permitting the use at the proposed location without any further proceedings hereunder. If there is no such concurrence, the applicant shall be entitled to a public hearing thereon to be conducted by

the Board of Zoning Appeals, who shall then forward their recommendations to the Governing Body, all pursuant to the procedures set forth in this section. If the Governing Body then finds that no part of the proposed facility would constitute a “hospital facility” or an “ambulatory surgical care facility” it shall grant the special use permit exemption. No facility or property as to which such an exemption has been granted may thereafter be used for the operation of any “hospital facility” or an “ambulatory surgical care facility” without a special use permit being obtained to allow for such a use.

- 5) If the application indicates that some or all of the proposed facility would constitute a “hospital facility” or an “ambulatory surgical care facility,” the applicant shall also disclose (i) the nature and extent of any such services to be provided in that regard, (ii) information regarding the extent to which such services are already being provided through existing community hospital facilities in the Newton community, and (iii) information regarding the extent to which the existing services are asserted as being inadequate to serve the current or reasonably foreseeable future community needs in this regard.

- 6) If the Zoning Administrator, the City Manager or Administrator and the City Attorney concur that the application clearly indicates that the “hospital facility” or the “ambulatory surgical care facility” services disclosed in the application are to be provided as part of a community hospital facility and are not duplicative of any other similar community hospital facility services provided elsewhere in the Newton community, and if all other requirements and restrictions under the Zoning Ordinances are satisfied, then the Zoning Administrator shall issue a special use permit exemption permitting the use at the proposed location without any further proceedings hereunder. If there is no such concurrence, the applicant shall be entitled to a public hearing thereon to be conducted by the Board of Zoning Appeals, who shall then forward their recommendations to the Governing Body, all pursuant to the procedures set forth in this section. If the Governing Body then finds that the “hospital facility” or the “ambulatory surgical care facility” services disclosed in the application are to be provided as part of a community hospital facility and are not duplicative of the services being provided by any other community hospital facility elsewhere in the Newton community, it shall grant the special use permit exemption. No facility or property as to which such an exemption has been granted may thereafter be used for the operation of other or different “hospital facility” or “ambulatory surgical care facility” services without a special use permit being obtained to allow for such a use.

- 7) In the absence of an exemption being granted, a special use permit for the operation of a “hospital facility” or an “ambulatory surgical care facility” shall be granted if the Governing Body finds that the services to be provided through such facility are not unduly duplicative with like services being adequately provided or reasonably anticipated to be provided through existing community hospital services in the Newton community, provided that all other zoning regulations and restrictions are also satisfied. Any such

special use permit which is issued shall include the following: (i) a specification of the extent to which such a “hospital facility” or “ambulatory surgical care facility” may be conducted as part of the premises; (ii) a specification of the nature and extent of the types of medical services which may be performed or provided in such “hospital facility” or “ambulatory surgical care facility; and (iii) a prohibition upon the providing of any additional, other or different services through such a “hospital facility” or “ambulatory surgical care facility” without the special use permit being amended to allow the same.

- 8) If the Governing Body finds that the services to be provided through such a “hospital facility” or “ambulatory surgical care facility” are unduly duplicative with like services being adequately provided or reasonably anticipated to be provided through existing community hospital services in the Newton community, a special use permit shall be denied unless a means can be determined to condition the provision of those services under a special use permit in a manner which will avoid or properly ameliorate what would otherwise be improper negative impacts upon the continued availability and development of community hospital services. The burden of establishing the nature and adequacy of any such conditions should be upon the applicant. A final denial of the special use permit shall not be issued without the applicant first being provided with a reasonable opportunity to propose suitable and adequate conditions in this regard.

B. Existing health care facilities. Health care facilities existing and in operation on October 15, 2004, shall not be required to obtain a special use permit as to any existing health care services being provided therein. However, the issuance of a special use permit or a special use permit exemption shall be required as to (i) any new or additional health care facility structures constructed, or (ii) any change in the nature of the health care services being provided in any existing structure which would cause any portion of the existing facilities to constitute a “hospital facility” or “ambulatory surgical care facility” as defined in the Zoning Ordinances, including any expansion or renovation of existing structures to accommodate such a change in services, or (iii) as a condition of the resumption of a prior use after a period of abandonment or discontinuance as defined in 13.5-5 of Article XIII of the Zoning Ordinances.

C. Filing Fees. Every applicant for a special use permit or a special use permit exemption for a health care facility, and every applicant for an amendment to an existing special use permit for a health care facility, shall pay a filing fee in the following manner:

- 1) An initial filing fee shall be paid at the time of the submission of the application in the amount of \$200.00. This initial filing fee shall be applicable regardless of whether the applicant is seeking a special use permit, a special use permit exemption or an amendment to an existing special use permit.
- 2) If the application is for a special use permit exemption, and if the exemption is

not administratively granted in the manner set forth in Part 5 or in Part 6 of Section 4.5-6.A above, an additional filing fee shall be required such that the total filing fee shall be in the amount of \$5,000.00. It is intended that the fee charged herein shall be used to cover the costs of the evaluation of the application, including City staff time and expenses, and including the cost of any independent expert consultant or consultants who may be retained to assist in the evaluation. Any excess of the fees paid over the costs incurred shall be refunded to the applicant; provided, however, that a minimum filing fee shall be retained in the amount of \$1,000.00.

- 3) If the Zoning Administrator determines from the application, or if it is subsequently determined, that any part of the subject facility would constitute a "hospital facility" or an "ambulatory surgical care facility," an additional filing fee shall be required such that the total filing fee shall be equal to one percent (1%) of the capital cost of the proposed facility or of the facility renovation, with a minimum fee of \$5,000.00 and a maximum fee of \$50,000.00. It is intended that the fee charged herein shall be used to cover the costs of the evaluation of the application, including City staff time and expenses, and including the cost of any independent expert consultant or consultants who may be retained to assist in the evaluation. Any excess of the fees paid over the costs incurred shall be refunded to the applicant; provided, however, that a minimum filing fee shall be retained in the amount of \$1,000.00.
- 4) All proceedings in relation to any such application shall be suspended during any period pending receipt of payment of the required filing fees. Failure to pay any such fee within 30 days of the submission of the application, or thereafter within 30 days after notice is given of the determination that an additional filing fee is required, then such failure shall be deemed to be a withdrawal or abandonment of the application and all proceedings thereon shall be terminated.

D. Procedures.

- 1) Upon the submission of an application for a special use permit or for a special use permit exemption hereunder, and upon payment of the initial filing fee, the Zoning Administrator shall have thirty days in which to conduct a preliminary review of the application. Prior to the end of such preliminary review period the Zoning Administrator may require the submission of any additional information which may reasonably aid in the evaluation thereof pursuant to the applicable criteria. Supplemental information requirements may also be made within fifteen days of any such submissions. The application shall not be deemed to be completed until compliance has been made with such additional information requirements. The application shall also not be deemed to be completed until compliance has been made with any requirements for the payment of an additional filing fee.
- 2) Upon completion of the application process the Zoning Administrator shall schedule a public hearing on such application by the Board of Zoning Appeals

and shall publish a notice thereof in the official newspaper of the City in the following manner:

- a. If the hearing is upon an application for a special use permit exemption, the notice shall be published not less than fifteen days prior to the hearing, with the date of the hearing to be not more than forty-five days following completion of the application.
 - b. If the hearing is upon an application for a special use permit, the notice shall be published once a week for two consecutive weeks with the second such publication being not less than fifteen days prior to the hearing, and with the date of the hearing to be not more than sixty days following completion of the application.
- 3) At any time during the public hearing process or during the deliberations the Governing Body of the City of Newton may authorize the retaining of one or more independent expert consultants to assist the Board of Zoning Appeals and/or the Governing Body in the evaluation of the application. If such authorization is given, the proceedings may be suspended for a period not to exceed ninety days for such purpose.
 - 4) The Board of Zoning Appeals shall submit a recommendation to the Governing Body within sixty days after the close of the public hearing. In making a recommendation the Board of Zoning Appeals shall enter its factual findings and shall specify the particular grounds upon which reliance is made in support of such recommendations. A failure of the Board of Zoning Appeals to adopt a set of recommendations within such time shall constitute a "no recommendation," and such matter shall be reported to the Governing Body along with a complete record of the public hearing proceedings.
 - 5) At the Governing Body's first regularly scheduled meeting which occurs not less than fifteen days following the conclusion of the proceedings of the Board of Zoning Appeals the Governing Body shall receive and consider a report of the proceedings of the Board of Zoning Appeals. The Governing Body shall be entitled to conduct a public hearing procedure for the purpose of receiving and considering any additional evidence it deems necessary in order to evaluate the application; provided, however, that any such public hearing procedure shall be commenced not less than thirty days following the Governing Body's initial consideration of the application.
 - 6) If the Governing Body fails to approve the application within 120 days from its initial consideration of the application, and in the absence of an agreement by the applicant for an extension of such time, then the application shall be deemed to have been denied.
- E. Revocation or modification of health care facility special use permit. A special use permit for the operation of a health care facility may be revoked, or may be

modified and/or made subject to additional, special conditions, upon a finding by the Governing Body that such facility has been operated in violation of the intent, terms or conditions of the Zoning Ordinances. Proceedings in this regard may be initiated by the Governing Body, the Board of Zoning Appeals, the Zoning Administrator, or by the owner of any health care facility claiming to be damaged or disadvantaged by reason of such violations. The Board of Zoning Appeals shall conduct a public hearing upon any such complaint with not less than 15 days notice thereof given to the owners or operators of the facility and given by publication in the official newspaper of the City. Upon the conclusion of such hearing, the Board of Zoning Appeals shall enter and transmit to the Governing Body its findings and recommendations. The Governing Body shall receive and consider such findings and recommendations at its next regularly scheduled meeting which is not less than 15 days following the date the Board of Zoning Appeals enters such findings and recommendations. The Governing Body may elect to conduct a public hearing on the matter for the purpose of receiving further evidence with not less than 15 days notice thereof given to the owners or operators of the facility and given by publication in the official newspaper of the City.

4.5-7 Limited Outdoor Market.

- A. A special use permit for a Limited Outdoor Market may be granted for a property located in R-1, R-2, R-3 and R-S zoning districts if the following requirements and criteria are satisfied:
- 1) All requirements and procedures applicable to special use permits in general under the Zoning Ordinances shall also be applicable to special use permits for the operation of Limited Outdoor Markets.
 - 2) In addition to the requirements under the Zoning Ordinances for the submission of a site plan or development plan for the property, such site plan or development plan shall also include a plan illustrating the existing layout of the site, including dimensions of the sales area, access ways, parking areas and location of trash receptacles. Additionally, the submission must include the specific days and hours of operation requested as well as the means, such as stalls, tables or other structures, by which merchandise is to be displayed.
 - 3) The special use permit shall designate the minimum number of off-street parking spaces which must be provided and the maximum number of off-street parking spaces which may be provided. In setting such limitations, consideration shall be given to the following:
 - a. The extent to which reliance upon on-street parking may cause congestion or inconvenience to the neighborhood; and
 - b. The extent to which off-street parking accommodations may detract from or impair the character of the neighborhood.

- B. A special use permit for the operation of a Limited Outdoor Market may be revoked, or may be modified and/or made subject to additional special conditions, upon a finding by the governing body that such Limited Outdoor Market has been operated in violation of the intent, terms or conditions of this Ordinance. Proceedings in this regard may be initiated by the governing body, the Planning Commission, the Zoning Administrator, or by the owners of three or more properties located within the same zoning district as the Limited Outdoor Market. The Planning Commission shall conduct a public hearing upon any such complaint with notice of not less than fifteen days thereof given in writing to both the owners and operators of the Limited Outdoor Market and given by publication in the official newspaper of the City. Upon the conclusion of such hearing, the Planning Commission shall enter and transmit to the governing body its findings and recommendations. The governing body shall receive and consider such findings and recommendations at its next regularly scheduled meeting which is not less than seven days following the date the Planning Commission enters such findings and recommendations.

ARTICLE V - "PUD" PLANNED UNIT DEVELOPMENT DISTRICT

5.1 Statutory Authorization.

The provisions relating to planned unit development districts are adopted pursuant to the authorization contained in Kansas Statutes Annotated Sections 12-755. The City Governing Body may by Ordinance approve the establishment of a planned unit development district on any parcel or tract of land which is suitable for and of sufficient size to be developed as a planned unit development consistent with the intent and purpose of this Ordinance and the Comprehensive Plan.

5.2 Purpose & Intent.

The intent of this Article is to permit greater flexibility and, consequently, more creative and imaginative design for developments than generally is possible under conventional zoning regulations by establishing planned unit development districts which are in general harmony with the purpose and intent of the Zoning Ordinance and with the Comprehensive Plan of the City, but in which permitted uses, densities, open space requirements and other elements may vary from those applicable in any other districts established in this Ordinance. Therefore, it is the purpose of this Article to:

- 5.2-1 Promote flexibility in design and permit planned diversification in the location of structures.
- 5.2-2 Promote the efficient use of land to facilitate a more economic arrangement of buildings, circulation systems, land use and utilities.
- 5.2-3 Conserve the value of land by relating the type, design, and layout of development to the particular site and its natural features.
- 5.2-4 Provide for more usable and suitably located recreation facilities and common open space than would otherwise be provided under conventional land development procedures.
- 5.2-5 Provide the maximum choice in the types of environments and living units available to the public.

5.3 Definitions

The following definitions shall apply and be used whenever these terms appear in this Article:

- 5.3-1 Homeowners' Association: A non-profit organization of homeowners in which each lot owner in the planned unit development is a member and in which each lot is subject to a charge for a proportionate share of the expenses of the organization's activities, such as maintaining required open space.

- 5.3-2 **Planned Unit Development:** An area to be developed as a single entity according to an approved plan, containing residential uses and associated nonresidential uses as specified in this Article.
- 5.3-3 **Screening:** A strip at least 10 feet wide of densely planted trees or shrubs at least eight feet high at the time of planting of a type that will form a year-round screen; or any other artificial or natural divider as may be required and approved by the Planning Commission in the Final Development Plan.
- 5.3-4 **Net Acre:** The total land area of the PUD exclusive of all-private roads and/or public street right-of-way.
- 5.3-5 **Usable Open Space:** A generally unobstructed parcel or area of land set aside, dedicated, or reserved for the use and enjoyment of owners and occupants of land within the planned unit development district for recreational or open space activities and uses. Such area shall not be devoted to private roadways, off-street parking or loading, or buildings and structures, except those incidental to the recreational or open space.

5.4 Permitted Uses.

- 5.4.1 **Residential Planned Unit Development:** All residential uses including detached, semi-detached, attached or multi-storied structures in any arrangement or combination thereof, plus non-residential service-oriented uses of a religious, cultural, recreational and business character that are primarily designed and intended to serve the residents of the residential planned unit development.
- 5.4.2 **General Planned Unit Development:** Business and industrial structures and uses exclusively or in combination with residential uses in a unified plan.

5.5 Site Development Standards.

Compliance with the following standards, in addition to those that may be required by other provisions of this Ordinance and the Subdivision Regulations shall be required:

- 5.5-1 **Lot Area and Yard Requirements:** No minimum lot size, frontage or yard requirements within the PUD shall be required except those dictated by health, fire safety, function, and screening considerations; provided, however, that the PUD will not injure nor hinder or prevent the development of surrounding property in accordance with the Comprehensive Plan.
- 5.5-2 **Height Limitations:** No maximum limits on building heights shall be required, except those that may relate to airports and landing zones.

- 5.5-3 Access: All lots should have direct access to a public or private road except residential dwellings, which need not front on a road but which must have access thereto via a court, walkway, or other area dedicated to public use or owned or maintained by a homeowners' association.
- 5.5-4 Building Location and Area: The location and arrangement of all structures, parking areas, walks, lighting and appurtenant facilities should be shown on the preliminary development plan and shall be compatible with the surrounding land uses and the purposes of the planned unit development district; any part of a PUD not used for structures, parking or loading areas, or accessways shall be landscaped, screened or otherwise improved. In residential planned unit developments, the total ground area occupied by structures and buildings shall not exceed 35% of the total ground area of the PUD.
- 5.5-5 Street Standards: All private roads, off-street parking areas, and public right-of-way shall be surfaced with asphalt or concrete and shall be so graded and drained as to dispose of all surface water accumulated within the area.
- 5.5-6 Density: Any development plan that does not propose more dwelling units per net acre than would be permitted pursuant to the R-3 District regulations shall be qualified for preliminary approval only insofar as residential density is concerned. A greater number of dwelling units per net acre may be permitted, but if the number exceeds that which would be permitted under the R-3 District regulations by more than ten percent (10%), the developer has the burden to show that such excess will not have an undue and adverse impact on the existing public facilities and on the reasonable enjoyment of neighboring property. The Planning Commission, in determining the reasonableness of a proposed increase in the number of dwelling units per net acre, shall recognize that increased density may be compensated for by additional private amenities and by increased efficiency in public services to be achieved by: 1) the amount, location and proposed use of common open space; and 2) the location, design and type of dwelling units. The Planning Commission shall, in its determination, also consider that the physical characteristics of the site make increased densities appropriate in the particular location.
- 5.5-7 Open Space: The application for residential PUD shall set aside an area equal to not less than 20% of the total planned unit development for usable open space. The development plan shall include such provisions for the ownership and maintenance of the common open space as are reasonably necessary to insure that remedial measures will be available to the City if the common open space is permitted to deteriorate or is not maintained in a condition consistent with the best interest of the planned development or of the City.
- 5.5-8 Screening: When business or manufacturing structures or users in a planned unit development district about a residential district or residential buildings in the same development, screening shall be provided.

5.6 Procedure for Designation of a Planned Development District.

- 5.6-1 Preliminary Conference: Any owner or developer proposing to develop a planned unit development pursuant to this Article may confer with the Planning staff before submitting an application for rezoning to the PUD District. The preliminary conference would enable the Planning staff to review the proposed development in sketch form and to explain the requirements and procedures of this Article to the owner or developer. The sketch plan would show the location of the proposed development, approximate building sizes and locations, vehicular access drives, location of existing utilities, surrounding right-of-way, pavements, and property lines.
- 5.6-2 Application and Preliminary Development Plan: Application for rezoning to PUD shall be filed in the Planning Department in accordance with Section 1.10 of this Ordinance. In addition to the requirements of Section 1.10, the applicant shall submit ten (10) copies of a Preliminary Development Plan which shall contain all information required for a preliminary plat in the Subdivision Regulations in addition to the following items:
- A. Written Statement: A written statement containing a general description of the project including ownership, number of phases for development, if more than one, the proposed commencement date and estimated completion date of each, the area of each phase, number of buildings, number of units and the number of bedrooms in each unit. Developer must also submit information demonstrating that the development will not impose an undue burden on public services and facilities.
 - B. Survey: A survey by a registered land surveyor showing thereon the exact net area of the site and of each phase, if more than one phase. C. Site Plan: An accurate scale map of the proposed development at a scale of not less than 1" = 100' showing the following where applicable.
 - C. Site Plan: An accurate scale map of the proposed development at a scale of not less than 1" = 100' showing the following where applicable.
 - 1) Topography at two-foot intervals.
 - 2) All existing right-of-way easements, pavements, structures, utilities, drainage facilities, lot lines and natural features such as wooded areas, streams, ponds, or marshes.
 - 3) Proposed lot, blocks, easements, and public street right-of-way if required.
 - 4) Locations and approximate dimensions of all proposed structures and including on the drawing the locations of all buildings within 100 feet of the property.

- 5) Locations and identifications of all recreational facilities.
- 6) Locations and dimensions of all proposed roadways, drives, walks and parking lots.
- 7) Generalized locations for areas to be landscaped and the nature of plantings.
- 8) A statement of the residential density (when applicable), the proposed total gross floor area, the percentage of the development which is to be occupied by structures, and the number of acres to be devoted to each use.
- 9) A statement showing the relationship of the planned unit development to the City's Comprehensive Plan.

D. Ownership Information: Evidence that the entire tract or parcel of land to be occupied by the planned unit development is held in a single ownership, if there are two or more owners that the application by PUD is filed jointly by all owners, and evidence that the applicant has sufficient control over the tract to effectuate the proposed plan, including a statement of all the ownership and beneficial interests in the tract of land and the proposed development.

E. Common Open Space: When a planned unit development includes provisions for common open space or recreational facilities, a statement describing the provision that is to be made for the care and maintenance of such open space or recreational facilities shall be made

F. Covenants: The substance of any covenants, easements, or other restrictions that will be imposed upon the use of land, buildings or structures or that are to be recorded with respect to property, shall be made a part of the planned unit development district.

G. Other: Additional drawings or information may be required to insure that the purpose of this section is met or to facilitate review of plans involving extraordinary sites.

5.6-3 Partial Submittal: To facilitate and promote proper long range planning, the City Commission may, upon recommendation of the Planning Commission, waive the requirement that any or all of the items listed in the foregoing subsections be included in the Preliminary Development Plans, except 5.6-2, A, B, C, (1) and C (2).

5.6-4 Approval of the Preliminary Development Plan: After approval of the preliminary plan by the Governing Body, the landowner shall file with the Register of Deeds with an exact copy to the City Planning Department that such a plan has been approved by and filed with the City and that such PUD is applicable to certain specified legally described land and that copies of said plan are on file in the Newton Planning Department.

- A. Such statement recorded with the Register of Deeds shall also specify the nature of the plan, the proposed density or intensity of land uses and other pertinent information sufficient to notify any prospective purchasers or users of land of the existence of such a plan.
- B. The recorded statement shall specify that the preliminary development plan shall become binding upon all successors and assigns unless amended in conformance with this act. Substantial or significant changes in the planned unit development shall be made either after rehearing and reapproval of the preliminary plan or by a change in the zoning district in which located under the terms and procedures specified in the statutes for conventional zoning.

5.7 Approval of the District and Submission of the Final Development Plan.

Approval of the district and the preliminary development plan by the Governing Body shall constitute permission to file a Final Development Plan. Amendment of the zoning, however, shall not be officially recorded until the Final Development Plan and Final Subdivision Plat have been approved by the Planning Commission. No building permits shall be issued until the Final Development Plan has been approved. The Final Development Plan shall be submitted in ten (10) copies at a scale of not less than one inch equals 100 feet and shall show the following information:

5.7-1 A Final Subdivision Plat.

5.7-2 Utility Easements: Wherever required by the City. 5.7-3. Public Street Right-of-Way: Where applicable.

5.7-3 Site Plan: An accurate map showing the following:

- A. Precise locations, dimensions, and grades of all structures, and open space, roadways, driveways, parking areas and walks, including all proposed or existing sidewalks adjacent to the site.
- B. The design, location and dimensions of all site details, including lighting, trash enclosures, signs, retaining walls and recreation facilities.
- C. Planting Plan showing specific plant materials and sizes.
- D. If private utilities are to be installed, the plans shall include utility system plans for sanitary storm drainage, water distribution and all private utilities. Plans shall be precisely engineered including locations, grades and sizes and shall show connections to existing utilities. Plans shall include easements and utility lines as may be required.
- E. Preliminary building plans, including floor plans and exterior elevations.

5.7-1 If it is proposed that any open space or recreational facility is to be owned and/or maintained by any entity other than a governmental authority, copies of the proposed articles or incorporation and bylaws of such entity shall be made a part of the planned unit development district and submitted to the Planning Commission for approval.

5.8 Approval of the Final Development Plan.

The Planning Commission may not deny approval of the Final Development Plan if it is in substantial compliance with the Preliminary Development Plan. The Final Development Plan shall be deemed to be in substantial compliance with the Preliminary Development Plan as approved, provided that the Final Plan does not:

5.7-2 Vary the proposed gross residential density or intensity of use by more than five percent (5%) or involve the reduction in the area set aside for common open space, nor the substantial relocation of such area.

A. Increase by more than ten percent (10%) the floor area proposed for non-residential use.

B. Increase by more than five percent (5%) the total ground area covered by buildings, nor involve a substantial change in the height or location of buildings and/or other major elements of the plan.

5.7-3 Within forty-five (45) days of filing an application for final plan approval, the Planning Commission shall grant such plan final approval provided the plan is in conformance to the preliminary development plan.

5.7-4 In the event the plan submitted contains variations from the plan given tentative approval but remains in substantial compliance with the plan as submitted for tentative approval, the Planning Commission may, after meeting with the landowner, refuse to grant final approval and shall within forty-five (45) days from the filing of the application for final approval so advise the landowner in writing of said refusal, setting forth in said notice the reasons why one or more said variations are not in the public interest. The landowner may either treat the refusal as a denial of final approval and resubmit said final plan in accordance with the request of the Planning Commission, or he or she may notify the Planning Commission, within forty-five (45) days of notice of the date of refusal, his or her notice to appeal the decision of the Planning Commission. In the event such an appeal is filed, the Planning Commission shall schedule a public hearing, giving such notice as is required for preliminary approval. After a public hearing by the Planning Commission and in the event the landowner is not in agreement with the decisions of the Planning Commission, the landowner may request within thirty (30) days that the application for final plat approval be submitted to the Planning Commission for final decision. Any reason for disapproval of the final development plan by either the Planning Commission or the Governing Body shall be set forth in full. A plan or any part thereof which has been given final approval by the Planning Commission or upon appeal to the Governing Body, shall be so certified by the secretary of the Planning

Commission, and shall be filed of record with the Register of Deeds immediately following the satisfying of all conditions precedent and conditioned upon such approval. In the event that a plan or section thereof is given final approval and thereafter the landowner shall abandon said plan or the section thereof finally approved and shall so notify the municipality in writing, or in the event the landowner shall fail to commence the planned unit development within eighteen (18) months after final approval 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.

5.9 Building Permits.

Building permits will not be issued until the Final Subdivision Plat and Final Development Plans have been approved by the Governing Body. Permits will be issued only when the permit application is in precise conformance to the approved Final Development Plan, and the Director of Planning so certifies on the permit application.

5.10 Staged Development.

In accordance with the schedule proposed in the application for approval of the Preliminary Plan, the developer may elect to file an application for final approval of only a geographic area of the total planned unit development and delay, within the time limits authorized in the ordinance approving the Preliminary Plan, application for final approval of other areas. In applying the provisions of this section, where the proposed Final Development Plan is submitted in stages, the Planning Commission may permit in each area deviations from the number of dwelling units per acre established for the entire planned unit development, provided such deviation shall be adjusted for in other sections of the development so that the number of dwelling units per acre authorized for the entire planned unit development is not affected. The developer shall furnish such performance bond, escrow deposit, or other financial guarantees as may be determined by the Planning Commission to be reasonably required to assure performance in accordance with the development plan and to protect the public interest in the event of abandonment of said plan before completion.

5.11 Amendments.

A planned development district ordinance or an approved preliminary or final development plan may be amended by the City Governing Body, but only after a public hearing has been held pursuant to notice, and findings of fact and recommendations have been prepared by the Planning Commission and transmitted to the City Governing Body.

5.12 Bonding.

The Governing Body may require the posting of a surety bond prior to the issuance of building permits to guarantee timely completion of all obligations in the contract and in compliance with approved Final Development Plans.

5.13 Recording.

Upon approval of the final development by the Planning Commission, the same, together with the final subdivision plat, shall be recorded with the Register of Deeds in the manner prescribed in the City Subdivision Regulations.

5.14 Enforcement by the City.

If for any reason the planned unit development in whole or in part has not been completed pursuant to the approved plans, the City may serve written notice upon the owners of the planned unit development stating why the variations or eliminated parts of the plan are not in conformance with the plan. Said notice shall include a demand that such variation(s) and/or deficiencies be completed within three (3) months after receipt of this notice.

5.15 Fee.

The fee for approval of a planned unit development shall be paid with the application for rezoning and approval of the preliminary development plan, and an additional fee to be paid with submittal of final development plan.

ARTICLE VI - "T-C" TINY HOME COMMUNITY DISTRICT

6.1 Intent and Purpose of District.

It is the intent of the "T-C" Tiny Home Community District to permit tiny homes in a community atmosphere. The tiny home community district is intended for those areas where the owner proposes to develop and rent or lease individual sites.

6.2 District Regulations.

In the "T-C" district, no residential building other than those meeting the definition of 'tiny home' shall be erected within this district. Accessory service or community buildings, such as communal kitchens or shared laundry facilities, which support the tiny home community use are allowable.

6.3 Definitions.

- 6.3-1. Tiny Home: A single-family dwelling unit with a maximum of 400 sq ft of floor area, excluding lofts, that shall comply with regulations found in IRC 2018, Appendix Q.
- 6.3-2. Tiny Home Space: A plot of ground within a tiny home community designed for the accommodation of one (1) tiny home.
- 6.3-3. Natural or Artificial Barrier: Any river or creek, lake or pond, canal, railroad, embankment, or street.
- 6.3-4. Permittee: Any persons to whom a permit is issued to maintain or operate a tiny home community under the provisions of this ordinance.
- 6.3-5. Person: Any individual, firm, trust, partnership, association, or corporation.
- 6.3-6. Street: Any recognized thoroughfare in the City.

6.4 General Requirements.

- 6.4-1. The tract to be used for a tiny home community shall be large enough to accommodate fifteen (15) tiny homes.
- 6.4-2. The applicant for a tiny home community shall prepare or cause to be prepared an application for rezoning and a development plan and shall present three (3) copies of the plan for review and approval by the Planning Commission. The plot plan shall show topography and location and size of:
 - A. Tiny home sites. Only one (1) tiny home may be placed per site.
 - B. Service buildings.

- C. Off-street parking areas.
- D. Electrical outlets.
- E. Sewer outlets.
- F. Water outlets.
- G. Water lines.
- H. Sewer lines.
- I. Recreational area.
- J. Landscaped areas and walls or fences.
- K. Roadways.
- L. Sidewalks.

6.4-3. The tiny home community shall conform with the following requirements:

- A. The community shall be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.
- B. Tiny home community shall have a maximum density of twelve (12) tiny homes per gross acre and a minimum space of three thousand (3,000) square feet for each tiny home.
- C. Each tiny home space shall be at least twenty-five (25) feet wide and clearly defined.
- D. Tiny homes shall be so located on each space that there shall be at least ten (10) feet of clearance between each home. No tiny home shall be located closer than twenty-five (25) feet from any property line bounding the community.
- E. All tiny home spaces shall front upon a private roadway of not less than thirty-one (31) feet in width, which shall have unobstructed access to a public street, alley or highway.
- F. Walkways, not less than forty-eight (48) inches wide and meeting ADA requirements, shall be provided from the tiny home spaces to service/ community buildings.
- G. All roadways and walkways within the tiny home community shall be hard surfaced and adequately lighted at night with electric lamps.
- H. Laundry facilities for the exclusive use of the tiny home occupants may be provided in a service building.

- I. Each tiny home shall be metered individually. At least one (1) electrical outlet supplying at least two hundred and twenty (220) volts of 200-amp capacity shall be provided for each tiny home space.
- J. A recreational area shall be provided at a central location in the tiny home community at the rate of two hundred (200) square feet for each tiny home space.
- K. A solid fence or wall and a ten (10) foot landscaped buffer area shall be provided between the Tiny Home Community District and any adjoining property zoned for residential purposes. The solid fence or wall shall be six (6) feet high. The owner shall be responsible for the maintenance of the fence or wall and the landscaped buffer area.

6.5 Water Supply.

An adequate supply of pure water for drinking and domestic purposes shall be supplied by pipes to all buildings and tiny home spaces within the park. Each tiny home space shall be provided with a cold water tap and individual water meter. An adequate supply of hot water shall be provided at all times in the service buildings for all washing and laundry facilities.

6.6 Service Buildings.

6.6-1. Service buildings, housing sanitation and laundry facilities or any other such facilities, shall be permanent structures complying with all applicable codes, ordinances, and statutes regulating buildings, electrical installations and plumbing and sanitation systems.

6.6-2. All service buildings and the grounds of the community shall be maintained in a clean, sightly condition and kept free of any debris that will be a menace to the health of any occupant or the public or constitute a nuisance.

6.7 Sewage and Refuse Disposal.

Each tiny home space shall be provided with an individual service line with a capped sewer at least four (4) inches in diameter, which shall be connected to receive the waste from the shower, bathtub, flush toilet, lavatory and kitchen sink of the tiny home located in such space and having any or all of such facilities. The capped sewer in each space shall be connected to discharge the tiny home waste into a public sewer system. Tiny homes with composting toilets are not permitted.

6.8 Garbage Receptacles.

Each tiny home shall be provided with at least one city provided trash receptacle with a tight-fitting cover to permit disposal for all garbage, trash, and rubbish, or have a screened dumpster conveniently located for use by the residents.

6.9 Permanent Foundation Required.

6.9-1. No tiny home built on a chassis may be allowed within the T-C area without having the suspension/axle components removed and attached on a permanent foundation.

6.9-2. Tiny homes on wheels are considered a “Recreational Vehicle” and not allowed within T-C.

6.10 Compliance with regulation in IRC 2018, Appendix Q.

Appendix Q shall be applicable to tiny homes used as single-family dwelling units.

6.10-1. All tiny homes placed shall be required to be inspected and a certificate of occupancy issued prior to occupation.

6.11 Register of Occupants.

6.11-1. It shall be the duty of each permittee to keep a record of all tiny homeowners and occupants located within the park.

6.11-2. The tiny home community owners, manager or caretakers shall keep the register available for inspection at all times by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of the information contained in the register.

6.11-3. The register record for each occupant registered shall not be destroyed for a period of three (3) years following the date of departure of the registrant from the park.

6.12 Supervision.

The permittee, or a duly authorized attendant or caretaker, shall be in charge at all times to keep the tiny home community, and its facilities and equipment, in a clean, orderly and sanitary condition. The attendant or caretaker shall be answerable, with the permittee, for the violation of any provision of the regulations in the Tiny Home Community District.

6.13 Permit.

6.13-1. It shall be unlawful for any person to maintain or operate a tiny home community unless a person shall first obtain a permit.

6.13-2. A tiny home community permit is not transferable without a new application being approved prior to the transfer.

6.14 Application for Permit to Operate.

- 6.14-1. A written application for a permit to operate a tiny home community in a “T-C” Tiny Home Community District shall be required for any person, firm or corporation operating the tiny home community. The application shall be filed in duplicate and shall include the following items:
- A. The name and address of the applicant.
 - B. The location and legal description of the tiny home community site.
 - C. The name and address of the manager of the tiny home community.
 - D. The number of tiny homes the tiny home community will accommodate.
 - E. A plan showing the location of all tiny homes, buildings, roadways, recreational areas, off-street parking areas, electrical outlets, sewer outlets, water outlets, water mains, sewer mains and other improvements and facilities constructed or to be constructed in the tiny home community. The plan shall be drawn at a scale of one (1) inch equals one hundred (100) feet or larger.
 - F. Such further information as may be required to determine if the proposed tiny home community will comply with this article and other city ordinances and requirements.
- 6.14-2. The application shall be filed by the owner or manager of said tiny home community. The person or persons filing the application and affidavit shall be the person(s) owning or managing the tiny home community and the person(s) responsible for the upkeep and maintenance and sanitary control. Any change in the management of said tiny home community shall be registered with the City Clerk by sworn affidavit by the new manager.
- 6.14-3. Upon receipt of the completed application, plans and filing fees, the City Clerk shall transmit a copy of the application and plans to the Administrative Official of the City who shall:
- A. Check the application for compliance with this Article and other city codes and ordinances.
 - B. Determine the condition of sanitation of the tiny home community.
- 6.14-4. If the application is found to be in compliance with this Article and other city codes and ordinances, and the site is found to be in conformance with sanitary regulations, a permit shall be issued for a tiny home community.

6.15 Inspection Required.

Upon the issuance of the permit for a tiny home community, the City shall have the authority to have said tiny home community inspected by the proper inspecting officer of the City; and if it shall be found that the holder of said permit has made any false or misleading statements in his application or has placed or caused to be placed more tiny homes in said tiny home community than provided for and set forth in said application for permit, or that said holder of said permit has violated or caused to be violated any provision of this Article, the City Governing Body shall have the power to revoke said permit.

ARTICLE VII - "M-P" MOBILE HOME PARK DISTRICT

7.1 Intent and Purpose of District.

It is the intent of the "M-P" Mobile Home Park District to permit low-density mobile home uses in a park-like atmosphere. The mobile home park district is intended for those areas where the owner proposes to develop and rent or lease individual sites.

7.2 District Regulations.

In District "M-P", no building shall be used and no building shall be erected, altered or enlarged, which is arranged, intended or designed for other than independent mobile homes, or independent trailer house coaches, and customarily accessory service buildings.

7.3 Definitions.

7.3-1 Independent Mobile home: A mobile home which has a flush toilet and a bath or shower.

7.3-2 Licensee: Any person licensed to operate and maintain a mobile home park under the provisions of this ordinance (resolution).

7.3-3 Mobile Home Space: A plot of ground within a mobile home park designed for the accommodation of one (1) mobile home.

7.3-4 Natural or Artificial Barrier: Any river, pond, canal, railroad, levee, embankment, or major street.

7.3-5 Permittee: Any persons to whom a permit is issued to maintain or operate a mobile home park under the provisions of this ordinance (resolution).

7.3-6 Person: Any individual, firm, trust, partnership, association, or corporation.

7.3-7 Street: Any recognized thoroughfare in the City.

7.4 General Requirements.

7.4-1 The tract to be used for a mobile home park shall be large enough to accommodate twenty-five (25) mobile homes.

- 7.4-2 The applicant for a zoning change to permit a mobile home park must satisfy the Planning Commission that he is financially able to carry out the proposed plan and shall prepare and submit a schedule of construction, which construction shall commence within a period of one (1) year following approval by the Planning Commission and shall be completed within a period of two (2) years.
- 7.4-3 The applicant for a mobile home park shall prepare or cause to be prepared an application for rezoning and a development plan and shall present three (3) copies of the plan for review and approval by the Planning Commission. The plot plan shall show topography and location and size of:
- A. Mobile home sites.
 - B. Service buildings.
 - C. Off-street parking areas.
 - D. Electrical outlets.
 - E. Sewer outlets.
 - F. Water outlets.
 - G. Water lines.
 - H. Sewer lines.
 - I. Recreational area.
 - J. Landscaped areas and walls or fences.
 - K. Roadways.
 - L. Sidewalks.
- 7.4-4 The mobile home park shall conform with the following requirements:
- A. The park shall be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.
 - B. Mobile home parks shall have a maximum density of eight (8) trailers per gross acre and a minimum space of three thousand (3,000) square feet for each mobile home.
 - C. Each mobile home space shall be at least thirty-five (35) feet wide and clearly defined.

- D. Mobile homes shall be so located on each space that there shall be at least twenty (20) feet of clearance between mobile homes; provided, however, that with respect to mobile homes parked end-to-end, the end-to-end clearance may be not less than fifteen (15) feet. No mobile home shall be located closer than twenty-five (25) feet from any building within the park or from any property line bounding the park.
- E. All mobile home spaces shall front upon a private roadway of not less than thirty-one (31) feet in width, which shall have unobstructed access to a public street, alley, or highway.
- F. Walkways, not less than forty-eight (48) inches wide, shall be provided from the mobile home spaces to service buildings.
- G. All roadways and walkways within the mobile home park shall be hard surfaced and adequately lighted at night with electric lamps.
- H. Laundry facilities for the exclusive use of the mobile home occupants may be provided in a service building.
- I. All mobile homes shall be metered individually. At least one (1) electrical outlet supplying at least two hundred and twenty (220) volts of 200-amp capacity shall be provided for each tiny home space.
- J. A recreational area shall be provided at a central location in the mobile home park at the rate of two hundred (200) square feet for each trailer space.
- K. A solid fence or wall and a ten (10) foot landscaped buffer area shall be provided between the Mobile Home Park District and any adjoining property zoned for residential purposes. The solid fence or wall shall not be less than four (4) feet high nor more than six (6) feet high. The owner shall be responsible for the maintenance of the fence or wall and the landscaped buffer area.

7.5 Water Supply.

An adequate supply of pure water for drinking and domestic purposes shall be supplied by pipes to all buildings and mobile home spaces within the park. Each mobile home space shall be provided with a cold-water tap and individual water meter. An adequate supply of hot water shall be provided at all times in the service buildings for all washing and laundry facilities.

7.6 Service Buildings.

Service buildings, housing sanitation and laundry facilities or any other such facilities, shall be permanent structures complying with all applicable codes, ordinances, and statutes regulating buildings, electrical installations and plumbing and sanitation systems.

7.6-1 All service buildings and the grounds of the park shall be maintained in a clean, sightly condition and kept free of any debris that will be a menace to the health of any occupant or the public or constitute a nuisance.

7.7 Sewage and Refuse Disposal.

A mobile home space shall be provided with an individual service line with a capped sewer at least four (4) inches in diameter, which shall be connected to receive the waste from the shower, bathtub, flush toilet, lavatory, and kitchen sink of the mobile home located in such space and having any or all of such facilities. The capped sewer in each space shall be connected to discharge the mobile home waste into a public sewer system.

7.8 Garbage Receptacles.

Each mobile home unit shall be provided with at least one city provided trash receptacle with a tight-fitting cover to permit disposal for all garbage, trash, and rubbish, or have a dumpster conveniently located for use by the residents.

7.9 Trash Burning Prohibited.

The burning of trash and rubbish is prohibited in a "M-P" Mobile Home Park District.

7.10 Animals and Pets

No owner or person in charge of any dog, cat or other pet or animal shall permit it to run at large or commit any nuisance within the limits of any mobile home park.

7.11 Tie Down Requirements.

See Ordinance No. 3281.

7.12 Register of Occupants.

- 7.12-1 It shall be the duty of each licensee and permittee to keep a record of all mobile homeowners and occupants located within the park.
- 7.12-2 The mobile home park owners, manager or caretakers shall keep the register available for inspection at all times by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of the information contained in the register.
- 7.12-3 The register record for each occupant registered shall not be destroyed for a period of three (3) years following the date of departure of the registrant from the park.

7.13 Supervision.

The licensee or permittee, or a duly authorized attendant or caretaker, shall be in charge at all times to keep the mobile home park, and its facilities and equipment, in a clean, orderly and sanitary condition. The attendant or caretaker shall be answerable, with the licensee or permittee, for the violation of any provision of the regulations in the Mobile Home Park District.

7.14 Permit and Permit Fee.

- 7.14-1 It shall be unlawful for any person to maintain or operate a mobile home park unless a person shall first obtain a permit.
- 7.14-2 An annual permit fee for each mobile home park per space shall be paid; this fee is not refundable.
- 7.14-3 A mobile home park permit is not transferable.
- 7.14-4 Renewal of the mobile home park permit shall be due by the 31st of December of each year.

7.15 Application for Permit.

- 7.15-1 A written application for a permit to operate a mobile home park in a “M-P” Mobile Home Park District shall be required for any person, firm or corporation operating the mobile home park. The application shall be filed in duplicate and shall include the following items:
 - A. The name and address of the applicant.
 - B. The location and legal description of the mobile home park site.
 - C. The name and address of the manager of the mobile home park.
 - D. The number of mobile homes the mobile home park will accommodate.
 - E. A plan showing the location of all mobile homes, buildings, roadways, recreational areas, off-street parking areas, electrical outlets, sewer outlets, water outlets, water mains, sewer mains and other improvements and facilities constructed or to be constructed in the mobile home park. The plan shall be drawn at a scale of one (1) inch equals one hundred (100) feet or larger.
 - F. Such further information as may be required to determine if the proposed mobile home park will comply with this article and other city ordinances and requirements.

- 7.15-2 The application shall be filed by the owner or manager of said mobile home park and sworn to before a notary public. The person or persons filing the application and affidavit shall be the person(s) owning or managing the mobile home park and the person(s) responsible for the upkeep and maintenance and sanitary control. Any change in the management of said mobile home park shall be registered with the City Clerk by sworn affidavit by the new manager.
- 7.15-3 Upon receipt of the completed application, plans and filing fees, the City Clerk shall transmit a copy of the application and plans to an approved representative of the City who shall:
- A. Check the application for compliance with this Article and other city codes and ordinances.
 - B. Determine the condition of sanitation of the mobile home park.
- 7.15-4 If the application is found to be in compliance with this Article and other city codes and ordinances, and the site is found to be in conformance with sanitary regulations, a permit shall be issued for a mobile home park.

7.16 Inspection Required.

Upon the issuance of the permit for a mobile home park or court, the City shall have the authority to have said mobile home park inspected by the proper inspecting officer of the City; and if it shall be found that the holder of said permit has made any false or misleading statements in his application or has placed or caused to be placed more mobile homes in said mobile home park or court than provided for and set forth in said application for permit, or that said holder of said permit has violated or caused to be violated any provision of this Article, the City Governing Body shall have the power to revoke said permit.

7.17 Revocation or Suspension.

If the City shall determine, upon proper inspection by the inspecting officer of the City, that the condition of the mobile home park shall have become so unsanitary as to endanger health or welfare of occupants of said mobile home park or the surrounding community, or that said sanitary facilities have become inadequate to properly protect the occupants of said mobile home park, the City Governing Body shall have the power to require the holder of said mobile home park permit within ten (10) days, to set said mobile home park in proper sanitary condition. If, upon notice from the City to the holder of the permit as aforesaid, the owner or manager of said mobile home park shall fail or refuse to place said park or court in sanitary condition, the City Governing Body shall have the right to revoke said permit.

ARTICLE VIII - FLEXIBLE MULTIPLE FAMILY DEVELOPMENT

8.1 General Provisions

- 8.1-1 Intent: To provide the developer with an alternative to the rigid conformity to lot, bulk, and area requirement that is otherwise required in the R-3 District. Such opportunity for flexibility in design, along with density bonuses and other incentives, will enable developers to construct lower cost housing in developed areas of the City with proper consideration for aesthetics, open space needs, buffering, landscaping and other design criteria. The option is only available where all public facilities and services, including water, sewer, storm drainage, schools, parks, streets, and fire service are available at the site and are adequate to handle the needs generated by the proposed development.
- 8.1-2 Maximum Parcel Size. The maximum parcel size for use of the flexible development option is two (2) acres.

8.2 Procedure.

- 8.2-1 Pre-application Conference. The developer shall have a pre-application conference with the Planning Department prior to submitting a site development plan for the purpose of determining the appropriate uses of the flexible development option with respect to the site and to review the particular requirements and incentives that may be applicable.
- 8.2-2 The site development plan shall be submitted to the Planning Commission for its review and approval prior to the issuance of a building permit, but in conjunction with an application for the building permit.
- 8.2-3 In considering the site plan, the Planning Commission may impose, in addition to the regulations and standards expressly specified in this Ordinance, other conditions found necessary to protect the interests of the surrounding property and the City as a whole and to prevent nuisance conditions from arising.
- 8.2-4 The Planning Commission shall approve, disapprove, or approve with conditions the site development plan within sixty (60) days after its submission by the applicant.

8.3 Site Development Plan Required.

In every case where the developer chooses to develop under the flexible development option, he shall submit a site development plan which shall include, but not be limited to, the following:

- 8.3-1 An area map showing the parcel in relation to adjacent parcels, uses, and structures.

8.3-2 A site plan showing:

- A. Approximate size and location of all buildings.
- B. Access from streets.
- C. Parking arrangements and number of spaces.
- D. All site improvements including lighting, landscaping, fences, walls, signs, walks and recreational area, buffering and open areas and significant natural features of the site.

8.3-3 A written statement to include the physical and environmental impact of the proposed development on the site with respect to adjacent land and uses and with particular respect to aesthetics, open space, parking demands, surface drainage, density, buffering, landscaping and other design and physical criteria.

8.4 Standards.

- 8.4-1 Clustering: The applicant may cluster the buildings on the site without regard for the lot size and bulk requirements otherwise required except those dictated by health, fire safety, function and screening considerations.
- 8.4-2 Density: The applicant who chooses the flexible development option may be granted a density bonus not to exceed a factor of one hundred twenty-five percent (125%) of the number of dwellings otherwise permitted by the provisions of the R- 3 District.
- 8.4-3 Off-Street Parking: The applicant will be required to provide off-street parking at a ratio of one and one-half (1 1/2) spaces for each dwelling unit. For additional information on off-street parking, refer to Article XI, Off-Street Parking and Loading Requirements.
- 8.4-4 Buffering: Landscaping or decorative architectural screening shall be required on all sides. Refer to Article XVIII, Landscaping, Screening, and Buffering Requirements.
- 8.4-5 Lighting: Any lighting used to illuminate off-street parking area shall be directed away from residential properties. Refer to Article XIX, Outdoor Lighting.
- 8.4-6 Open Space: An area equal to not less than ten percent (10%) of the total acreage shall be set aside for usable open space.

ARTICLE IX - COMMERCIAL/INDUSTRIAL SITE DEVELOPMENT PROCEDURES

9.1 Intent.

It is the intent of this Article to allow for greater flexibility and to assure a greater degree of compatibility between land uses with respect to commercial and industrial uses of land by ensuring that parking, access, landscaping, buffering, placement of buildings, signs and other design features are appropriate for the site and in relation to surrounding land uses.

9.2 General Site Requirements.

No building permit shall be issued for the construction of any building in the C-1, C-2, C-3, I-1, 1-2, 1-3 districts until all requirements of this Article and all other applicable provisions of this Zoning Ordinance have been met.

9.2-1 Procedure for Site Development Plan Approval: An application for a building permit for any structure in a commercial or industrial district shall be referred to the Planning Department. Said application shall be accompanied by a development plan which shall include the following:

A. A site plan showing:

- 1) Approximate size and locations of all buildings.
- 2) Access from streets.
- 3) Parking arrangements and number of spaces.
- 4) Landscaped areas.
- 5) All proposed signs.
- 6) Additional drawings or information may be required to ensure that the purpose of this section is met or to facilitate review of plans involving extraordinary sites.

B. The full legal description of the boundaries of said development area.

C. In lieu of constructing or installing the required improvements prior to occupancy, the Governing Body may require that a corporate surety bond, cashier's check, escrow account or other like security, in an amount to be fixed by the Governing Body, and conditioned upon the actual completion of such work or improvements within a specified period. The Governing Body may enforce such bond by all equitable remedies.

9.2-2 Planning Department Action and Standards to be Considered:

- A. Within thirty (30) days of the receipt of the application, the Planning Department shall render a decision based on the following standards:
- 1) The provisions and intent of this Article and all applicable provisions of the Zoning Ordinance.
 - 2) The relationship between the principal buildings and structures on the parcel.
 - 3) The convenience and safety of the parking and loading areas and the interior circulation systems and the access to public streets.
 - 4) The adequacy of landscaping and lighting features to screen adjacent residential areas and streets from any potential nuisance features of the use of the parcel.
 - 5) Such other criteria as directly relate to the health, safety, and general welfare of the surrounding community.
 - 6) The aesthetics to the area and the community.

ARTICLE X - DESIGN STANDARDS

10.1 Building and Site Design Standards.

10.1-1 Purpose and Intent.

The design standards in this section are intended to implement the City's vision for duplex, triplex, quadplex, and multi-family (more than 4 units) residential, commercial, institutional, and industrial developments. The intent of these standards is to improve the overall quality of commercial, multi-family residential, institutional, and industrial developments with surrounding land uses and enhance pedestrian safety and walkability.

10.1-2 Exemptions - Single-Family Residential.

10.1-3 Review process.

These standards shall be applied in the normal building permit review process shall be approved by the Administrative Official. If the structures are to be constructed as part of a subdivision or commercial/industrial site plan, concept sketches shall be provided to the Planning Commission as a part of the normal submittal packet.

10.2 Residential Design Standards.

10.2-1 The provisions of this section shall apply to all newly constructed duplex, triplex and quadplex units constructed in any zoning district where the use is allowed by right or by special use permit.

- A. This section shall apply when an existing unit is proposed to increase the overall square footage by more than 50%.
- B. Structures within the Historic and Cultural Districts have additional standards that shall apply.

10.2-2 Building Design Standards.

- A. For all units with a garage, the garage shall be placed behind the front façade.
- B. Each entry, whether combined or individual entries, shall be clearly visible on each building.
- C. Each building façade shall have articulation.
- D. No blank façades are to be accepted.

10.2-3 Site planning.

- A. Driveways shall extend at least 30 feet into the property from the front or street-side right-of-way to allow parking to occur without encroaching into the right-of-way or obstructing the pedestrian access.
- B. Driveways shall extend at least twenty (20) feet from a street side yard or alley.
- C. Trash areas shall be screened. For individual trash service, each residential unit shall be designed in a manner that provides access to store trash receptacles out of sight.
- D. Building designs shall be varied. There shall be a minimum of three (3) alternative building façade designs before a repeat design may be utilized. In no case shall two identical building façade designs be placed adjacent to one another.

10.3 Commercial / Institutional Design Standards.

10.3-1 The provisions of this section shall apply to all new developments constructed in any zoning district where the use is allowed by right or by special use permit. Properties shall only be required to meet the standards for the side(s) of the structure(s) facing a street frontage.

- A. This section shall apply when an existing unit is proposed to increase the overall square footage by more than 50%.
- B. Structures within the Historic and Cultural Districts have additional standards that shall apply.

10.3-2 Building design:

- A. Material.
 - 1) Forty percent (40%) exterior material shall consist of a combination of brick, textured concrete block, stucco, wood, architectural metal (not to include sheet metal, corrugated metal, or R-panels), synthetic stone or natural stone, or other masonry product.
 - 2) No masonite, asphaltic exterior wall or roof material, non-textured concrete block (ground-faced is allowed), vinyl or other similar materials shall constitute a portion of any building except trim.
 - 3) Trim is defined as an ornamental design feature, that when removed does not significantly alter the appearance of the building. This commonly consists of moldings, cornices, parapet, frieze, sills, lintels, stringcourse, quoining, and ledging.

B. Color.

- 1) The building's exterior color scheme shall utilize primarily muted, neutral, or earth tone type colors.
- 2) The primary use of bright, intense, or extreme colors not consistent with the adjoining developments shall not be permitted.
- 3) This regulation is not intended to prohibit the use of these colors for specifically approved architectural detailing.

C. Compatibility.

- 1) All commercial and multi-family structures are encouraged to be designed in a manner compatible with other structures in the surrounding vicinity.
- 2) The exterior building design, including roof style, color, materials, architectural form and detailing, are encouraged to be consistent among all buildings in a common commercial development and on all elevations of each building to achieve design harmony and continuity within itself.

D. Scale and bulk.

- 1) The height and scale of new buildings are encouraged to be consistent or compatible with the height and scale of adjacent buildings.
- 2) Special care, however, is encouraged to be taken to achieve the compatibility of larger buildings next to small scale buildings; techniques shall include limited size, building articulation, and shadow patterns.
- 3) The scale of the building is encouraged to also consider building setback, lot size and relationship to street width.

E. Wall and roofline articulation.

- 1) Buildings are encouraged avoid long uninterrupted façade planes and/or blank walls.
- 2) All commercial and multi-family buildings with facades greater than 50 feet in length are encouraged to incorporate wall plane projections or recess that are at least two feet deep. Projections/recess are recommended to be at least 25% of the length of the façade.
- 3) Roof lines and/or parapets are encouraged be varied with a change in height every 100 linear feet in the building length.

- 4) Parapets, gable roofs, high roofs, or dormers shall be used to conceal flat roofs and rooftop equipment from public view.
- 5) Alternative lengths and designs may be acceptable and may be approved by Planning Commission.

F. Entrances.

Each primary building on a site, regardless of size, shall have clearly defined, highly visible customer entrances featuring no less than two of the following:

- 1) Canopies or porticos;
- 2) Overhangs;
- 3) Recesses/projections;
- 4) Arcades;
- 5) Raised corniced parapets over the door;
- 6) Peaked roof forms;
- 7) Arches;
- 8) Architectural detail such as tile work and moldings integrated into the building structure and design;
- 9) Integral planters or wing walls that incorporate landscaped areas and/or places for sitting; or
- 10) Other architectural features approved by Planning Commission.

G. Utility and mechanical equipment screening.

Screening of service yards, utility meters and hardware, mechanical equipment, refuse areas, grease traps, and/or other potentially unattractive places from public view, shall be accomplished by the use of walls, fencing, planting, or a combination of the measures that follow.

- 1) Adjusting the architectural or landscape profile to screen those elements from view.
- 2) Placing those elements on service courts or other locations usable by the general public.
- 3) Integrating those elements into the architecture or landscaping of the site.

- 4) Screening shall be equally effective in the winter and the summer seasons.
- 5) For rooftop equipment, parapet walls or other screening methods approved by Planning Commission, are required along street frontages and bordering residential areas.

10.3-3 Site planning.

A. Building placement.

- 1) Place as much of the building width at the front of the lot as possible to maximize front façade exposure to the public.
- 2) The front façade is encouraged to be kept parallel with the street.
- 3) On corner lots, place as much building mass near the intersection as possible to help anchor the lot and take advantage of high visibility.

B. Shared Access and Parking.

- 1) Commercial and Institutional uses.
 - a. The Administrative Official shall have the authority to require cross access between properties.
 - b. Adjacent parking lots may be required to be linked, or shared parking areas provided, which can serve neighboring buildings simultaneously.
 - c. Shared drives and cross access between properties may be required to adjacent developed and undeveloped properties.
 - d. Access easements may be required to be shown on the site plan to provide cross access to adjacent properties.
 - e. Shared Parking Agreements and/or Access Easements shall be filed with the Harvey County Register of Deeds.
 - f. Parking lots shall be designed in regular, rectangular shapes, unless otherwise approved.
- 2) Multi-family uses (more than four units).
 - a. The Administrative Official shall have the authority to require cross access between properties.
 - b. Shared drives and cross access between properties may be required to adjacent developed and undeveloped properties.
 - c. Access easements may be required to be shown on the site plan to provide cross access to adjacent properties.

C. Pedestrian circulation.

- 1) Clearly defined pedestrian walkways or paths shall be provided from parking areas to primary building entrances.
- 2) Design walkways and parking lots so that pedestrians do not have to cross parking aisles and landscape islands to reach building entries.

10.4 Industrial Design Standards.

10.4-1 The provisions of this section shall apply to all new constructed in any zoning district where the use is allowed by right or by special use permit. Properties shall only be required to meet the standards for the side(s) of the structure(s) facing a street frontage.

A. This section shall apply when an existing unit is proposed to increase the overall square footage by more than 50%.

10.4-2 Building Design.

A. Material.

- 1) All industrial buildings shall at a minimum have a decorative wainscot of no less than four (4) feet tall, and entry façade at the main entrance that extends to the roofline.
- 2) The wainscot and entry façade material shall consist of a combination of brick, textured concrete block, stucco, wood, architectural metal (not to include sheet metal, corrugated metal or R-panels), synthetic stone or natural stone, or other masonry product.
- 3) The remaining exterior material shall not include masonite, asphaltic exterior wall or roof material, non-textured concrete block (ground-faced is allowed), vinyl, or other similar materials, except trim.
- 4) Trim is defined as an ornamental design feature, that when removed does not significantly alter the appearance of the building. This commonly consists of moldings, cornices, parapet, frieze, sills, lintels, stringcourse, quoining, and ledgement.

B. Color.

- 1) The building's exterior color scheme shall utilize primarily muted, neutral, or earth tone type colors.
- 2) The primary use of bright, intense, or extreme colors not consistent with the adjoining developments shall not be permitted.
- 3) This regulation is not intended to prohibit the use of these colors for

specifically approved architectural detailing.

C. Compatibility.

- 1) All industrial structures are encouraged to be designed in a manner compatible with other structures in the surrounding vicinity.
- 2) The exterior building design, including roof style, color, materials, architectural form and detailing, are encouraged to be consistent among all buildings in a common commercial development and on all elevations of each building to achieve design harmony and continuity within itself.

D. Scale and bulk.

- 1) The height and scale of new buildings are encouraged to be consistent or compatible with the height and scale of adjacent buildings.
- 2) Special care, however, is encouraged to be taken to achieve the compatibility of larger buildings next to small scale buildings; techniques shall include limited size, building articulation, and shadow patterns.
- 3) The scale of the building is encouraged to also consider building setback, lot size and relationship to street width.

E. Wall and roofline articulation.

- 1) Buildings are encouraged to avoid long uninterrupted façade planes and/or blank walls.
- 2) All industrial buildings with façades greater than 300 feet in length are encouraged incorporate wall plane projections or recesses that are at least two feet deep.
- 3) Projections/recesses are encouraged to be at least 25% of the length of the façade.
- 4) Roof lines and/or parapets are encouraged to be varied with a change in height every 300 linear feet in the building length.
- 5) Parapets, gable roofs, high roofs, or dormers shall be used to conceal flat roofs and rooftop equipment from public view.
- 6) Alternative lengths and designs may be acceptable and may be approved by the Planning Commission.

F. Entrances.

Each primary building on a site, regardless of size, shall have clearly defined, highly visible customer entrances featuring no less than two of the following:

- 1) Canopies or porticos;
- 2) Overhangs;
- 3) Recesses/projections;
- 4) Arcades;
- 5) Raised corniced parapets over the door;
- 6) Peaked roof forms;
- 7) Arches;
- 8) Architectural detail such as tile work and moldings integrated into the building structure and design;
- 9) Integral planters or wing walls that incorporate landscaped areas and/or places for sitting; or
- 10) Other architectural features approved by Planning Commission.

G. Utility and mechanical equipment screening.

Screening of service yards, utility meters and hardware, mechanical equipment, refuse areas, grease traps, and/or other potentially unattractive places from public view, shall be accomplished by the use of walls, fencing, planting, or a combination of the measures that follow.

- 1) Adjusting the architectural or landscape profile to screen those elements from view.
- 2) Placing those elements on service courts or other locations usable by the general public.
- 3) Integrating those elements into the architecture or landscaping of the site.
- 4) Screening shall be equally effective in the winter and the summer seasons.
- 5) For rooftop equipment, parapet walls or other screening methods approved by Planning Commission, are required along street

frontages and bordering residential areas.

10.4-3 Site planning.

A. Building placement.

- 1) Buildings shall be placed so that they have the least amount of impact on surrounding properties.
- 2) Buffering, landscaping, and setbacks are to be used to enhance compatibility when and industrial use is abutting a commercial use, marginally compatible use, or when abutting a residential use/residential zoning category.

B. Shared Access, Parking, and Drives.

- 1) The Administrative Official shall have the authority to require cross access between properties.
- 2) Adjacent parking lots may be required to be linked, or shared parking areas provided, which can serve neighboring buildings simultaneously.
- 3) Shared drives and cross access between properties may be required to adjacent developed and undeveloped properties.
- 4) Access easements may be required to be shown on the site plan to provide cross access to adjacent properties.
- 5) Shared Parking Agreements and/or Access Easements shall be filed with the Harvey County Register of Deeds.
- 6) Parking lots shall be designed in regular, rectangular shapes, unless otherwise approved.
- 7) Entrances/exits shall be 40' in width and have a minimum throat length as determined by the Administrative Official.

10.4-4 Pedestrian circulation.

A. Clearly defined pedestrian walkways or paths shall be provided from parking areas to primary building entrances.

B. Design walkways and parking lots so that pedestrians do not have to cross parking aisles and landscape islands to reach building entries.

ARTICLE XI - OFF-STREET PARKING AND LOADING REQUIREMENTS

11.1. Purpose.

The regulations of this section are intended to reinforce community standards and to promote safe and attractive parking lots for new, redeveloped, and expanded development within the city. The size, number, design, landscaping, and location of parking lots are regulated to:

- 11.1-1 Provide for the safe and orderly circulation of motor vehicles within parking lots;
- 11.1-2 Provide safe ingress and egress to parking lots from public and private streets;
- 11.1-3 Protect adjoining properties from the adverse impacts associated with parking lots such as noise, lighting, appearance, drainage, and effect on property values;
- 11.1-4 Provide adequate areas for off-street parking and storage of motor vehicles, while at the same time preventing over-supply of parking in mixed-use circumstances; and,
- 11.1-5 Enhance the appearance of parking lots in all zoning districts.

11.2 Applicability.

11.2-1 Applicability: In each zoning district excluding C-3, all structures built, and all uses established hereafter shall provide accessory off-street parking and loading spaces as indicated in the requirements set forth in this section. Where an existing structure or use is expanded, accessory off-street parking and loading spaces shall be provided in accordance with the requirements for the area, capacity, or additional employees in such expanded area.

11.3 Parking Lot Construction Standards.

- 11.3-1 *Permits and Plan.* For parking lots containing five (5) or more spaces, building, and grading permits and site and grading plans shall be required prior to any initiation of work.
- 11.3-2 *Surfacing.* Parking lots shall be asphalt or concrete, graded and drained to dispose of surface water into appropriate structures.
- 11.3-3 *Barriers.* Parking lots shall be provided with wheel guards or curbs so located that no part of a parked vehicle will extend into or over the sidewalks, property lines, or street right-of-way.
- 11.3-4 *Striping and Marking.* Parking lots spaces shall be striped to indicate the location of the individual spaces, directional arrows shall be provided at the entrance of aisles and entry drives, and accessible spaces shall be marked meeting current Americans with Disabilities Act (ADA) requirements. Such striping and marking shall be in accordance with the Manual on Uniform Traffic Control Devices.

11.4 Standards for the Number of Spaces by Use; Required Parking.

11.4-1 Non-Residential Use.

There shall be no minimum number of spaces required for non-residential use. The applicant shall provide a statement or parking analysis indicating how they will provide adequate parking for the proposed non-residential use to succeed without negatively impacting adjacent properties or creating or compounding a dangerous traffic condition.

11.4-2. Residential Use.

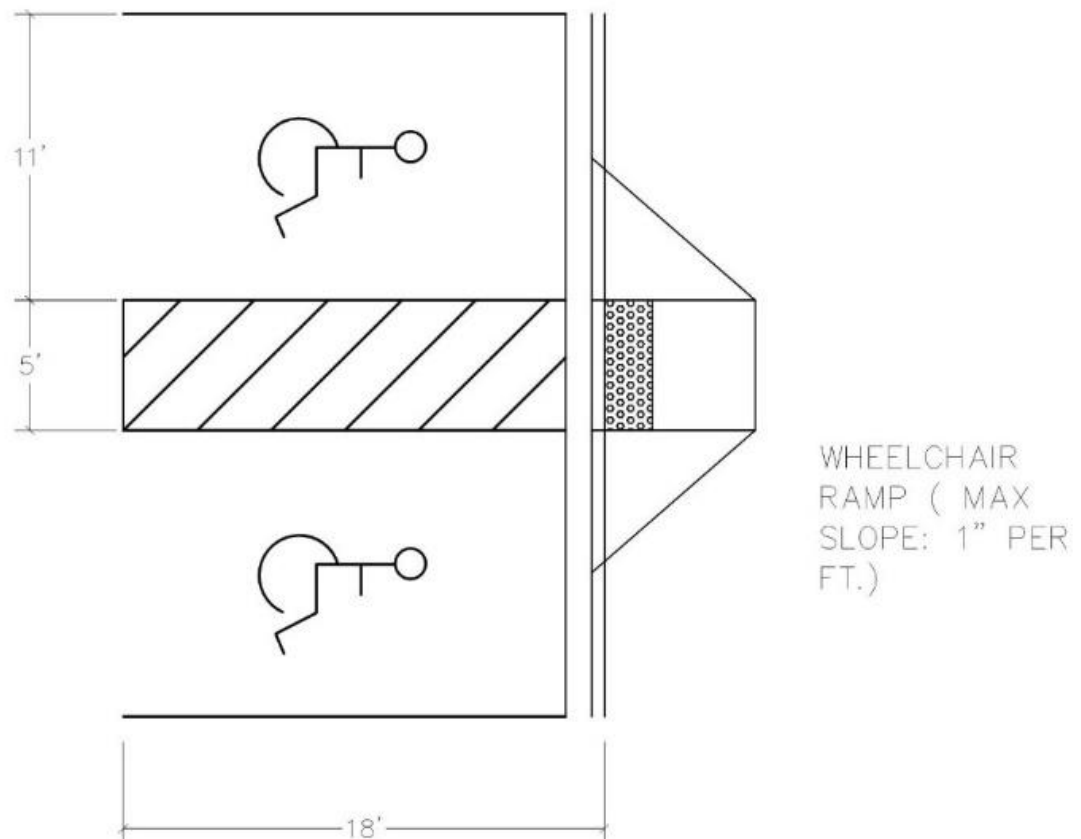
The minimum number of spaces required for residential use shall conform to the parking ratios listed in Table 1.

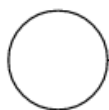
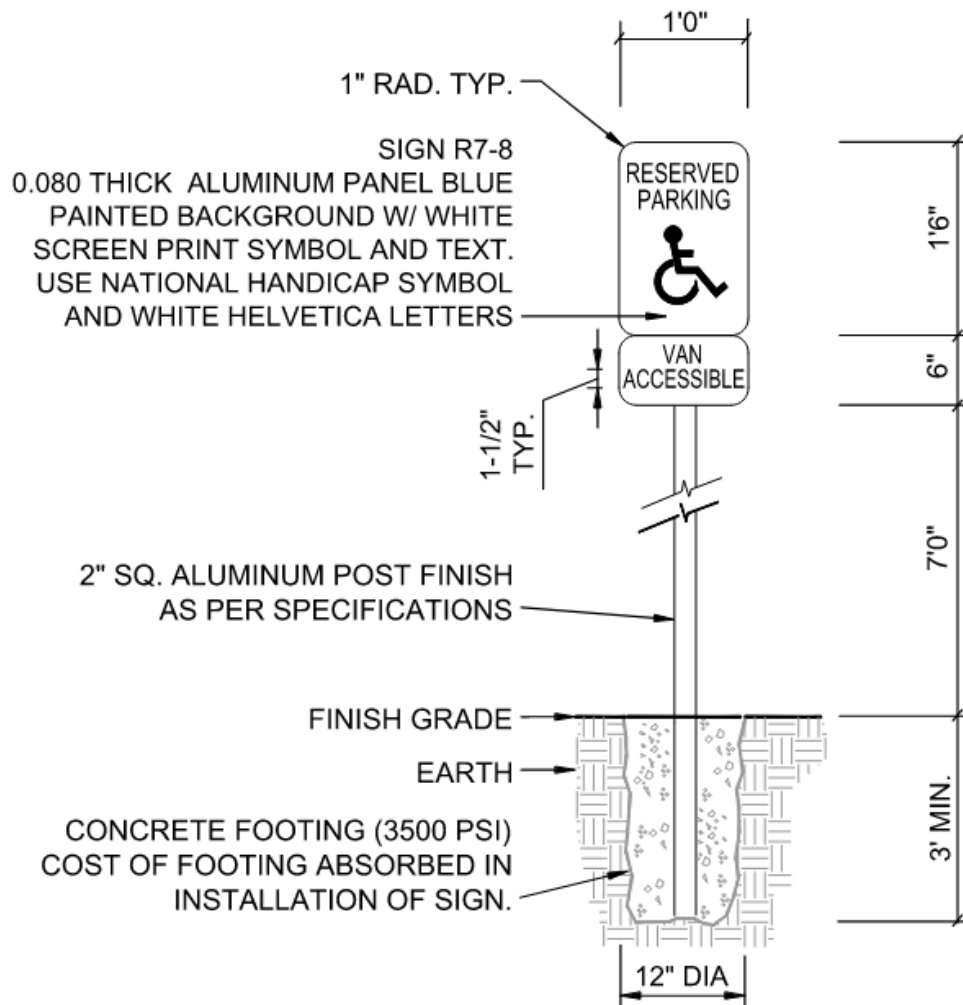
Single-family	2 per dwelling unit
Duplex, triplex, multi-family or townhouse	1.5 per dwelling unit. If the total required is not a whole number, the number of required spaces shall be rounded up to the next whole number

11.4-3. Reductions for Multifamily Residential Use. Residential uses may utilize the following reductions to the minimum number required off-street parking ratios listed in Table 1 when the following standards are met:

- A. Motorcycle and Scooter Spaces. Up to 5% of the required automobile parking spaces may be substituted with motorcycle/scooter parking at a rate of one (1) motorcycle/scooter space for one (1) automobile space.
- A. Bike Racks. Up to 5% of required automobile parking may be substituted with bicycle parking at a rate of one (1) additional bicycle rack (beyond the minimum racks required by this code) for one (1) automobile space. This reduction shall be allowed in addition to other variances, reductions, and shared parking agreements.
- B. A shared parking agreement approved in conformance with the guidelines of this code.

- 11.4-4. Motorcycle and Scooter Parking. In parking lots containing twenty-five (25) parking spaces or more, one (1) space for every twenty-five (25) parking spaces of the required number of parking spaces for a use or combination of uses shall be striped as a motorcycle and scooter parking space.
- 11.4-5. Reductions in excess of the minimum required parking numbers and allowable reductions identified herein shall be allowed only by the Planning Commission as a variance and shall be granted in accordance with the City of Newton code.
- 11.4-6. Accessibility.
- A. ADA Reference. Accessibility for persons with disabilities in parking lots and building approaches shall be as required by the current ADA and as may from time to time be amended.
- B. Location and Size. Location and minimum stall size of accessible parking spaces, passenger loading zones, or valet parking facilities, when provided for public or governmental buildings and facilities, shall meet the standards adopted for the universal design layout for parking stalls and signage in the ADA.





ACCESSIBLE PARKING SIGN

SCALE: NONE

- C. Buildings. ADA Accessibility guidelines (ADAAG) for buildings and facilities, Appendix A to 28 C.F.R. Part 36, or the current federal standard.
- D. Signage. Accessible parking spaces for persons with disabilities shall be identified with signs in accordance with the current federal statute of the Americans with Disabilities Act (ADA). Curb ramps shall be provided in accordance with the Americans with Disabilities Act (ADA) wherever an accessible route crosses a curb in the parking lot.

- E. Minimum Number of Accessible Spaces. The following table shall be used to determine the minimum number of accessible parking spaces to be provided for persons with disabilities:

Total parking spaces in lot or garage	Minimum number of accessible spaces
1—25	1
26—50	2
51—75	3
76—100	4
101—150	5
151—200	6
201—300	7
301—400	8
401—500	9
501—1000	2% of total spaces
Over 1000	20 spaces + 1 space for each 100 spaces over 1000

- F. Facilities Providing Medical Care. Facilities providing medical care and other services for persons with mobility impairments shall provide accessible parking spaces as follows:
- 1) Outpatient Facilities. Outpatient units and facilities shall provide a minimum of 10% of the total number of parking spaces provided serving each such outpatient unit or facility, but in no event shall less than one such parking space be provided.
 - 2) *Specialized Facilities*. Units and facilities that specialize in treatment or services for persons with mobility impairments shall provide 20% of the total number of parking spaces provided serving each such unit or facility, but in no event shall less than one such parking space be provided.
- G. Multi-Family Dwellings. Multi-family dwellings containing four (4) or more dwelling units shall provide accessible parking spaces as follows:
- 1) Fair Housing Act Reference. Accessible parking shall be provided which meets the provision in the Final Housing Accessibility Guidelines, 24 C.F.R., Chapter 1, Subchapter A, Appendix II, of the Fair Housing Act of 1968, as amended, or the current federal standard.

- 2) Number of Required Accessible Space. Designated accessible parking shall be provided for at least 2% of the dwelling units and at facilities such as swimming pools and clubhouses that serve accessible buildings. Additional designated accessible parking shall be provided on request of residents with disabilities, on the same terms and with the full range of choices that are provided for other residents of the development.
- 3) Visitor Parking. Accessible visitor parking that provides sufficient access to grade level entrances of multi-family dwellings is also required.

11.5 Shared Parking.

- 11.5-1. Parking requirements may be shared where it can be determined that the peak parking demand of the existing or proposed occupancy occur at different times (either daily or seasonally). Such arrangements are subject to the approval of the Planning Commission.
- 11.5-2. Shared Parking Between Developments. Formal arrangements that share parking between intermittent uses with non-conflicting parking demands are encouraged as a means to reduce the amount of parking required.
- 11.5-3. Shared Parking Agreements. If a privately owned parking facility is to serve two (2) or more separate properties, then a "Shared Parking Agreement" is to be filed with the city for consideration by the Planning Commission. Shared off-street parking spaces shall be located within a reasonable distance. Once approved, Proof of recording of the agreement (as part of the development approval or with the County Register of Deeds) shall be presented prior to issuance of a building permit.
- 11.5-4. Shared Spaces. An acceptable parking study shall be submitted which clearly establishes that uses will make use of the shared spaces at different times of the day, week, month, or year. Individual spaces identified on a site plan for shared users shall not be shared by more than one (1) user at the same time.

11.6 On-Street Parking.

Each permitted on-street parking space adjacent to a project's street frontage may count toward the parking requirements for all development. The approval of on-street parking is subject to approval by the Administrative Official.

11.7 Parking Lot Location Standards.

The location of all parking lots shall meet the location requirements below. All special uses hereunder shall be granted by the Planning Commission in accordance with the City of Newton code governing applications of conditional use procedures.

11.7-1. Permitted Locations by Right. Parking lots shall be located within the same zoning district as the use they serve; provided, however, that if in the opinion of the Board of Zoning Appeals, said spaces cannot be reasonably provided on the same lot, the Board may permit such spaces to be provided on other off-street property located not more than four hundred (400) feet from the principal structure or use. Uses which generate only intermittent demand for parking, such as churches, may count available on-street parking within 600 feet of the building as part of required parking, subject to the approval of the Planning Commission. Required parking lots for uses allowed by right within a zoning district are allowed as a use by right in the same zoning district.

11.7-2. Permitted Locations as a Special Use.

- A. Parking lots located within residential zones which serve uses in non-residential zones may be allowed as a conditional use by the Planning Commission.
- B. Parking lots for uses allowed as special uses within residential zones must also be approved as a special use. A special use for a parking lot may be approved at the same time the use is approved or may be approved separately if additional parking lots are developed later. The Planning Commission shall make a finding based upon the size, scale, and location of these activities that the proposed parking lot will not adversely affect adjacent residential uses or the residential character of the neighborhood.

11.8 Nonconforming Parking Lots

11.8-1 All parking lots and/or parking areas which were in existence prior to the effective date of this ordinance may continue in a nonconforming state until such time as the following shall occur:

- A. Rehabilitation. When a building permit is granted to rehabilitate a structure on the property exceeding fifty (50) percent of the current replacement cost of the structure, at such time, the parking area must come into compliance with all ADA requirements as set out within this section, and/or

- B. Enlargement or Reconstruction. When a building permit is granted to enlarge or reconstruct a structure on the property exceeding twenty (25) percent of its existing gross floor area, at such time twenty (25) percent of the existing parking lot and/or parking lot area shall be brought into compliance with the provisions of this section. This shall be on a graduated scale until reaching 100% of the current requirements are met; and/or
- C. Expansion of Parking area. When an expansion of an existing, non-conforming parking lot resulting in an increase of fifteen (15) percent or greater to the existing parking area, at such time, fifteen (15) percent of the total parking lot and/or parking lot area shall be brought into compliance with the provisions of this section. This may consist of the newly expanded area, the existing area, or a combination thereof. This shall be on a graduated scale until reaching 100% of the current requirements are met. Any expansion of 5 or more spaces will require a commercial site development plan approval.

11.9 Location and design of off-street parking and loading spaces.

11.9-1 On-site. Except as otherwise specifically provided, required off-street parking and loading spaces shall be located on the same lot as the principal use.

11.9-2 Setbacks.

- A. Required off-street parking shall be located outside of the public right-of-way. In no case shall the parking obstruct sidewalks or site visibility.
- B. There should be a minimum 5' setback of parking areas from the R.O.W., and a minimum 5' setback between the parking area and adjoining properties except within areas where the adjoining parking areas are intended to meet any applicable Overlay District and/or landscape code requirements.

11.9-3 Maneuvering.

Parking lots shall be designated, maintained, and regulated so that no parking or maneuvering incidental to parking will encroach into the areas designated for sidewalks, streets, or required landscaping. Parking lots shall be designed so that parking and un-parking can occur without moving other vehicles, unless a valet service has been approved as part of the development plans. Vehicles shall exit the parking lot in a forward motion. Each required off-street parking space shall open directly upon an aisle or driveway which provides direct access to a street or alley or shall itself be directly accessible to such street or alley.

11.9-4 Pedestrian Access. Pedestrian access shall be provided from the street to the entrance of the structure by way of designated pathway or sidewalk.

11.9-5 Curbing. The perimeter of all off-street parking and loading areas and their access drives shall be curbed with the exception of single-family and duplex residences. Landscape islands and other interior features within parking lots shall also be protected by curbs. In addition, the principal building on the lot shall be protected by curbs and/or raised walkways. The area between the curb and the property line, except for the driveway(s) shall be maintained as green space.

A. Exceptions. Engineered curb depressions and other post-construction stormwater BMPs are allowable at the discretion of the City Engineer. Special review and approval by the City Engineer's office is required.

11.9-6 Dimensional Requirements. See Entrances and Internal Aisle Design for Parking Lots Containing Five (5) or More Parking Spaces. The driveway width into parking lots shall meet the following requirements:

A. Entrances.

- 1) One-Way Access to Parking Lots. If the driveway is a one-way in or one-way out, then the driveway width shall be a minimum of 12 feet and a maximum of 16 feet. Measurements shall be taken from face of curb to face of curb.
- 2) Two-Way Access to Parking Lots. For two (2) way access, the driveway width shall be a minimum 20 feet, unless otherwise required by the Fire Department. Measurements shall be taken from face of curb to face of curb.
- 3) Collector and Arterial Streets. Driveways that enter collector and arterial streets may be required to have two (2) outbound lanes (one for each turning direction) and one inbound lane for a maximum total driveway width of 40 feet. Measurements shall be taken from face of curb to face of curb.
- 4) Effective Curb Radius. All non-residential effective curb radii shall meet the Master Street Plan Commercial Driveway Standards unless otherwise specified by the City Contract Engineer due to use or traffic-specific needs.

B. Internal Aisle Design.

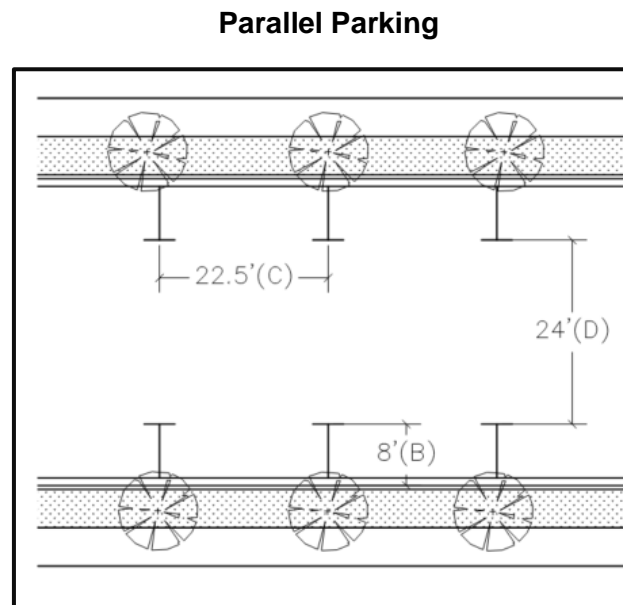
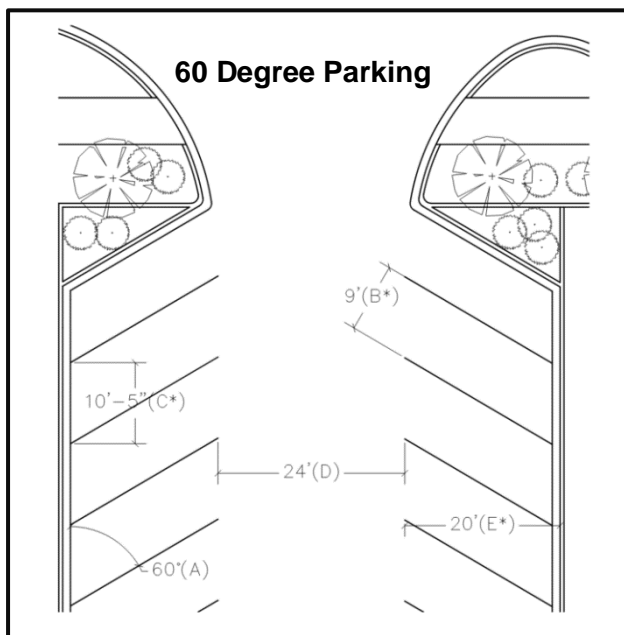
- 1) Aisles shall be designed so they intersect at 90 degrees with other aisles and driveways where practical.

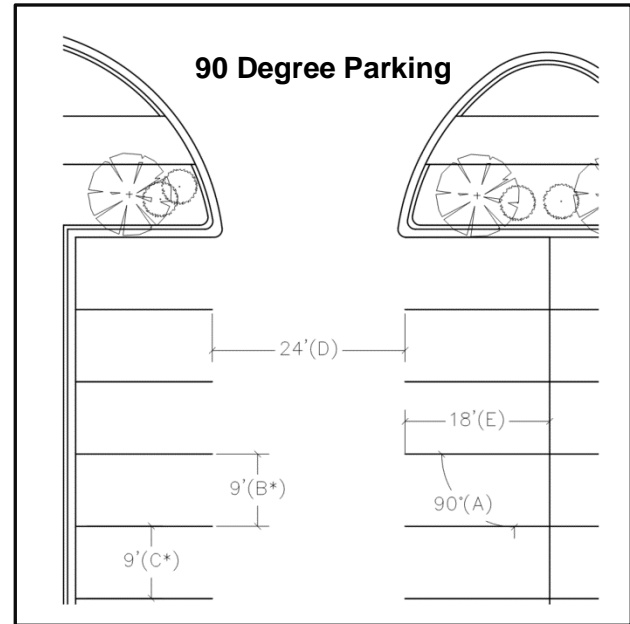
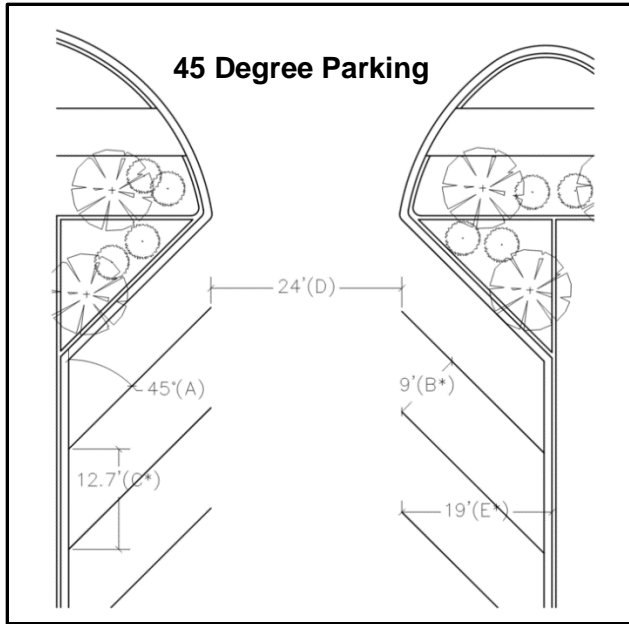
- 2) Aisles shall be designed to discourage cut-through traffic by use of landscape islands.
- 3) One Way Access Aisles: 10 ft minimum width- 14 maximum width
- 4) Two Way Access Aisles:
 - a. Two Drive Lanes – 24 feet Minimum; 30 feet Maximum
 - b. Three Drive lanes- 36 feet Minimum; 48 feet Maximum
- 5) Three Drive lanes, Industrial Uses, and any drives with Islands- Minimum and Maximum widths to be approved by City Engineer.
- 6) Dimensions are as measured from face of curb to face of curb
- 7) Applicable fire codes may require wider widths in some circumstances. In those circumstances fire code requirements shall prevail.
- 8) Aisles shall conform to the dimensional requirements shown in below table and diagrams.

DIMENSIONAL REQUIREMENTS

Angle (A)	Type	Width (in ft.) (B)	Curb length (in ft.) (€)	Stall depth (in ft.) (E)	One-way aisle width (in ft.) (D)	Two-way aisle width (in ft.) (D)
0° (Parallel)	Standard	8	22.5	8	12	24
45°	Standard	9	12.7	19	12	24
		9.5	13.4	18	12	24
		10	14.1	18	12	24
60°	Standard	9	10.5	20	18	24
		9.5	11	20.5	18	24
		10	11.5	20.5	18	24
90°	Standard	9	9	18	NA	24
		9.5	9.5	18	NA	24
		10	10	18	NA	24
	Motorcycle/Scooter	4	4	7-5 - 9	12-24	24

**Seventeen (17) foot long stalls are allowed when overhanging occurs over landscaping, and the landscaping will not be damaged by overhanging vehicles, and when the overhang does not occur in the right of way.*





C. Loading space. Off-street loading spaces shall be adequate for the use. Substantiation for provided loading spaces may be required by the Administrative Official. Loading shall occur solely within the subject property. Loading shall not occur in the Right of Way.

- 1) Loading Spaces: A required off-street loading space or berth shall be at least ten (10) feet in width by twenty-five (25) feet in length, exclusive of aisle and maneuvering space, and shall have a vertical clearance of at least fourteen (14) feet.
- 2) All required loading spaces or berths shall be located on the same lot as the use served.
- 3) Off- street loading spaces may be located either within a building or in open space.

D. Parking Lot Circulation.

- 1) Throat Length. The length of driveways "r "throat length" shall be designed in accordance with the anticipated storage length for vehicles to prevent them from backing into the flow of traffic on the public street or causing unsafe conflicts with on-site circulation. Should the development size and expected generated traffic volumes cause safety concerns, then the City Engineer may require minimum throat length distances.

E. Screening and Lighting.

- 1) All open off-street parking areas containing more than five (5) spaces and all loading spaces which are within a non-residential district and are adjacent to a residential district, shall be screened by a wall, solid fence, or hedge not less than six (6) feet nor more than eight (8) feet in height when adjacent to a residential rear or side yard and not less than three (3) feet nor more than four (4) feet when adjacent to a residential front yard.
- 2) Off-street parking areas permitted as accessory uses in residential districts shall be exempted from these requirements providing a statement of agreement to the exemption signed by the adjacent property owner(s) is submitted with the building permit and recorded with the Harvey County Register of Deeds.
- 3) Any lighting used to illuminate off-street parking or loading areas shall be directed away from residential properties in such a way as not to interfere with such residential use.
- 4) Where compliance with this section is not possible because of inclement weather, the Administrative Official may grant an appropriate delay but in no case shall such delay exceed one (1) year from the initial date of occupancy or commencement of use.

11.10 Bicycle Parking Rack Requirements.

- 11.10-1. Applicability. All new construction or expansions requiring five (5) or more off-street automobile parking spaces shall provide bicycle parking as required by this chapter. Any property owner required to have bicycle parking may elect to establish a shared bicycle parking facility with any other property owner within the same block to meet the combined requirements.
- 11.10-2. Definition. A bicycle rack is a fixture designed to park bicycles that can be secured with a standard u-shaped bicycle lock. Each bicycle parking rack shall hold two (2) bicycles
- 11.10-3. Number of Bicycle Racks Required. The minimum number of bicycle parking racks required is determined by the number of parking spaces required for the type of land use. Alternative rack designs may be approved by the Administrative Official so long as they have the bicycle capacity storage equivalent to the total number of standard bicycle racks required. The following standards shall determine the number of bicycle racks required based on the number of automobile parking spaces in the development

- A. Non-Residential Development. Non-residential development shall provide one (1) bicycle parking rack per twenty (20) automobile parking spaces. At a minimum, the development shall provide one (1) bike rack.
- B. Multi-Family Residential Development. No bike racks will be required with duplex development. Residential development of triplexes with no garages and all other multifamily residential developments greater than three units (regardless of the provision of garages) shall provide one (1) bicycle rack per thirty (30) dwelling units. At a minimum, a multifamily development meeting the above criteria shall provide one (1) bike rack.

11.10-4 Bicycle Rack Site Design. Careful consideration should be given to the layout and location of bicycle racks. For optimal functionality, the following standards shall apply in determining the layout and position of bicycle racks:

- A. Spacing Between Bicycle Racks. Each bicycle parking space shall have 36 inches of clear space, paved or unpaved, beside the rack allowing each rack to support two (2) bicycles. The 36-inch dimension may overlap another bicycle parking space such that racks positioned in a parallel row may be 36 inches on center. The minimum length dimension required is 8 feet free and clear.
- B. Location of Bicycle Parking Racks. Bicycle racks should be located in areas where they are useful to the bicyclist while not impeding access. The following standards shall apply when determining the location of bicycle racks:
 - 1) Bicycle parking racks should be located within 50 feet of a public entry. In locations that have multiple entrances, such as shopping areas, bicycle parking racks should be distributed near all major points of public entry.
 - 2) Bicycle parking facilities should have adequate lighting for the operation of combination and key locks at night and to minimize theft.
 - 3) Bicycle parking racks should be positioned so that no pedestrian traffic is impeded.
 - 4) Bicycle parking racks should not be located within bus stops, loading zones, or other curb space where on-street parking is permitted unless approved by the city engineer.
 - 5) Bicycle parking racks shall have a 6-foot minimum clearance from the edge of fire hydrants.
 - 6) Bicycle parking racks should have a 4 feet 0 inches clearance from existing street furniture, including mailboxes and light poles.
 - 7) Bicycle parking rack location shall not interfere with ADA standards.

- C. **Bicycle Rack Specifications.** The preferred bike rack is the standard inverted u-shaped bicycle rack. Applicants may request an alternative design with Administrative Official approval. All bicycle racks shall be designed so that they support a bicycle at two points on the bicycle frame and such that the bicycle may be securely locked with a u-shaped bicycle lock.
- D. **Materials.** Racks are to be constructed of 1½ inch, Schedule 40 steel pipe (1"90" x 0."45" wall).
- E. **Finishes.** Unless the pipe material is stainless steel, the pipe shall have PVC coating, powder coat finish or hot-dipped galvanized finish applied after the flange has been welded in place (Surface Mount Method) or the anchoring cross bar/supports have been fitted (Embedment Method).
- F. **Anchoring.** Bicycle racks shall be anchored with one of the following methods:
 - G. **Embedded in Concrete.** The rack legs shall extend a minimum of 9 inches into a concrete footing with an anchoring crossbar mounted 3 inches above the base.
 - H. **Surface Flange Mount.** A pre-drilled, steel flange, minimum 8-inch square, shall be welded to the bottom of each leg before final finish is applied. The flange shall have a minimum of three bolt holes. Each bolt hole shall accept a ½ inch diameter steel bolt.
 - I. **Alternative Anchoring Methods.** Alternative methods of anchoring bicycle racks may be permitted with approval of the City Engineer.

11.11 Driveway & Parking Standards - Single Family / Duplexes or other parking areas.

- 11.11-1. **Purpose.** The purpose of this ordinance section is to promote the public health, safety and general welfare, to prevent the adverse impacts associated with excess parking and over-occupancy of homes in single family districts, and to ensure that compatibility of land uses within single family districts remain intact.
- 11.11-2. **Applicability.** The following requirements shall apply to properties within single family districts that require four (4) or fewer parking spaces and properties within all zoning districts which are utilized for a single family detached home. The regulations herein do not apply to motor vehicles located completely within or underneath garages or carports, nor to properties zoned Agricultural

- 11.11-3. Use of off-street parking and loading spaces. Required off-street parking spaces shall be used solely for the parking of motor vehicles in operating condition and shall not be used for the storage of vehicles, boats, motor homes, campers, mobile homes, materials, tractor trailers or other temporary storage unless they are located in a designated staging area and are screened, fenced or otherwise fully shielded from public view
- 11.11-4. Outdoor parking/storage of boats, trailers, and recreational vehicles. One boat, trailer and/or recreational vehicle may be parked outdoors on a lot in a residential district provided that:
- A. The boat, trailer or recreational, vehicle is owned and used by property owner or resident.
 - B. The boat, trailer or recreational vehicle is not parked in the area between the front of the residence and the street or other area between the structure and the street except for the purpose of loading or unloading, during a period of less than, eight (8) hours.
 - C. The boat, trailer and/or recreational vehicle is located in the side or rear yard.
 - D. The boat, trailer and/or recreational vehicle is not used for living, sleeping or housekeeping purposes; and
 - E. The boat, trailer or recreational vehicle is currently registered and licensed as required by state law.
- 11.11-5. Off-Street Parking on City Street Right-of-Way. The off-street parking of any motor vehicle, non-motorized recreational vehicle, boat or trailer shall be prohibited within the street right-of-way, which includes any sidewalk, greenspace or other area from the edge of the paved street through the width of the dedicated street right-of-way. On-street parking within properly designated areas of the street right-of-way may be permitted, in accordance with current traffic regulations.
- 11.11-6. Driveway Standards.
- B. Surfacing. All required off-street parking and loading spaces, and the driveways serving off-street parking and loading spaces, shall be paved with asphalt, concrete, or brick or stone pavers, or other solid surface. This includes all single family and multifamily development. Rock may be considered as a solid surface if located within an older neighborhood with similar material, for a non-conforming existing structure, or on a

case-by-case basis; city approval shall be required.

- C. Driveway approach to property line. The driveway approach shall extend to the property line and/or master street plan right-of-way from the paved street and shall be designed, permitted, and paved with concrete in accordance with the residential drive detail in the adopted Master Street Plan. The driveway shall not exceed 24' in width at the property line.
- D. To prevent vehicles from parking over the public sidewalk, garages and carports shall be positioned to provide a minimum of thirty (30) feet between the sidewalk or Master Street Plan right-of-way line and the garage or carport.
- E. Duplex dwellings. Duplex dwellings are encouraged to utilize shared driveways with other duplex structures within the development. If shared drives are not utilized, a minimum of 10' of linear spacing is required between driveways serving adjacent structures.
- F. Loop, Circle, and Multiple Driveways. Loop, circle and multiple driveways on a single property shall be allowed so long as a thirty (30) foot separation between the drives is maintained, as measured from the interior edges of the curb cuts, subject to other restrictions for driveway separations in the code.
- G. Single-family and duplex driveways may be designed to allow backing out onto local streets.
- H. Driveway and Parking Area Maintenance Requirements.
 - 1) Paved. Driveways and parking areas that are paved shall be maintained to prevent erosion onto adjacent properties and to prevent dirt, rock and other materials from entering the street.
 - 2) Pre-existing Unpaved Driveways. New Building Permits are issued only for structures on paved streets. Pre-existing driveways and parking areas that are not paved shall be maintained to prevent erosion onto adjacent properties and to prevent dirt, rock and other materials from entering the street.
 - 3) Driveways and parking areas shall be constructed and maintained with adequate gravel, grasses, or other plants and/or landscaping materials to keep the area from becoming rutted, muddy and/or soil from being blown or washed away. If an unpaved driveway is not maintained and is identified as a violation of this provision, such driveway shall be immediately remedied by the property owner
 - 4) Driveway Grading and Drainage. The driveway shall be graded in such a way to dispose of surface water into appropriate structures and to not

increase the stormwater runoff onto the surface of adjoining properties or streets.

11.12 Exemptions.

- 11.12-1. Construction Vehicles. Parking of motor vehicles for new construction and additions shall be allowed on private properties and within the greenspace between the street and sidewalk during the duration of the project, as long as the building permit remains active. Any damage from construction vehicles to city property such as broken curb, sidewalk cracks, ruts in the greenspace, and erosion of unpaved areas shall be repaired by the owner/developer prior to completion of construction.
- 11.12-2. Temporary Parking. Temporary driveways or parking lots approved by the Planning Commission
- 11.12-3. Existing Driveways. All existing driveways constructed prior to the adoption of this ordinance shall be exempt from meeting the requirements of this section until a curb cut permit or a building permit for the new construction of 1,000 square feet or larger is granted for the primary structure (additional dwelling units and other outbuildings will not count toward this calculation of 1000 sq ft).
- 11.12-4. Special Events. Infrequent parking for special events. Excessive parking which occurs more frequently than an average of one day a month may be determined by the Administrative Official. The Administrative Official shall notify an owner/tenant by regular mail or similar notice that the excessive parking has been determined to be "frequent" and in violation of this section prior to taking other enforcement measures
- 11.12-5. Timing of construction All required parking and loading spaces, driving aisles, and access ways shall be constructed prior to the issuance of a certificate of occupancy.

11.13 Drive-Through Facilities.

All uses that include a drive-up window or are characterized by patrons remaining in their vehicles to receive service shall meet the following on-site stacking requirements in order to alleviate traffic congestions:

- 11.13-1. Stack spaces shall be designed so as not to impede pedestrian access to the building on and off-site traffic movements or movements into or out of parking spaces.
- 11.13-2. Stack space lanes shall be a minimum of eight (8) feet wide and shall be separated from other internal driveways with painted lines or curbing.
- 11.13-3. Restaurant, fast food: a minimum of four (4) spaces as measured from the drive-thru window.
- 11.13-4. Vehicular washes: a minimum of two (2) spaces per car wash bay as measured from the bay.
- 11.13-5. Pharmacies and financial institutions: a minimum of four (4) spaces for one (1) drive-thru window, plus three (3) spaces for each additional drive-thru lane or automated teller machine (ATM), as measured from each drive-thru window
- 11.13-6. Dry cleaning and laundry services: a minimum of two (2) spaces as measured from the drive-thru window
- 11.13-7. Other uses, thirty (30) feet as measured from the pick-up window

11.14 Maximum Number Allowed.

- 11.14-1. Residential and non-residential developments may increase the required spaces listed in Table 5 when the following standards are met.
 - A. Developments may increase the number of off-street parking spaces by 15% above the parking ratios listed in Table 5.
 - B. Developments may increase the number of off-street parking spaces by an additional 10% when alternative stormwater treatment techniques are utilized, such as:
 - 1) Bioswales
 - 2) Constructed wetlands
 - 3) Pervious pavement
 - 4) Other such techniques that aid in improving water quality and

quantity as approved by the City Engineer

- C. Developments may increase the number of off-street parking spaces by an additional 5% when one (1), 2-inch caliper tree for every ten (10) additional parking spaces is planted on-site in addition to all other landscaping requirements.

11.14-2. Parking Ratio Calculation. The number of spaces required for a use not specifically included in Table 5 shall be as required for the most similar use listed or as otherwise determined by the City Planning Division utilizing industry standards. For all parking space requirements resulting in a fraction, the fraction shall be:

- A. Rounded to the next higher whole number when the fraction is 0.5 or higher.
- B. Rounded to the next lower whole number when the fraction is less than 0.5.

11.14-3. On-Street Parking for Multifamily. Each permitted on-street parking space adjacent to a project frontage may count toward the parking requirements for all development. The approval of on-street parking is subject to approval by the Zoning and Development Administrator.

11.14-4. Increases or reductions beyond those identified herein shall be allowed only by the Planning Commission as a variance

**TABLE 5
PARKING RATIOS**

Residential (Minimum required spaces)

Single-family, duplex, triplex	2 per dwelling unit
Multi-family or townhouse	1.5 per dwelling unit

Commercial (Maximum allowable spaces for each use)

Agricultural supply	1 per 500 sq. ft. of GFA
Amusement	1 per 200 sq. ft. of GFA
Auditorium	1 per 4 seats
Auto/motorcycle service stations	4 per each enclosed service bay
Bank	1 per 200 sq. ft. of GFA
Barber or beauty shop	2 per chair
Building/home improvement supply	1 per 500 sq. ft. of GFA
Coin-operated laundry	1 per 3 machines
Dry cleaning	1 per 300 sq. ft. of retail area and 1 per employee
Hotels and motels	1 per guest room, plus 75% of spaces required for accessory uses.
Furniture and carpet store	1 per 500 sq. ft. of GFA
Plant nursery	1 per 1,000 sq. ft of indoor/outdoor retail area
Restaurants	1 per 100 sq. ft. GFA plus 4 stacking spaces per drive-thru window.
Retail	1 per 250 sq. ft. of GFA
Retail fuel sales with convenience stores	1 per 250 sq. ft. of retail floor area. Owner may count spaces at pump islands as parking spaces.
Retail fuel sales only	1 per employee. Owner may count spaces at pump islands as parking spaces.

Office (Maximum allowable spaces for each use)

Professional Office	1 per 300 sq. ft. of GFA
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Public and Institutional Uses

Nonprofit Commercial (Maximum allowable spaces for each use)

Art gallery, library, museum	1 per 1,000 sq. ft. of GFA
Auditorium	1 per 4 seats, provided only auditorium space is counted in determining parking
Childcare center, nursery school	1 per employee plus on-site loading and unloading spaces at a rate of 1 per 10

	children accommodated
Church/religious institution	1 per 4 seats in the main auditorium or 1 per 40 sq. ft. of assembly area, whichever provides more spaces
College auditorium	1 per 4 seats
College dormitory	1 per sleeping room
College or university	1 per 500 sq. ft. of classroom area
Community center	1 per 250 sq. ft. of GFA
Cooperative housing	1 per 2 occupants
Convalescent home, assisted living, nursing home	1 per 2 beds
Detention home	1 per 1,500 sq. ft. of GFA
Elderly Housing	1 per 2 units
Funeral homes	1 per 4 seats in main chapel plus 1 per 2 employees plus 1 reserved for each vehicle used in connection with the business
Government facilities	1 per 500 square feet of floor area
Hospital	1 per bed
Convalescent home	1 per bed
School—elementary and junior high	1 per employee plus 1 space per classroom
School—senior high	1 per employee plus 1 per 3 students based on design capacity, or 1 per 6 seats in auditorium or other places of assembly, whichever is greater
Zoo	1 per 2,000 sq. ft. of land area
All other public and institutional uses (only auditorium space shall be counted for churches, auditoriums, or group occupancy space)	1 per 4 occupants

Manufacturing/Industrial (Maximum allowable spaces for each use)

Manufacturing	1 per 1,200 sq. ft. of GFA or one per employee, whichever is greater
Heavy industrial	1 per 1,200 sq. ft. of GFA
Extractive uses	Adequate for all employees, trucks, and equipment

Recreational Uses (Maximum allowable spaces for each use)

Amusement park, miniature golf	1 per 1,000 sq. ft. of site area
Bowling alley	6 per lane

Commercial recreation	1 per 200 sq. ft. of GFA
Commercial recreation-large sites	1 per 1,000 sq. ft. of site area
Dance hall, bar or tavern	1 per 50 sq. ft. of GFA, excluding kitchen
Golf course	3 per hole
Golf driving range	1 per tee box
Health club, gym	1 per 150 sq. ft. of GFA
Regional or community park	2 per acre of accessible active and passive space
Neighborhood park	None
Private club or lodge	1 per 500 sq. ft. of GFA or 1 per 3 occupants based on the current adopted Standard Building Code whichever is greater
Riding stable	1 per acre; not required to be paved
Tennis court	2 per court
Theater	1 per 4 seats
All other recreational uses	1 per 4 occupants

Warehousing and Wholesale (Maximum allowable spaces for each use)

Warehousing	1 per 2,000 sq. ft. of GFA
Wholesale	1 per 1,000 sq. ft. of GFA
Center for collecting recycled materials	1 per 1,000 sq. ft. of GFA

ARTICLE XII - SIGN REGULATIONS

12.1 General Provisions.

12.1-1. Statement of Purpose.

This Article provides standards relating to Signs located within the City of Newton, Kansas, and governs the number, size, type, location, and physical aspects of Signs.

It is determined that the regulation of Signs is necessary to promote traffic safety by reducing hazards that may be caused or worsened by driver and pedestrian distractions, to preserve and enhance the aesthetic and environmental values of the community, to reduce excessive and confusing Sign displays, to provide for effective communication between people within the context of their environment and to protect the rights of free speech and expression.

12.1-2. Applicability.

The provisions of this Article shall apply to the erection, construction, reconstruction, remodeling, relocation, alteration, hanging, affixing or creation by painting, use, location and maintenance of all Signs located out-of-doors, to those Signs painted on any part of a Building, and to those Signs placed within a Building for the purpose of being visible from the exterior of the Building. The provisions herein contained shall be considered together with the Building, zoning, fire, and electrical codes of the Governing Bodies, and shall particularly regulate the size, height and type of Signs otherwise permitted.

12.1-3. Message Neutrality.

It is the policy and intent of the Governing Bodies to regulate Signs in a manner consistent with the United States Constitution and Kansas Constitution, and in a manner which is content-neutral as to protected non-commercial speech.

12.1-4. Substitution of Messages.

Subject to the landowner's consent, a non-commercial Message of any type may be substituted for any duly permitted or allowed Commercial Message or any duly permitted or allowed Non-Commercial Message, provided that the Sign is legal without consideration of Message content. This substitution of Message may be made without any additional approval or permitting. This provision 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 the structural device 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.

The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular Non-Commercial Message over any other Non-Commercial Message.

12.1-5. Scope; Private Property.

As to Signs located on Private Property, this Article is regulatory; it does not abrogate, override, limit, modify or nullify any easements, covenants, leases or other existing private agreements that are more restrictive than this Article. This Article does not modify state or federal laws pertaining to the regulation or display of Signs.

12.1-6. Scope; Public Property.

Unless otherwise permitted in this Article, no Sign shall be placed within a public Street right-of-way, public park or other Public Property, or on a utility pole. Any Sign found within the public right-of-way shall be removed by the Sign Administrator or their designees, and may be destroyed without notice.

12.1-7. Distinction: On-Site & Off-Site.

Within this Article, the distinction between “on-site” and “off-site” Signs applies only in regard to Signs displaying commercial speech Messages. This distinction does not apply to Signs displaying non-commercial Messages.

12.1-8. Legal Nature of Sign Rights and Duties.

As to all Signs attached to real property, the signage rights, duties and obligations arising from this Article attach to and travel with the land or other property on which a Sign is mounted, installed or displayed. A Sign Permit is an official authorization of legal right to a certain use of a particular parcel of land; it is not a certificate of ownership. This Article does not modify or affect the law of fixtures, sign-related provisions in private leases (so long as they are not in conflict with this Article or other applicable law), or the ownership of Sign Structures. This Article does not apply to Hand-Held Signs, Commercial Mascots or visual images which are aspects of personal appearance.

12.1-9. Compliance Required.

Signs may be erected, installed or displayed only in compliance with this Article. Unless explicitly exempted from the permit requirement, Signs may be displayed only pursuant to a Sign Permit or other approval, and in compliance with all other applicable permit requirements. A Sign that is exempt from the Sign Permit requirement may still be subject to other permit requirements or legal approvals, including those required by other governmental or regulatory agencies.

12.1-10. Responsibility for Compliance.

The responsibility for compliance with this Article rests jointly and severally upon the Sign Owner, the Sign Operator, all parties holding the present right of possession and control of the property whereon a Sign is located, mounted or installed including the legal Owner of the lot or parcel.

12.1-11. Aesthetic Considerations.

All Permanent Signs shall be well constructed of permanent materials and shall be constructed with similar materials as used in other Buildings on the site. All Signs shall be well constructed of materials able to sustain the environmental conditions.

12.1-12. Maintenance.

All Signs together with all their supports, braces, guys and anchors, shall be kept in good repair and in a proper state of preservation.

12.1-13. Severability.

Should any of the clauses, sentences, paragraphs, words, sections or parts of this Article be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Article. All provisions of this Article are declared to be severable.

12.2 Definitions.

When used in this Article, the following terms shall be defined as follows:

Advertising Sign (Billboard): *A Sign in a fixed location, which meets any one or more of the following criteria: (1) it is intended to be used for, or is actually used for, the display of general advertising or general advertising for hire; (2) it is used for or intended to be used for the display of commercial advertising Messages which pertain to products and/or services which are offered at a different location, also known as Off-Site Commercial Messages or Off-Premise Sign; or (3) it constitutes a separate principal use of the property, in contrast to an auxiliary, accessory or appurtenant use of the principal use of the property.*

Applicant: *The Person or entity requesting Sign Permit approval from the City. Typically to obtain status of an Applicant, the Person must be the property Owner, tenant, or an authorized agent of the property Owner or tenant. The City may require documentation of a Person's authority to act as an Applicant before processing a request.*

Artistic Mural: *Painted graphics on a wall or fence that does not contain advertising symbols or other references to the products or services that are provided on the premises. Artistic Murals shall not contain text that covers more than 15% of the total surface area of the Sign.*

Awning Sign: *A Sign that is mounted on, painted on, or attached to an Awning.*

Awning: *Any Structure made of cloth or metal with a rigid frame attached to a Building and projecting over Public Property when so erected to permit its being lowered to a position over Public Property and to permit its being raised to a position flat against Building when not in use.*

Billboard: *See Advertising Sign.*

Building: *Any Structure intended for shelter, occupancy, housing or enclosure for Persons, animals or property.*

Canopy Sign: *Any Sign erected upon or against a Canopy.*

Canopy: *A roof-like Structure of a permanent nature which projects over a public walkway or ROW.*

City Administrator: *The person authorized by the governing body to administer and enforce the provisions of this Article.*

City: *The City of Newton, Kansas.*

Commercial Mascot: *A live Person or animal attired in commercial speech imagery, in public view, for the principal purpose of attracting attention to the commercial imagery.*

Commercial Message: *A Message displayed on a Sign that concerns a business, commercial or economic interest, or which proposes an economic transaction.*

Commercial Mural: *Painted graphics on a wall or fence that either includes text that covers more than 15% of the total surface area of the Sign, or which contains a Commercial Message, advertising symbol or other references to the products or services that are provided on the premises.*

Copy: *Words, letters, Logos, figures, symbols, illustrations, or patterns that form a Message or otherwise call attention to a business, product, service, activity, or to the Sign itself.*

Day: *A calendar Day.*

Digital Display Device: *A device which allows any image on a Sign to be changed by electronic control methods, such devices typically use light emitting diodes or their functional equivalent to create the visible image. Both slide show type and moving image type displays are within this definition.*

Digital Sign: *A Sign which uses a Digital Display Device to present words, symbols, figures or images that can be changed, including any Sign that includes Animation, flashing light, intermittent light or moving light.*

Directional Sign: *An on-site operational Sign of not more than five (5) square feet in area needed to control traffic, parking, access, etc. A Directional Sign may not include a Commercial Message.*

Display Area: *The entire area within a single continuous perimeter enclosing the extreme limits of such sign, and in no case passing through or between any adjacent elements of the same. Such perimeter shall not include any structural elements lying outside the limits of such signs and which cannot form an integral part of the display.*

Dissolve: *A mode of Message Transition on a Digital Sign accompanied 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 Board: *See Digital Sign.*

Fade: A mode of Message Transition on a Digital Sign 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.

Flag: Any Sign printed or painted on cloth, plastic, canvas or other like material attached to a pole or staff and anchored along only one edge or supported or anchored at only two corners.

Flashing Sign: A Sign which changes light intensity at regular intervals, including repeated brightening or dimming of lights, change in contrast or hue, or turning on and off in a manner in which the duration of light is less than the duration of darkness.

Frame: A complete, static display screen on a Digital Sign.

Ground Sign: See Monument Sign.

Hand-Held Signs: Any Sign held by a Person.

Height of a Sign: The distance from the average ground level immediately surrounding the base of the sign to the top of its highest element, including any structural or architectural element. Landscape mounding shall not be used to artificially alter the Height of a Sign.

Historical Marker: Plaque or Sign describing state or national designation as an historic site or Structure, not exceeding twelve (12) square feet in area and subject to height and setback requirements for the zoning district in which the sign is placed.

Home Occupation Sign: A Sign identifying services provided or advertising a home-business located on-site. Home Occupation Signs are limited to a total of six (6) square feet.

Identification Sign: A Sign limited to two (2) square feet which is limited to the name, address and number of a Building, institution or Person and to the activity carried on in the Building or institution, or the occupancy of the Person.

Illuminated Sign: Any Sign which emanates light.

Illumination: A source of any artificial or reflected light, either directly from a source or light incorporated in, or indirectly from an artificial source.

Incidental Sign: Any Sign, two (2) square feet or less in surface area, of a non-commercial nature, intended primarily for the convenience of the public. Included are signs designating restrooms, address numbers, hours of operation, entrances to Buildings, directions, help wanted, public telephone, etc. Also included in this group of Signs are those designed to identify an area or place on the Premises of a business Building or development by means of a directory designating the applicable names and addresses of the businesses.

Inflatable Sign: A Sign that is an air-inflated object, which may be of various shapes, made of flexible fabric, resting on the ground or Structure.

Interactive Sign: An electronic or animated Sign that reacts to the behavior or electronic signals of the drivers of motor vehicles or pedestrians.

Interior Sign: Any Sign located within a Building interior, an enclosed lobby, or Building courtyard, or signs located on the interior of a parcel that is not normally viewed from the public right-of-way (such as signs on stadium walls within ball parks); provided they meet the structural, electrical and material specification in this Code. Interior Sign does not include Window Signs as defined by this article.

Interstate Highway Sign: A Sign (other than an Advertising Sign) which serves a retail establishment in an Interstate Highway Sign District established by the Governing Body for advertising by businesses catering to the Interstate highway motoring public.

Logo: A symbol, emblem, or other graphical element that is easily recognized as representing a product, identity or service.

Marquee Sign: A sign affixed to the visible surface of an attached or freestanding Marquee. May be internally or externally illuminated.

Marquee: A permanent roof Structure projecting over the sidewalk and attached to and supported by a Building.

Memorial Sign: A memorial plaque or tablet displayed on Private Property, including grave markers or other remembrances or Persons or events, which is not used for a Commercial Message.

Message: Copy or a series of Copy displays that directly or indirectly names, advertises, or calls attention to a business, product, service or other activity.

Monument Sign: Any Sign placed upon, or supported by, the ground independent of the principal Building or Structure on the property and is constructed with permanent building materials. Also known as a Ground Sign.

Multiple-Building Complex: is a group of Structures housing two or more retail, offices, or commercial uses sharing the same lot, access and/or parking facilities, or a coordinated site plan. For purposes of this section, each Multiple-Building Complex shall be considered a single use. “Multiple-tenant building” is a single Structure housing two or more retail, office, or commercial uses sharing the same lot, access and/or parking facilities, or a coordinated site plan. For purposes of this section, each Multiple-Building Complex shall be considered a single use.

Non-Commercial Sign: Means a Sign that does not contain a Commercial Message nor identify, advertise or attract attention to a business, product or service, or propose an economic transaction. Typical examples include Signs whose Message addresses a topic of public concern or controversy including, but not limited to, politics, religion, philosophy, science, art or social commentary.

Non-Permanent Sign: See also Temporary Sign.

Off-Site or Off-Premise Sign: A Sign whose Message does not pertain or relate to the Premises upon which the sign Structure is mounted or constructed. The onsite/offsite distinction in this Article applies only to Commercial Messages.

On-Site or On-Premises Sign: A Sign whose Message pertains or relate to the Premises upon which the sign Structure is mounted or constructed. The onsite/offsite distinction in this Article applies only to Commercial Messages.

Owner: A Person recorded as such on official records, a purchaser or any Person having a vested or contingent interest in the property in question.

Parking Lot Sign: A Sign placed or displayed on a parking lot to supply information to people using the lot, including liability, entry, exit and directional information, as necessary to facilitate the safe movement of vehicles and pedestrians.

Pennant: See Flag.

Permanent Sign: A non-temporary Sign designed and intended for long-term use.

Permittee: A Person receiving a permit from the City pursuant to the provisions of this Article.

Person: Any human individual, firm, partnership, association, corporation, company or organization of any kind, and its agents, representatives, or employees. For purposes of determining liability for actions taken in violation of this Article, the term Person shall include the Owner, lessor, lessee, and tenant of the property upon which the sign is located.

Pole Sign: An elevated Sign supported by poles or pylons independent of any other Structure.

Political Sign: Sign advertising a candidate or candidates for public elective office, or a political party, or sign urging a particular vote on a public issue decided by ballot.

Portable Sign: A Sign designed to be transported or moved and not attached to the ground or a Structure. Portable Signs differ from Temporary Signs in the limitations made upon their display. Portable Signs include A-frame signs, Sandwich Boards and mobile signs.

Premises: A lot together with the Structures and other improvements located thereon.

Private Property: All property not included in the definition of "Public Property" including but not limited to, vacant land or to any land, Building or other Structure designed or used for residential, commercial, business, industrial, institutional or religious purposes, together with any Structure appurtenant thereto.

Professional and Occupation Sign: A Sign with Sign Area of no greater than six (6) square feet displayed On-Site that displays the name and profession of the occupant.

Projecting Sign: A Sign, other than a Wall Sign, suspended or supported by a Structure or Building that projects more than one (1) foot from the Building wall.

Public Property: All property owned, operated or controlled by a government agency, including but not limited to Streets, sidewalks, parks, playgrounds, parking lots, schools, libraries, rights-of-way, post offices and other public lands and Buildings.

Public Regulatory Signs: Signs of a duly constituted governmental body, including traffic or similar regulatory devices, legal notices, warning at railroad crossings and other instructional or regulatory signs having to do with health, hazards, parking, swimming, dumping, etc.

Real Estate Signs: Any on-site sign pertaining to the sale, lease or rental of land or Buildings. (See Temporary Signs)

Roof Sign: Any Sign erected, constructed or maintained upon or over the roof of any Building.

Sandwich Board: Also known as an "A-Frame" Sign. A Sandwich Board is a freestanding Temporary sign, made up of two (2) flat faces, with no moving parts or lights, usually connected at the top to form an "A" shape. See Portable Sign.

Scroll: A mode of message transition on a Digital Sign in which the message appears to move vertically or diagonally across the display surface.

Sign Administrator: The officer appointed by the City Administrator with the authority to enforce this Article. The term also includes any Person designated to act on behalf of the Sign Administrator.

Sign Area. *The gross surface area of a Sign shall be the sum of all surface areas of all the Sign faces, except that Signs designed as double-faced signs, with both faces parallel and when the distance between the faces does not exceed three feet, then only one face of the Sign shall be considered in determining the Sign area.*

Sign Operator: *Any Person exercising lawful control over a Sign.*

Sign Owner: *Includes the property Owner of record, manager, lessee, designated agent, or any Person exercising control over the Sign.*

Sign Permit: *A revocable license issued by the Sign Administrator that allows the holder to Erect, construct, reconstruct, remodel, relocate, hang or display a Sign.*

Sign: *Any device or Structure for displaying visual images, graphics, symbols, and/or written Copy for the primary purpose of communicating with the public, when such image is visible from any public right-of-way. "Sign" shall include any moving part, lighting, sound equipment, framework, background material, structural support, or other part thereof. A display, device, or thing need not contain lettering to be a Sign. Signs shall include both Permanent Signs and Temporary Signs. For the purposes of this Article, Signs held or worn by Persons including Hand-Held Signs, Sandwich Boards, Commercial Mascots, costumes and clothing are not subject to regulation.*

Street: *A public roadway, or a private roadway that has been approved by the City for common use, which provides frontage for a vehicular access to lots or which may carry through traffic, whether designated as a highway, Street, avenue, road, drive, place, court, way, lane, or circle.*

Structure: *Anything built that requires a permanent location. This term includes a Building.*

Temporary Sign: *A Sign not permanently attached to the ground, wall or Building and which is intended for use for a limited period of time. Temporary Signs are typically constructed of cloth, paper, canvas, cardboard or other light materials. Temporary Signs include, but are not limited to garage sale Signs, ideological Signs, Real Estate Signs, Home Occupation Signs, Construction Signs, grand opening displays and Political Signs. Temporary Signs are also known as Non-Permanent Signs and do not require a permit.*

Transition: *A visual effect used on a Digital Sign to change from one Message to another.*

Travel: *A mode of message transition on a Digital Sign in which the message appears to move horizontally or diagonally across the display surface.*

Unlawful Sign: A Sign which contravenes this Article or which the Sign Administrator may declare as unlawful if it becomes dangerous to public safety by reason of placement, dilapidation or abandonment or a Non-Conforming Sign or a Sign not specifically allowed by this Article or for which a permit required under a previous ordinance was not obtained.

Unprotected Speech: Any Message or image which is outside the protection of the First Amendment to the U.S. Constitution and/or the corollary provisions of the Kansas Constitution is prohibited. Examples include material which meets the legal definition of obscenity, misleading or deceptive Commercial Messages and Messages which promote illegal products or services.

Wall Sign: A Sign attached to the wall of a Building with the exposed Sign face parallel to the wall. Wall Sign does not include Artistic Mural or Commercial Mural.

Window Sign: A Sign installed inside a window for purposes of viewing from outside the Premises. This term does not include merchandise located in a window.

12.3 Sign Administrator.

The City Manager shall appoint a Sign Administrator to administer and enforce the terms and conditions of this Article and all other provisions of law relating to Signs.

12.3-1. Duties of Sign Administrator.

The duties of the Sign Administrator shall include not only the issuance of Permits as set forth in this Ordinance, but also the responsibility to ensure that all Signs are in compliance with this Ordinance and other applicable laws. It is the Sign Administrator's responsibility that all Signs for which a permit is required, do in fact have a Permit. The Sign Administrator shall make such inspections as may be necessary and initiate appropriate action to bring about compliance with this Ordinance and other applicable law. The Sign Administrator shall investigate thoroughly any complaints of alleged violations of this Article.

12.3-2. Interpretations.

The Sign Administrator in consultation with the City Attorney, shall interpret this Article as the need for interpretation arises, including for application to specific issues and proposed Signs. Such interpretations may be appealed first to the Planning Commission and then to the Governmental Body. All interpretations are to be made in light of the overarching policy, purposes and intent of this Article.

12.3-3. Discretionary Approvals.

Whenever any Sign Permit, variance, special use permit, or other sign-related decision is made by any exercise of official discretion, such discretion should be limited to the non-communicative aspects of the Sign as defined herein. Discretion may not be exercised as to the Message Content of the subject Sign. When discretion is authorized, it may be exercised to the following factors as applicable:

- A. Constructive material and details of structural design;
- B. The letter size, type and style;
- C. The number and spacing of Signs in the area;
- D. Style or character of existing improvements upon the site and lots adjacent to the site;
- E. The Display Area, height and location of the Sign in relation to its proposed use;
- F. How the Sign utilizes lighting;
- G. Other elements of Street and site furniture and adjacent Structures; form, proportion, and scale;
- H. Potential effect of the proposed Sign on driver and pedestrian safety;
- I. Potential blocking of view of historical, cultural or architectural significance;
- J. Potential obstruction of views of users of adjacent Buildings to side yards, front yards, open space, or parks;
- K. Potential negative impact on visual quality of public spaces.

12.3-4. Inspection.

As soon as a Sign that requires a permit has been erected, the Permittee shall notify the Sign Administrator who shall inspect such Sign and approve the same if it is in compliance with the provisions of this Article. The Sign Administrator may initiate an inspection of any Sign regulated by this Article at any time for the purpose of ascertaining whether the same is secure or insecure or whether it is in need of removal or repair.

12.3-5. Enforcement.

The Sign Administrator may authorize an agent or agents to enforce and administer this Article.

12.4 Sign Permits and Application.

All Signs which require a Permit, must be properly permitted by the Sign Administrator prior to being displayed, erected or altered.

12.4-1. Scope.

This section applies to all Signs which may be erected, maintained or displayed only by a Sign Permit. The internal review and appeal procedures also apply to any other sign-related decision made by the City, including but not limited to removal orders, revocation of permits, orders to abate, etc.

12.4-2. Permit Generally Required.

Except as provided herein, or as may be provided by other ordinances or resolutions, it shall be unlawful for any Person to erect, construct, maintain, install, alter, move or replace any new or existing Sign without first obtaining a permit and making payment of the Sign Permit fee. This rule does not apply to Signs which are exempted from the permit requirement by an explicit provision of this Article. A permit is not required for ordinary maintenance and repair of a Sign, nor is a permit or fee required to post a Temporary Sign or other exempt Sign.

12.4-3. Application.

Application for Sign Permits required under this Article shall be made on forms provided by the Sign Administrator and accompanied by the following, if required by the Sign Administrator, or if required by the provisions hereof:

- A. Name, address and telephone number of the Applicant;
- B. Location of the Building, Structure, or lot to which or upon which the Sign is to be attached or erected;
- C. Position of the Sign in relation to nearby Building or Structures, Streets and sidewalks;
- D. An illustration of the proposed Sign including specifications describing the Sign;
- E. Length of time that the proposed Sign will be displayed;

- F. Written consent of the Owner of the Building or land to which or on which the Sign is to be erected;
- G. Such other information as the Sign Administrator shall require to show full compliance with this Article and all other laws and ordinances of the City;
- H. For any Sign installed or erected over Public Property, the Applicant must provide a certificate of Accident Public Liability Insurance issued to the Applicant providing coverage of \$50,000 per Person, \$100,000 per accident and \$25,000 towards property damage.

12.4-4. Permit Fees.

Before being granted a permit hereunder, every Applicant shall pay to the City a permit fee per square foot for each Sign requiring a permit and regulated by this Article. Temporary Signs and Artistic Murals shall be exempt from permit fees.

12.4-5. Approval of Application.

Upon the filing of an application for a Sign Permit, it shall be the duty of the Sign Administrator to review the application and to conduct such other investigation as is necessary to determine the accuracy and comprehensiveness of the application. If it shall appear that the Applicant has provided the information requested in the application and that said information is accurate and that the proposed Sign when placed will comply with all applicable law, the Sign Administrator shall issue a Sign Permit.

12.4-6. Timely Review.

The Sign Administrator shall promptly review the application upon the receipt of a complete permit application and payment of the permit fee by the Applicant. The Sign Administrator shall grant or deny the permit application within fourteen (14) Days from the date the complete application, including all required documentation filed and permit fees paid in full. If the Sign Administrator fails to approve the application within fourteen (14) Days, the application will be considered denied.

12.4-7. Denial of Application.

If the Sign Administrator determines that the proposed Sign is not in compliance with all requirements of this Article or any other laws and ordinances of the City, the Sign Administrator shall not issue the requested permit and shall advise the Applicant of the right to appeal this decision. If a Sign Permit application is rejected, the Sign Administrator must provide a list of the reasons for the rejection in writing.

12.4-8. Revocation or Cancellation.

All rights and privileges acquired under the provisions of this Article or any amendments thereto, are mere licenses revocable at any time. All such permits shall contain this provision.

12.5 Prohibitions and Restrictions.

12.5-1. Prohibited Signs.

All Signs not expressly permitted within this Article or exempted herein are prohibited. Such prohibited Signs include, but are not limited to:

- A. **Unprotected Speech:** Any Sign containing a Message or image which is outside the protection of the First Amendment to the U.S. Constitution and/or the corollary provisions of the Kansas Constitution is prohibited. Examples include material which meets the legal definition of obscenity, misleading or deceptive Commercial Messages and Messages which promote illegal products or services.
- B. **Unlawful Signs:** Any Sign which contravenes this Article or which the Sign Administrator may declare as unlawful if it becomes dangerous to public safety by reason of dilapidation or abandonment.
- C. **Hazardous Signs:** Any Sign erected in any manner which would create a hazardous condition to pedestrians or traffic, either by obstructing the free use of exits, Buildings or sites, or by creating visual distractions by using color, sound or glare.
- D. **Vandalized Signs:** Any Sign damaged, defaced or painted by acts of vandalism must be repaired and restored, or removed within seven (7) Days unless an extension is granted by the Sign Administrator.
- E. **Damaged or Unmaintained Signs:** Any Sign damaged by natural acts must be repaired and restored, or removed within seven (7) Days unless an extension is granted by the Sign Administrator. Any Sign damaged to the extent that it has become a public hazard must be repaired immediately.
- F. **Inflatable Signs:** Any Sign in the form of air-inflated objects of various shapes that are made of flexible fabric and placed on the ground or a Structure. By changing the rate of air being blown into the object, the Inflatable Sign can appear to be moving increasing the likelihood of the Sign becoming an unreasonable distraction.
- G. **Destruction of Nature:** Signs tacked, posted, cut, burnt, painted or otherwise affixed on trees, fields, vegetation, rocks, or other natural features.

- H. Fluorescent Signs: Signs containing fluorescent or day-glow colors as all or part of their Copy.
- I. Rotating Signs: Signs that turn on an axis, allowing different faces or images to be viewed from a single location.
- J. Utility Pole Signs: Signs attached to any utility pole, except warning Signs issued and properly posted by that utility company or a government agency.
- K. Fence Signs: Signs attached to any fence, except warning Signs properly posted by the Owner.
- L. Flashing Signs: Flashing, blinking, chasing, moving or any artificial light which is not constant in intensity and color at all times. Exception: Digital Signs.
- M. Sound, Smoke or Odor Emitting Signs: Any Sign that emits sound, smoke, odor or visible matter.
- N. Interactive Signs

12.5-2. Restrictions.

See Table 12.9. No Sign shall extend onto or across a public right-of-way unless otherwise permitted.

12.5-3. Historic Districts.

- A. Residential Historic Districts – Illumination of Signs is prohibited with the exception of external Illumination. All Signs must first be approved by the Historic Preservation Commission or State Historic Preservation Officer with the exception of Temporary Signs.
- B. Commercial Historic Districts – All Signs must first be approved by the Historic Preservation Commission or State Historic Preservation Officer with the exception of Temporary Signs and Portable Signs.

12.6 Signs Exempt from Permit.

The following Signs shall be exempt from requiring a Permit, but remain subject to regulation:

12.6-1. Temporary Signs

12.6-2. Public Regulatory Signs

12.6-3. Required Signs: Signs required by federal, state or local law.

- 12.6-4. Governmental Signs: Signs necessary to promote health, safety and welfare, and other regulatory, statutory, traffic control or installed by employees or officials of the Governing Bodies, state agencies or federal agencies in the course of governmental duties and bearing no Commercial Message.
- 12.6-5. Window Display Signs: Non-illuminated display Signs affixed to the inside of windows in Commercial and Industrial districts and limited in size to no greater than 30% of the total window area.
- 12.6-6. Interior Signs
- 12.6-7. Directional Signs
- 12.6-8. Court Orders; Signs required by an order of a court of competent jurisdiction.
- 12.6-9. Legal Notices
- 12.6-10. Public Utility Signs: Signs installed by public utilities in their rights-of-way or on their facilities and bearing no Commercial Message other than such Message as necessary to identify the public utility and the use.
- 12.6-11. Equipment Signs: Signs incorporated into machinery or equipment by a manufacturer or distributor.
- 12.6-12. Vehicle Sale Signs: Signs displayed on vehicles stating terms of sale and contact information.
- 12.6-13. Commemorative plaques: Including Historical Markers that are mounted on the face of a Building indicating the name of the Building, the date of its date of erection or other commemorative information.
- 12.6-14. Informational Warning Signs: Signs which do not exceed three square feet in surface area including “no trespassing”, “no dumping”, “no parking”, “private” and other informational warning Signs.
- 12.6-15. Professional and Occupation Signs
- 12.6-16. Memorial Signs
- 12.6-17. Vehicle Signs: Signs on a bus, trailer or other vehicle.
- 12.6-18. Incidental Signs
- 12.6-19. Identification Signs
- 12.6-20. Parking Lot Signs

12.7 Unsafe and Unlawful Signs.

12.7-1. On-Site Inspection.

The Sign Administrator may enter, for the purposes of inspecting and investigating Signs, any Building, Structure or other Premises or property during normal business hours. In cases of emergency where hazards are known to exist that may involve imminent injury to Persons, loss of life or severe property damage, and where the Owner, agent or tenant in charge of the property is not available after the Sign Administrator has made a good faith effort to locate same, the Sign Administrator may enter the aforementioned Structures and Premises at any time upon presentation of proper identification to any Person on the Premises.

12.7-2. Unlawful Signs.

If the Sign Administrator finds that any Sign regulated herein has been constructed or erected, or has been maintained in violation of the provisions of this Article, the Sign Administrator shall provide written notice to the Owner of the Structure, lot, or parcel upon which the Sign is installed. If the property owner fails to remove or alter the Sign so as to comply with the standards herein set forth within seven (7) Days after such notice, such Sign may be removed or altered to comply by the Sign Administrator at the expense of the Permittee or Owner of the property upon which it is located, and the permit shall be revoked. The Sign Administrator shall not issue a permit to any Permittee or Owner who refuses to pay the costs so assessed.

12.7-3. Unsafe Signs.

The Sign Administrator or an agent of the Sign Administrator may immediately remove any Sign without notice if said Sign is unsafe or insecure, or is a menace to the public and deemed to be an immediate peril to Persons or property. The costs associated with the removal of any unsafe Sign shall be assessed to the Permittee or Owner of the property upon which the unsafe Sign was located, and the Permit shall be revoked. The Sign Administrator shall not issue a Permit to any Permittee or Owner who has failed to pay the costs assessed.

12.7-4. Construction and Stability.

Permanent Signs shall be constructed to withstand a wind pressure of at least eighty (80) MPH and shall be structurally safe and securely anchored so that they will not be a menace to Person or property, and rigidly mounted so as not to swing. Building mounted Signs shall be adequately ground where exposed to lightning. Any metal Sign that can be touched by a passerby or that is placed on a metal mounting pole shall have a ground fault electrical connection or an assured grounding means. Wooden supporting members shall be treated to prevent decomposition wherever they contact the ground. All Signs and the

Premises surrounding them shall be maintained and be kept free of noxious weeds and rubbish.

12.7-5. Obstruction to Doors, Windows or Fire Escapes.

No Sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window, or fire escape. No Sign of any kind shall be attached to any fire escape.

12.7-6. Not to Constitute Traffic Hazard.

No Sign or other advertising Structure as regulated by this Article shall be erected near any Street in such a manner as to obstruct free and clear vision; or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic Sign, signal or device. No Sign shall make use of the words "Stop", "Look", "Drive-In" or any other work, phrase, symbol or character in such a manner as to interfere with traffic or to mislead or confuse motorists.

12.8 Sign Standards.

The following standards are based on Sign type. If a Sign is determined to fit under multiple Sign types, it is subject to each of the applicable set of regulations and restrictions. The allowable Sign area for each type is based on linear Building frontage, linear Street frontage, or a set maximum as herein specified.

12.8-1. Awning, Canopy and Marquee Signs. Awning Signs, Canopy Signs and Marquee Signs when permitted by Table 12.9, shall meet the following conditions:

- A. Such Signs are allowed one (1) per face area of the supporting Structure with the maximum size being no greater than 50% of the Structure face area.
- B. Signs attached to Awnings, canopies and Marquees shall not extend above or beyond the end of the Structure to which they are attached.
- C. Such Signs must have a minimum clearance of eight (8) feet and must have a minimum setback of two (2) feet from the curb-line.
- D. Illumination is permitted.

12.8-2. Monument Signs.

Monument Signs when permitted by Table 12.9, shall meet the following conditions:

- A. The top edge of the Monument Sign shall not exceed ten (10) feet above grade from its base.
- B. The base of the Monument Sign shall be no less than 50% of the Sign width.
- C. The surface Display Area of any face of a Monument Sign shall not exceed one (1) square foot per linear foot of Street frontage to a maximum of 150 square feet.
- D. No Monument Sign shall be located closer than five (5) feet from any property line.
- E. No Monument Sign shall be placed within fifty (50) feet of any other Pole Sign or Monument Sign located on the same property.
- F. Illumination is permitted.

12.8-3. Pole Signs.

Pole Signs when permitted by Table 12.9 shall meet the following conditions:

- A. The height of Pole Signs shall not exceed twenty-five (25) feet above grade from its base.
- B. The surface Display Area of any face of a Pole Sign shall not exceed one (1) square foot per linear foot of Street frontage to a maximum of two hundred and fifty (250) square feet.
- C. The minimum clearance above grade shall be not less than eight (8) feet.
- D. No Pole Sign shall be placed within fifty (50) feet of any other Pole Sign or Monument Sign located on the same property.
- E. Illumination is permitted.

12.8-4. Projecting Signs.

Projecting Signs when permitted by Table 12.9, shall meet the following conditions:

- A. The surface Display Area of any face of a Projecting Sign shall not exceed one (1) square foot per linear foot of Building frontage to a maximum of one hundred and fifty (150) square feet.
- B. The maximum projection of a Projecting Sign shall be seven (7) feet horizontal, and it shall not project above the attaching wall.
- C. The minimum clearance above grade to the bottom of a Projecting Sign shall be ten (10) feet.
Illumination is permitted.

12.8-5. Roof Signs.

Roof Signs when permitted by Table 12.9, shall meet the following conditions:

- A. The surface Display Area of any face of a Roof Sign shall not exceed two (2) square feet per linear foot of Building frontage.
- B. Roof Signs shall not project above or beyond the limits of the attaching roof.

12.8-6. Wall Signs.

Wall Signs when permitted by Table 12.9, shall meet the following conditions:

- C. The surface Display Area of the face of a Wall Sign shall not exceed two (2) square feet per linear foot of Building frontage.
- D. Wall Signs shall not project more than twelve (12) inches from the Building face.
- E. Wall Signs consisting of individually fixed letters shall be sized by multiplying the letter height by the Message length.
- F. Wall Signs may protrude not more than eight (8) inches into a public Street right-of-way if the Sign is nine (9) feet or more above the sidewalk or the grade abutting said wall.
- G. Illumination is permitted.

12.8-7. Temporary Signs.

Purpose and Findings. 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. By implementing these regulations, the Governing Bodies intend to:

- A. Protect the rights of individuals to convey Messages through Temporary Signs while also implementing a policy against the unrestricted proliferation of Temporary Signs;
- B. Protect the public health, safety and welfare;
- C. Reduce traffic and pedestrian hazards; and
- D. Ensure the fair and consistent enforcement of Temporary Sign regulations.
- E. Regulations. Temporary Signs may be posted on property in all zoning districts, subject to the following requirements:
 - 1) The total square footage for Temporary Signs in any zoning district, in the aggregate, shall not exceed forty-eight (48) square feet per lot, with

no individual Temporary Sign exceeding ten and one half (10.5) square feet in any residential zoning district. The total square footage of a Temporary Sign is measured to include all of the visible Display Area of only one side of the Sign and only the area of one side of a double-sided Sign is included in the aggregate calculation.

- 2) The maximum Height of Sign for Temporary Signs shall not exceed four (4) feet in any residential zoning district.
- 3) Temporary Signs shall be constructed of materials and installed in a manner capable of withstanding the forces of wind, rain and other atmospheric conditions.
- 4) Temporary Signs which become damaged, tattered or unreadable may be removed by the Sign Administrator.
- 5) No Temporary Sign shall obstruct or impair access to a public sidewalk, public Street or driveway, traffic control Sign, bus stop, fire hydrant, or any type of Street furniture, or otherwise create a hazard, including a trip hazard.
- 6) No Temporary Sign shall be illuminated or painted with light-reflecting paint.
- 7) A Temporary Sign may be posted for a period of up to ninety (90) Days, at which time the Temporary Sign shall be removed or replaced.
- 8) Temporary Signs shall not be posted on trees, utility poles, or other similar Structures.
- 9) Temporary Signs shall not be placed upon the Public Right of Way.

12.8-8. Portable Signs.

Portable Signs when permitted by Table 12.9, shall meet the following conditions:

- A. One (1) Portable Sign may be placed on each Street frontage on property zoned for commercial or industrial purposes.
- B. Portable Signs shall not exceed sixteen (16) square feet in area.
- C. Portable Signs may be placed in the public right-of-way only in the C-3 districts, but shall not impede pedestrian movement.
- D. Portable Signs shall not be placed within twenty (20) feet of any other Monument Sign or any other Portable Sign.

- E. Portable Signs shall be of rigid construction and anchored or weighted to prevent movement and overturning by the wind.
- F. Commercial multiple occupancy centers are to be allowed one Portable Sign per Street frontage for the entire center.
- G. Portable Signs shall not be illuminated.

12.8-9. Digital Signs.

Digital Signs are subject to the following requirements:

- A. Operational Limitations: Such displays shall be limited to static displays, messages that appear or disappear from the display through dissolve, fade, or similar transitions (excluding Travel and Scroll) and frame effects that have text, animated graphics or images that appear to move or change in size, or be revealed sequentially rather than all at once. No message may flash or strobe.
- B. Brightness: All Digital Signs are subject to the following brightness limits:
 - 1) Each Sign must have a light sensing device that will automatically adjust the brightness of the display as the natural ambient light conditions change to comply with these regulations.
 - 2) Each Sign shall have automatic dimming software or solar sensors to control brightness for nighttime viewing.
 - 3) Documentation shall be required from the Sign manufacturer which verifies compliance with automatic dimming and brightness requirements.
 - 4) The maximum brightness levels for Digital Signs shall not exceed .3 (three-tenths) foot-candles over ambient light levels measured within 150 (one hundred fifty) feet of the source.
 - 5) Certification must be provided to the City demonstrating that the Sign has been preset to automatically adjust the brightness to these levels or lower. Re-inspection and recalibration may be periodically required by the City in its reasonable discretion, at the Sign Owner's expense, to ensure that the specified brightness levels are maintained at all times.

12.9 Table of Permitted Signs.

The following table is attached to and made part of this Article. Signs shall conform to the limitations of types as set forth in the table, and as limited by the Sign Standards. Exempted Signs as permitted in this Article are allowed in all zoning districts.

**Table 12.9 (A) Newton
Permitted Signs**

SIGN TYPE	ZONING DISTRICT				
	AG-R-S, R-1, R-2, R-3, M-H, M-P	C-T, P-O	C-1, C-2	C-3	I-1, I-2, I-3
Advertising Sign	Permitted only in Districts established under Sec. 11.10				
Awning, Canopy or Marquee Sign	N	Y	Y	Y	Y
Monument Sign	N	Y	Y	Y	Y
Interstate Highway Sign	Permitted only in Districts established under Sec. 11.10				
Pole Sign	SUP	SUP	Y	Y	Y
Projecting Sign	N	Y	Y	Y	Y
Roof Sign	N	N	Y	Y	Y
Portable Sign	N	Y	Y	Y	Y
Wall Sign	N	Y	Y	Y	Y
Digital Sign	SUP	Y	Y	Y	Y
Temporary Signs	Y	Y	Y	Y	Y
Artistic Mural	SUP	Y	Y	Y	Y
Commercial Mural	SUP	Y	Y	Y	Y

12.10 Interstate Highway Signs & Advertising Signs.

12.10-1 Districts Established. The governing body of the City may from time to time establish one or more districts wherein the location of Interstate Highway Signs or Advertising Signs may be permitted. No Interstate Highway Signs or Advertising Signs shall be permitted except in such a designated district (unless the Sign is specifically allowed under some other provision of the Sign Ordinance). Interstate Highway Sign and Advertising Sign districts shall be established under the following procedure:

- A. The governing body or the planning commission may cause the preparation of a district proposal, or may accept for consideration a proposal submitted by others (along with any options thereto as the governing body or planning commission may direct). Any such proposal shall identify with reasonable specificity the area proposed to be included in the district, and shall specify each of the standards and requirements to which such Signs are proposed to be subject.

- B. If the governing body or the planning commission decides to proceed with the consideration of any such proposal or proposals, the planning commission shall establish a date and time for the conduct of a public hearing, allowing sufficient time for notice to be given.
- C. Notice shall be given by publication in the same manner as notice is given for the consideration of text amendments to zoning regulations. The governing body or the planning commission may provide for such further notice of the proceedings as they deem appropriate.
- D. A copy of the proposal or proposals shall be maintained by the city clerk of the City in which such district is proposed to be located, and the city clerk shall provide a copy thereof at no cost to any member of the general public requesting the same.
- E. At the hearing thereon, a presentation shall be made summarizing the features of the proposal or proposals, and then the matter shall be open for public comment, all pursuant to such reasonable rules regarding the conduct of public hearings as may be established from time to time by the planning commission.
- F. Following the close of the public hearing, the planning commission shall determine and convey to the governing body of the City in which such proposed district would be located a recommendation regarding the proposal. Such recommendation shall then be considered by the governing body in the same manner as recommendations regarding text amendments to the zoning regulations.
- G. Following receipt and consideration of the planning commission's recommendations, the governing body may establish an Interstate Highway Sign or Advertising Sign district by ordinance. Said ordinance shall include a description of the boundaries of the district and shall set forth all standards and regulations regarding the permitted Interstate Highway Signs therein. The details of such ordinance may be different in any respect to those contained in the original proposal or in the planning commission's recommendation, except that the governing body may not increase the area of the district beyond that which was described in the published notice of hearing. The governing body may suspend the proceedings for the purpose of directing the publication of a new notice and the conduct of a public hearing by the planning commission as to any expansion of the proposed area of the district.

12.10-2 Specified Interstate Highway Sign Districts. Interstate highway sign districts are hereby established in the following areas, subject to the rules and regulations set forth in this Section and subject to any other applicable rules, regulations and standards provided under Article XI of the Zoning Ordinances of the City of Newton, Kansas such interstate highway sign districts being as follows:

- A. **Outlet Mall Commercial Area Sign District:** All of the property zoned C-2 (General Business District) adjacent to and on either side of Southwest 36th Street between South Kansas Avenue and Interstate 135 highway.
- B. **Spencer Road Commercial Area Sign District:** All the property located within the contiguous C-2 (General Business District) zoning classification located east and west of Interstate 135 highway and south of East Broadway, extending south to and beyond East 1st Street.

12.10-3 Rules & Regulations. It is the intent of the rules and regulations within this section is to comply with the applicable regulatory standards set forth in K.S.A. 68-2234. The interstate highway sign districts established in this Section shall be subject to the following rules and regulations:

- A. No Interstate Highway Sign may be closer than two-hundred (200) to any other Interstate Highway Sign or any Advertising (Billboard) Sign.
- B. The minimum distances between two signs shall not apply where such signs are separated by a building, structure, roadway or other obstruction which prevents a view of both signs at the same time by traffic proceedings on any one highway; and
- C. Nothing in this subsection shall be construed as preventing the erection of double-faced, back-to-back or V-type signs with a maximum of two sign displays per sign facing. Nothing in this subsection shall prevent the owner of a single face sign to change the position of the sign face to a different or opposite direction of traffic flow so long as an additional face or additional square feet are not added to the sign structure. No such change may be affected until approval is granted by the City and the Department of Transportation.
- D. Interstate Highway Signs may be located anywhere within the designated district which is not within one-hundred seventy-five (175) feet of any property located within the city and zoned either R-S (Single-family Suburban District), R-1 (Single-family Dwelling District), R-2 (Two-family Dwelling District) or R-3 (Multi-family Dwelling District) at the time of the establishment of any such sign; provided, however, that no such distance limitation shall be applicable as to any property within any such zoning district which is being utilized as a cemetery.
- E. Interstate Highway Signs may not exceed fifty (50) feet in height (The height

is defined as any portion of the sign structure, excluding cutouts or extensions, as measured vertically from the adjacent edge of the road grade of the main traveled way).

- F. The surface display area of an Interstate Highway Sign shall not exceed nine-hundred (900) square feet, and must have not less than a twenty (20)-foot clearance from the ground.
- G. Signs shall not be erected with sign faces which exceed 30 feet in height, 60 feet in length or 900 square feet in area, per facing, including border, trim and embellishments, but not including base or apron, supports, and other structural members; the maximum size limitations shall apply to each sign facing;
 - 1. Two sign displays not exceeding 450 square feet each may be erected in a facing, side by side or "double decked," and double-faced, back-to-back or V-type signs shall be permitted and shall be treated as one structure with a maximum area of 900 square feet permitted for each side or facing. To be classified as "back-to-back" there must not be more than 15 feet between structures or faces, to allow for cross bracing;
 - 2. The area of any sign structure shall be measured by the smallest square, rectangle, circle or combination thereof which will encompass the area of the sign display or displays;
- H. Cutouts or extensions shall be permitted on legal conforming signs at a size not to exceed 30% of the size of the main display area, with a maximum extension of five feet along the top edge, two feet along the sides and 1 1/2 feet along the bottom of the main display area. Cutouts or extensions shall not be permitted where the configuration and size requirements of this subsection will be exceeded.

12.11 Advertising (Billboard) Sign Districts

12.11-1 Districts Established. Advertising (Billboard) Sign Districts are hereby established in the following areas, subject to the rules and regulations set forth in Section 12.11-2 and subject to any other applicable rules, regulations and standards provided under Article XII of the Zoning Ordinances of the City of Newton, Kansas, such Advertising (Billboard) Sign Districts being as follows, to-wit:

- A. All property zoned C-1 (Neighborhood Business District), C-2 (General Business District), I-1 (Light Industrial District), I-2 (General Industrial District), and I-3 (Heavy Industrial District) which lies within three-hundred (300) feet of the main right-of-way of Interstate 135 highway and US Highway 50, such line of measurement being from the main right-of-way line as extended through areas of highway entrances and exits, with the portions of the entrances and exits beyond such extended line being excluded; provided, however, that this

shall not include any such described area which is east of Interstate 135 highway and which is north of East First Street and south of East Broadway.

12.11-2 Same; Rules and Regulations. The Advertising (Billboard) Sign Districts established in this Ordinance shall be subject to the following rules and regulations:

- A. No Advertising (Billboard) Sign may be closer than five-hundred (500) feet to any other Advertising (Billboard) Sign, nor closer than one-hundred (100) feet to any Interstate Highway Sign, Monument Sign, or Pole sign.
- B. Advertising (Billboard) Signs may be located anywhere within the designated district which is not within two-hundred (200) feet of any property located within the city and zoned either R-S (Single-family Suburban District), R-1 (Single-family Dwelling District), R-2 (Two-family Dwelling District) or R-3 (Multi-family Dwelling District) at the time of establishment of any such sign.
- C. Advertising (Billboard) Signs may not exceed thirty-five (35) feet in height above the grade at its base or above the roadway base of the interstate or state highway at its closest point, provided that in any event such signs may not exceed fifty (50) feet in height.
- D. The surface area of any Advertising (Billboard) Sign shall not exceed five-hundred (500) square feet.

12.12 Sign Illumination.

Where Illumination of Signs is permitted, the following standards shall apply:

- 12.12-1 Any light source intended to illuminate a Sign shall be so shaded, shielded or directed so that the light intensity or brightness shall not adversely affect surrounding or facing Premises, nor adversely affect safe visibility for pedestrians or operators of vehicles moving on public or private Streets, driveways or parking areas.
- 12.12-2 The light source, whether internal to the Sign or external, shall be shielded from view. This requirement is not intended to preclude the use of diffused exposed neon.
- 12.12-3 Sign Illumination for externally Illuminated Signs shall utilize focused light fixtures that do not allow light or glare to shine above the horizontal plane of the top of the Sign or onto any public right-of-way or adjoining property.
- 12.12-4 No Sign may be brighter than is necessary for clear and adequate visibility.

12.12-5 No Sign may be of such intensity or brilliance that it interferes with the effectiveness of an official traffic Sign or distracts the attention of motorists.

12.13 Frontage

12.13-1 Linear Street Frontage. Where gross Sign area is allocated based on linear Street frontage and the tract or parcel is adjacent to more than one Street, the linear Street frontage shall be determined to be the Street with the greatest linear Street frontage, but shall not combine linear Street frontage of multiple Streets.

12.13-2 Linear Building Frontage. Where gross Sign area is based on linear Building frontage, each exterior Building face shall be considered frontage.

12.14 Non-conforming Signs

Every Sign lawfully in existence on the adoption of this Article shall not be altered or moved unless it is brought into greater conformance with the provisions of this Article. Face changes, painting and general maintenance are not considered alterations.

12.15 Public Nuisance.

Any Sign erected or maintained in violation of this Article is a public nuisance, and the City Attorney shall commence an action for the abatement thereof in the manner approved by law. The City may take proceedings for the abatement of the nuisance and make the cost of abatement a lien. In addition, the cost of abatement shall be a personal obligation of the property Owner.

ARTICLE XIII- NONCONFORMING LOTS, STRUCTURES, USES, BULK AND SIGNS

13.1 Applicability.

This Article applies only to lots, buildings, structures, signs and non-building uses in existence on the effective date of these Regulations. The lawful use of any premises existing on the effective date of these regulations may be continued as hereinafter provided, although neither such use nor bulk conforms to these Regulations. To avoid undue hardship and to protect lawfully vested rights, nothing in this Article shall be deemed to require a change in the plans, construction or designated use of any buildings on which actual construction was lawfully begun prior to the effective date of these Regulations and upon which construction has diligently proceeded.

13.2 Nonconforming Lots of Record.

13.2-1 Single Lot: In any zoning district in which single-family structures are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot, shall conform to the zoning regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Zoning Appeals.

13.2-2 Lots with Continuous Frontage: If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage of this Ordinance and if all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purpose of this Ordinance and no portion of said parcel shall be used in a manner which diminished compliance with lot width and area requirements established by this Ordinance nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Ordinance.

13.3 Nonconforming Uses of Land.

Where, at the time of passage of this Ordinance, a lawful use of land exists which would not be permitted by the Zoning Regulations imposed by this Ordinance, such use may be continued so long as it remains otherwise lawful, provided that:

13.3-1. No such nonconforming use shall be moved in whole or in part to any portion of the

lot or parcel other than that actively occupied by such use at the effective date of adoption or amendment of this Ordinance.

- 13.3-2. No such nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was actively being used at the time such use became nonconforming, notwithstanding the fact that the user thereof may own, or have an equitable or a leasehold interest in and to a larger land area than that in active use.
- 13.3-3. No additional structure not conforming to the requirement of this Ordinance shall be erected in connection with such nonconforming use of land.

13.4 Structures With Nonconforming Bulk.

- 13.4-1. Authority to Continue: Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is either nonconforming as to bulk or area requirements or which is located on a lot which does not comply with the applicable bulk regulations, may be continued so long as it remains otherwise lawful, subject to the restrictions in Section 13.4-2 through 13.4-4.
- 13.4-2. Enlargement, Repair, Alterations: Normal maintenance and repairs, structural alteration, enlargement, or remodeling of a building or structure with nonconforming bulk is permitted if the same does not increase the degree of existing nonconformity or create any new nonconforming bulk in such building or structure. Provided, however, any existing structure which is not less than 5 feet from any side yard, located in any addition to the City of Newton platted prior to July 1, 1950, may be substantially rebuilt, altered, repaired, remodeled or enlarged providing said existing structure and enlargement meet all other provisions of this Ordinance.
- 13.4-3. Damage or Destruction: Any structure which is nonconforming as to bulk, and which is destroyed or damaged by fire or other causes to the extent of fifty percent (50%) or more of its current market value as of date of damage or destruction, excluding the valuation of the land, shall not be repaired or rebuilt except in conformity with these regulations. Any such structure or any part thereof which is damaged to an extent less than fifty percent (50%) excluding the assessed valuation of the land may be repaired or restored provided that a building permit is obtained and substantial reconstruction is undertaken within one year after such damage and is diligently pursued to completion. Otherwise such building, structure or part thereof shall thereafter be occupied only by a conforming use, and shall conform to the bulk requirements of these regulations. Proof of value, if needed, shall be by three appointed appraisers; one by the owner, one by the City and one by the other two appraisers. Cost of the appraisals shall be borne by the owner.
- 13.4-4. Moving: No structure described in Sections 13.1 and 13.2 of this Article shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

13.5 Nonconforming Uses.

- 13.5-1. Authority to Continue: Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land may be continued, so long as otherwise lawful, subject to the regulations contained in Sections 13.5-2 through 13.5-7 and 13.8.
- 13.5-2. Repair, Maintenance and Remodeling:
- A. Normal maintenance and incidental repair, or replacement, installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use; provided, however, that it does not extend the nonconforming use nor violate any other provisions of this Article.
 - B. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition (where such restoration will not be in violation of any other provisions of this Article).
 - C. No structure that is devoted in whole or in part to a nonconforming use shall be remodeled unless the entire structure and use thereof shall thereafter conform to all regulations of the zoning district in which it is located, except as provided in 13.5-7 of this Article.
- 13.5-3. Extension or Enlargement: No structure that is devoted in whole or in part to a nonconforming use shall be extended, expanded, enlarged or added to in any manner unless such structure and the use thereof conform to the regulations of the district in which it is located.
- 13.5-4. Damage or Destruction: Any structure which is occupied by a nonconforming use, and which is destroyed or damaged by fire or other causes to the extent of fifty percent (50%) or more of last full value as shown by the Assessor's records, excluding the assessed valuation of the land, shall not be re-occupied by the nonconforming use unless the Board of Zoning Appeals permits the resumption of the nonconforming use under Section 13.5-5 of this Ordinance. Any such structure or any part thereof which is damaged to an extent less than fifty percent (50%) of last full value as shown by the Assessor's records, excluding the assessed valuation of the land, may be repaired or restored as per Section 13.4-3 of this Ordinance.
- 13.5-5. Abandonment or Discontinuance: In order for the nonconforming use of land, structure, or structure and land in combination, to lawfully continue, the same must be a continuous active use. Cessation of such active nonconforming use of land, structure, or structure and land in combination for nine (9) consecutive months or for fifteen (15) months during any two- year period shall cause the forfeiture of such nonconforming use privilege. Any subsequent use of land, structure or structure and

land in combination thereafter shall conform to the regulations and uses permitted in the district in which such land or structure is located, except that a forfeited nonconforming use privilege shall lawfully resume should the Newton Area Planning Commission under Section 13.8 of this Ordinance permit the substitution of a nonconforming use.

13.5-6. Nonconforming Accessory Uses: No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.

13.5-7. Nonconforming Residential Uses: Notwithstanding the provision of Sections 13.5-2 and 13.5-3, any structure which is devoted to a residential use and which is located in a commercial or industrial district, may be remodeled, extended, expanded and enlarged; provided that after any such remodeling, extension, expansion, or enlargement, such structure shall not be used to accommodate a greater number of dwelling or lodging units than such structure accommodated prior to any such work.

13.6 Status of Special Use Permit.

Any use which lawfully exists at the effective date of this Ordinance as a special permit use under the terms of this Ordinance shall not be deemed to be a nonconforming use in such district but shall, without further action, be considered a conforming use.

13.7 Nonconforming Signs.

All existing signs which are not specifically permitted or which do not comply with all of the provisions of these regulations for the zoning district in which it is located, as of the date of adoption of these regulations, shall be considered nonconforming signs.

13.7-1. Repairs and Damage: Nonconforming signs may not, after the effective date of these regulations, be enlarged, structurally altered or extended unless such sign shall be made to comply with all of the provisions of these regulations, except that normal repairs and repainting of nonconforming signs are permitted. When a permanent nonconforming sign is destroyed or damaged by any means to the extent of fifty percent (50%) or more of its present day replacement value, it shall not thereafter be restored unless such sign shall be made to conform to all of the provisions of these regulations.

13.8 Substitution or Reinstatement of Nonconforming Uses.

13.8-1. The Board of Zoning Appeals may permit the substitution of a nonconforming use for an existing or forfeited nonconforming use and may permit specified structural alterations provided that the parking requirements for the proposed use as prescribed in Article XI of this Ordinance are either complied with, or are amended through a variance as provided in Section 14.3 of this Ordinance.

13.8-2. When a nonconforming use has been changed to any conforming use, it shall not thereafter be changed back to a nonconforming use; except, however, that

the Board of Zoning Appeals may permit the reinstatement of a nonconforming residential use of a structure located in a commercial zoning district if the essential character and appearance of the existing structure is that of a residential structure, and if the Board finds that such reinstatement will not place any unreasonable burdens or create any unreasonable conflicts with existing commercial uses or with the further commercial development of the district or area in which such structure is located.

- 13.8-3. In authorizing any substitution or reinstatement of nonconforming uses, the Board may attach thereto such conditions and restrictions regarding the location, character and other features of the proposed structure or used as it may deem necessary in the interest of the furtherance of the purpose of the Code and in the public interest.

ARTICLE XIV - BOARD OF ZONING APPEALS

14.1 General Provisions.

- 14.1-1. Authorization: A Board of Zoning Appeals has been established by the Newton City Commission pursuant to K.S.A. 12-759.
- 14.1-2. Membership: The Newton Area Planning Commission shall perform the duties of the Board of Zoning Appeals as authorized by City of Newton Ordinance 4035-92. The officers of said Commission shall also serve as officers of said Board.
- 14.1-3. Meetings: All meetings of the Board of Zoning Appeals shall be held at the call of the Chairman and at such other times as the Board may determine; and shall be open to the public.
- 14.1-4. Records: The Board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the Board, decisions of the Board and the vote upon each question. Records of all official actions of the Board shall be filed in its office and shall be a public record.
- 14.1-5. Filing Fee: For the purpose of wholly or partially defraying the cost of the proceedings prescribed herein, including publication costs, the applicant wishing to appear before the Board shall pay a fee.
- 14.1-6. List of Property Owners: Any person desiring a variance, temporary structure and use permit, or a substitution of a nonconforming use shall file with the application a certified ownership list of names and addresses of all owners of all properties located within two hundred (200) feet of the boundaries within the City, and 1000 feet within the County, of the of the outer limits of the land in question.
- 14.1-7. Powers: The Board of Zoning Appeals shall have the following powers and duties pursuant to K.S.A. 12-759 of this Ordinance:
 - A. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator or any other administrative official in the enforcement of the Zoning Ordinance.

- B. To hear and decide upon applications for variances from the regulations and restrictions imposed by this Ordinance in the manner and subject to the procedures and standards set forth in Sections 14.3-2 through 14.3-4 of this Article.
 - C. To hear and decide upon applications for temporary structure and use permits provided such use is of a temporary nature and does not involve the erection of a substantial structure. A zoning certificate for such use shall be granted in the form of a temporary and revocable permit for not more than 12 months subject to such conditions as will safeguard the public health, safety, conveniences and general welfare.
 - D. To hear and decide upon applications for a substitution of nonconforming use pursuant to Article XIII, Section 13.8 of the Zoning Code.
 - E. To hear and decide, in accordance with the provisions of any regulations, requests for interpretation of any map and all other matters referred to it upon which the Board is required or authorized to pass by this Ordinance.
 - F. In exercising the abovementioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as shall be proper, and to that end shall have all the powers of the administrative officer from whom the appeal is taken. The concurring vote of a majority of members present shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to decide in favor of the applicant or any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.
- 14.1-8. Finality and Judicial Review of Decisions: All decisions and findings of the Board of Zoning Appeals on appeal or upon application for a temporary structure and use permit or substitution of a nonconforming use shall be final decisions, and shall in all instances be subject to judicial review provided in K.S.A. 12-759. Any person, official or governmental agency aggrieved with any decision or determination of the Board of Appeals may present a petition within fifteen (15) days after the filing of the Board's decision, to the District Court of Harvey County to determine the reasonableness of any such order of determination.

14.2 Appeals to the Board of Zoning Appeals.

- 14.2-1. Authorization: An appeal from a decision of the Zoning Administrator or any other administrative official or agency with respect to the interpretation or application of this Ordinance may be taken to the Board of Zoning Appeals by any person aggrieved or by any officer, department, board or governmental agency or body affected by such decision of the Zoning Administrator, or other administrative official or agency.
- 14.2-2. Time for Appeals: The Board of Appeals shall prescribe the time for taking appeals by general rule. Appeals shall be taken within the prescribed time by filing a notice of appeal to the Board of Zoning Appeals specifying the grounds therefore and paying the fee specified. The official or agency from whom the appeal is taken, when notified by the Board or its agent of such appeal, shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed was based.
- 14.2-3. Stay of Proceedings: An appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator or other administrative official or agency certifies to the Board of Zoning Appeals, after notice of the appeal has been filed, that by reason of specified facts stated in the certificate of a stay would, in his/their judgment, cause imminent peril to life or property. In such case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of record upon application; upon notice to the Zoning Administrator; and upon due cause shown.
- 14.2-4. Hearing and Notice: The Board of Zoning Appeals shall fix a reasonable time and place for the hearing of the appeal or any other matter referred to it. Public notice of the time, place, date and subject of such hearing shall be published once in the official City newspaper at least twenty (20) days prior to the date fixed for hearing. A copy of such notice shall be mailed to each party in interest. Any party in interest may appear and be heard at the hearing in person, by agent or by attorney.
- 14.2-5. Decision: The Board of Zoning Appeals shall render a written decision on the appeal without unreasonable delay after the close of the hearing, and in all cases, within thirty (30) days after the close of the hearing. In rendering the decision, the Board of Zoning Appeals shall be bound by the provisions of this Ordinance.

14.3 Variances.

- 14.3-1. Authorization of Variances: The Board of Zoning Appeals may authorize such variances from the terms of this Ordinance as will not be contrary to the public interest. Variances may be authorized only when the Board has made findings of fact based upon the specific standards set forth in Section 14.3-4 of this Article, that owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship for the owner, lessee or occupant of land or structures.

14.3-2. Application for Variance: A written application for a variance shall be filed with the Board of Zoning Appeals which shall contain the following information, as well as such additional information as may be prescribed by rule or regulation of the Board of Zoning Appeals:

- A. The particular requirements of this Ordinance which prevent the proposed use or construction.
- B. The characteristics of the subject property which prevent compliance with the requirement of this Ordinance.
- C. The reduction of the minimum requirements of this Ordinance which would be necessary to permit the proposed use or construction.
- D. The particular hardship which would result if said particular requirements were applied to the subject property or structure.

14.3-3. Notice and Hearing: Notice shall be given in the manner required for hearings on appeals by Section 14.2-4 of this Article; provided that in addition to the time, place, date and subject, such notice shall also include a description of the property involved and a brief description of the relief sought.

14.3-4. Standards for Granting Variances: The Board of Zoning Appeals shall not grant a variance as authorized by Section 14.3-1 of this Article unless it shall, in each case, make specific written findings of fact directly based upon the evidence presented to it that support conclusions that:

- A. The variance requested arises from such conditions which are unique to the property in question and which are not ordinarily found in the same zoning district and which were not created by an action of the property owner or the applicant.
- B. The granting of the variance will not adversely affect the rights of adjacent property owners or residents nor will it confer upon the applicant any special privileges denied by this Ordinance to other land or structures in the same district.
- C. The strict application of the provisions of this Ordinance from which a variance is requested will constitute unnecessary hardship upon the applicant.
- D. The variance will not adversely affect the public health, safety, morals, order, convenience or welfare.
- E. Granting the variance requested will not be opposed to the general spirit and intent of this Ordinance.

- 14.3-5. Conditions and Restrictions: In granting a variance, temporary structure and use permit, or a substitution of a nonconforming use, the Board may impose such conditions, safeguards and restrictions upon the subject property as may be necessary to insure compliance with the standards set forth in Section 14.3-4, to reduce or minimize any potentially injurious effect of such variance upon other property, and to fulfill the general purposes and intent of this ordinance. Failure to comply with any of the conditions or restrictions imposed on the variance shall constitute a violation of this ordinance.
- 14.3-6. Prohibitions: Under no circumstances shall the Board of Appeals grant a variance to allow a use that is not permissible under the terms of this ordinance in the district involved. No nonconforming use of adjacent lands or structures in the same district and no permitted or nonconforming use of adjacent lands or structures in the same district and no permitted or nonconforming use of lands or structures in other districts shall be considered grounds for the issuance of a variance.
- 14.3-7. Decision: The decision shall be rendered in the manner required and subject to the provisions of Section 14.2-5 of this Article.

ARTICLE XV- FLOODPLAIN ZONING DISTRICT

15.1 Statutory Authorization.

15.1-1 Approval of Draft Ordinance by Kansas Chief Engineer Prior to Adoption

- A. The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on _____, 20__.

15.1-2 Kansas Statutory Authorization

- A. The Legislature of the State of Kansas has in K.S.A. 12-741 et seq, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare of the public. Therefore, the City Commission of Newton, Kansas, ordains as follows:

15.2 Findings of Fact.

15.2-1. Flood Losses Resulting from Periodic Inundation

The special flood hazard areas of Newton, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

15.2-2. General Causes of the Flood Losses

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

15.3 Purpose.

The uncontrolled use of floodplains, rivers and streams, as well as filling, construction and certain other land practices in the flood plain of the City of Newton adversely affect the public health, safety and welfare and impairs the tax base of the City. In addition, extraordinary public expenditures may be required for the protection of persons and property and for the relief of distress in areas subject to periodic flooding. Therefore, it is the purpose of this section to promote the public health, safety, and general welfare of the public; to minimize losses; to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) § 59.22(a)(3); and to meet the requirements of 44 CFR §

60.3(d) and K.A.R. 5-44-4 by applying the provisions of this ordinance to:

- 15.3-1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
- 15.3-2. Prohibit the placement of fill, materials, and structures which would obstruct flood flows and decrease the storage capacity of the floodway.
- 15.3-3. Protect human life and health, prevent property damage, minimize business interruptions and minimize rescue and relief efforts, which generally must be undertaken at public expense.
- 15.3-4. Require that uses vulnerable to floods, including public facilities which serve such uses, provided with flood protection at the time of initial construction.
- 15.3-5. Minimize expenditures of public monies for costly flood control projects and minimize the damage to public facilities in the flood plain, such as water mains, sewer lines, streets and bridges.
- 15.3-6. Minimize flood blight areas and maintain property values and a stable tax base adjacent to the floodplain.
- 15.3-7. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.
- 15.3-8. Discourage the victimization of unwary home and land buyers.
- 15.3-9. To assure that eligibility is maintained for property owners in the community to purchase flood insurance in the Federal Flood Insurance Program.

15.4 Warning and disclaimer of liability.

The degree of flood protection required by this section is considered to be reasonable for regulatory purposes and is based on engineering and scientific methods of study, review and evaluation conducted by the Federal Insurance Administration. However, larger floods may occur on rare occasions or the flood height may be increased by manmade or natural causes. This section does not imply that areas outside the flood plain districts or land uses permitted within such districts will be free from flooding or flood damage. This section shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this section or on any administrative decision lawfully made thereunder.

15.5 Severability.

If any section; clause; provision; or portion of this ordinance is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this ordinance shall not be affected thereby.

15.6 Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

Additional definitions for floodplain management terms can be found at Part §59.1 of 44 CFR.

44 CFR (Emergency Management and Assistance – National Flood Insurance Program Regulations) Parts 59-75 contain Federal regulations upon which local floodplain managements are based.

"**100-year Flood**" *see "base flood."*

"**Accessory Structure**" means the same as *"appurtenant structure."*

"**Actuarial Rates**" *see "risk premium rates."*

"**Administrator**" means the Federal Insurance Administrator.

"**Agency**" means the Federal Emergency Management Agency (FEMA).

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

"**Appurtenant Structure**" means a structure that is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

"**Area of Shallow Flooding**" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard is the land in the flood plain within a community subject to a one percent (1%) or greater chance of flooding in any given year.

"**Base Flood**" means the flood having a one percent chance of being equaled or exceeded in any given year.

"**Base Flood Elevation**" means the elevation of the surface of the water during a one percent annual chance flood event.

"**Basement**" means any area of the structure having its floor subgrade (below ground level) on all sides.

"**Building**" *see "structure."*

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

"Chief Engineer" means the chief engineer of the division of water resources, Kansas Department of Agriculture.

"Chief Executive Officer" or "Chief Elected Official" means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

"Community" means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"Elevated Building" means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Eligible Community" or "Participating Community" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

"Existing Construction" means for the purposes of determining rates, structures for which the *"start of construction"* commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. *"Existing construction"* may also be referred to as *"existing structures."*

"Existing Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Expansion to an Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

"Flood Boundary and Floodway Map (FBFM)" means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

"Flood Elevation Determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood Elevation Study" means an examination, evaluation and determination of flood hazards.

"Flood Fringe" means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

"Flood Hazard Map" means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study is the official report provided by the Federal Insurance Administration. The report contains flood profiles, as well as the Flood Boundary- Floodway Map and the water surface elevation of the base flood.

"Flood Insurance Study (FIS)" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

"Floodplain" or "Flood-prone Area" means any land area susceptible to being inundated by water from any source (*see "flood or flooding"*). Floodplain can also be the land adjacent to a body of water which has been or may be hereafter covered by floodwater including but not limited to the regulatory flood.

"Floodplain Administrator" the person appointed by the City Manager to administer the provisions of this section.

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

"Floodplain Management Regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

Flood Profile is a graph or a longitudinal profile showing the relationship of the water- surface elevation of a flood event to location along a stream or river.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

Floodway or "Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodway Encroachment Lines" means the lines marking the limits of floodways on Federal, State and local floodplain maps.

Floodway Fringe is that area of the flood plain, outside of the floodway, that on the average is likely to be flooded once every 100 years (i.e. that has a one percent (1%) chance of flood occurrence in any one year).

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

"Functionally Dependent Use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable floodproofing / non-elevation design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *"manufactured home"* does include mobile homes manufactured prior to 1976 but **does not include** a *"recreational vehicle."*

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Manufactured Home Park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map" means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

"Market Value" or "Fair Market Value" means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

"Mean Sea Level" means, for purposes of the National Flood Insurance Program (NFIP), the National American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

"New Construction" means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of construction"* commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

New construction means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

"(NFIP)" means the National Flood Insurance Program (NFIP).

"Numbered A Zone" means a special flood hazard area where the Flood Insurance Rate Map shows the Base Flood Elevation.

Obstruction is any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood hazard area which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to the damage of life or property.

"One percent annual chance flood" see *"base flood."*

"Participating Community" also known as an *"eligible community,"* means a community in which the Administrator has authorized the sale of flood insurance.

"Permit" means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

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

"Principally Above Ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Reasonably Safe From Flooding" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational Vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Remedy A Violation" means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

"Risk Premium Rates" means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *"Risk premium rates"* include provisions for operating costs and allowances.

"Special Flood Hazard Area" see *"area of special flood hazard."*

"Special Hazard Area" means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

Start of construction means (for other than new construction or substantial improvements under the Coastal Barrier Resources Act, Pub. L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the ***actual start of construction*** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State Coordinating Agency" means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *"Structure"* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Substantial-Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, rehabilitation, addition or improvement of a structure, the cost of which equals or exceeds 50 percent (50%) of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Unnumbered A Zone" means a special flood hazard area shown on either a flood hazard boundary map or flood insurance rate map where the base flood elevation is not determined.

Variance is a grant of relief to a person by the community from the terms of a floodplain management regulation which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

15.7 General provisions.

- 15.7-1. Lands to which this Section Applies. This section shall apply to all floodplain areas, areas identified as numbered and unnumbered A Zones, AE, AO and AH Zones on the Flood Insurance Rate Map (FIRM) panels referenced on the associated FIRM Index dated 08/04/2014 as amended, and any future revisions thereto within the City of Newton. Flood-prone areas may also be regulated by this section if so determined by the Administrative Official.

Also applicable to all floodplain areas, areas identified as numbered and unnumbered A Zones, AE, AO and AH Zones on the Flood Insurance Rate Map (FIRM) panels referenced on the associated FIRM Index dated 10/6/2010 as amended, and any future revisions thereto in unincorporated territory lying outside of, but within three (3) miles of, the nearest point of the City limits provided that the unincorporated territory is not currently subject to county zoning regulations and has not been designated a flood plain zone or district by any other government unit or subdivisions. In no case shall this section include land which is located more than 1/2 the distance to another city. Flood-prone areas may also be regulated by this section if so determined by the Administrative Official.

In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by the City of Newton or its duly designated representative under such safeguards and restrictions as the City of Newton or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in the Provisions for Flood Hazard Reduction.

- 15.7-2. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration through a scientific and engineering report entitled "The Flood Insurance Study for the City of Newton" with accompanying Flood Insurance Rate Maps and Flood Boundary and Floodway Maps and any revision thereto are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study (FIS) that is the basis of this ordinance uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.
- A. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated 08/04/2014 amended, and any future revisions thereto.

- B. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.
 - C. Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.
 - D. Delineation of floodway encroachment lines within which no development is permitted that would cause **any** increase in flood height.
 - E. Delineation of flood fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.
- 15.7-3. National Flood Insurance. Nothing in this section or in any regulations adopted hereunder shall be construed as affecting the eligibility of any existing structure upon the publication of the Flood Insurance Rate Map.
- 15.7-4. Compliance. No structure, land or water shall hereafter be used and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.
- 15.7-5. Rules for Interpretation of District Boundaries. The boundaries of the floodway fringe overlay districts shall be determined by scaling distances on the official zoning map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Floodplain Administrator shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Zoning Appeals will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence, if he so desires.
- 15.7-6. Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.
- 15.7-7. Interpretation. In the interpretation and application of ordinance, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit or repeal any other powers granted under Kansas statutes.

15.8 Designation of Floodplain Administrator.

The Administrative Official as determined by the City Manager is hereby appointed to administer and implement the provisions of this ordinance.

15.8-1 DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR

Duties of the Floodplain Administrator shall include, but not be limited to:

- A. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;
- B. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
- C. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
- D. Issue floodplain development permits for all approved applications;
- E. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
- F. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
- G. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
- H. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;
- I. When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

15.9 Development permit.

- 15.9-1. A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured or mobile homes, in the areas to which this section applies. No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.
- 15.9-2. To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:
- A. Identify and describe the work to be covered by the permit for which the application is made.
 - B. Describe the land on which the proposed work is to be done by lot, block tract and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.
 - C. Indicate the use or occupancy for which the proposed work is intended.
 - D. Indicate the assessed value of the structure and the fair market value of the improvement;
 - E. Be accompanied by plans and specifications for proposed construction.
 - F. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.
 - G. Specify whether development is located in designated flood fringe or floodway;
 - H. Identify the existing base flood elevation and the elevation of the proposed development: Within designated flood prone areas, be accompanied by elevations (in relation to mean sea level) of the lowest floor (including basement) or in the case of floodproofed non-residential structures, the elevation to which it has been floodproofed. Documentation or certification of such elevation will be maintained by the Floodplain Administrator.
 - I. Provide a certificate from a registered professional engineer or architect that the non-residential floodproofed structure is adequate to be watertight with walls impermeable to the passage of water and withstand the hydrodynamic forces associated with the 100-year flood.
 - J. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

- 1) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator.
 - 2) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- K. Give such other information as reasonably may be required by the Floodplain Administrator.
- 1) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be corrupted by the proposed development and higher water information.
 - 2) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations, size, location and spatial arrangement of all proposed and existing structures on the site; location and elevation of streets, water supply, sanitary facilities, photographs showing existing land uses and vegetation upstream and downstream, soil types, and other pertinent information.
 - 3) Profile showing the slope of the bottom of the channel or flow line of the stream.
 - 4) Floodplain Administrator. The Floodplain Administrator shall review all building permit applications to determine if the site of the proposed development is reasonably safe from flooding, and that all necessary permits have been received as required by Federal or State law.

15.10 Variance Procedures.

15.10-1. The Board of Zoning Appeals shall act as the Appeal Board as established by the City of Newton and shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance.

Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board.

The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

- 15.10-2. In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
- A. The danger that materials may be swept onto other lands to the injury of others;
 - B. The danger to life and property due to flooding or erosion damage;
 - C. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - D. The importance of the services provided by the proposed facility to the community;
 - E. The necessity to the facility of a waterfront location, where applicable;
 - F. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - G. The compatibility of the proposed use with existing and anticipated development;
 - H. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - I. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - J. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - K. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
 - L. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the criteria found in Section 15.10-5 has been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
 - M. Variances may be issued for the reconstruction, repair, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provide the proposed activity will not preclude the structure's

continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.

- 15.10-3. Upon consideration of the factors listed above and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- 15.10-4. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- 15.10-5. Conditions for Variances:
- A. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - B. Variances shall only be issued upon (1) a showing of good and sufficient cause, (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - C. A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
 - D. A community shall maintain a record of all variance actions, including justification for their issuance.
 - E. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of 15.10-2 L-M and 15.10-5 A-C are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

15.11 Provisions for Flood Hazard Reduction.

15.11-1. General Standards

- A. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured or mobile homes, within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of this section are satisfied.
- B. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the one percent annual chance or 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
- C. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- D. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured or mobile homes, and other developments shall require:
 - 1) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
 - 2) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
 - 3) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions), which is greater than either 50 lots or 5 acres.
 - 4) All new construction including manufactured homes and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

- 5) All new construction and substantial improvement shall be constructed with materials and utility equipment resistant to flood damage
- 6) All subdivision proposals and other proposed new developments, including manufactured home parks or subdivisions, shall be consistent with the need to minimize flood damage.
- 7) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- 8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- 9) On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- 10) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 11) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
- 12) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

15.11-2. Accessory Structures

Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 600 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; the accessory structure meets the following floodplain management requirements; and a floodplain development permit has been issued. Wet-floodproofing is only allowed for small low-cost structures.

Any permit granted for an accessory structure shall be decided individually based on a case-by-case analysis of the building's unique circumstances. Permits shall meet the following conditions. To minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be required for any permit issued for accessory structures that are constructed at-grade and wet-floodproofed:

- A. Use of the accessory structures must be solely for parking and limited storage purposes in any special flood hazard area as identified on the community's Flood Insurance Rate Map (FIRM).
- B. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials.
- C. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- D. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Section 15.11 of this Ordinance.
- E. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters.
- F. The accessory structures must comply with the floodplain management floodway encroachment provisions of this section. No permits may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
- G. Equipment, machinery, or other contents must be protected from any flood damage.
- H. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.
- I. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.

15.11-3. Critical Facilities

- A. All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated at least one (1) foot above the .2 percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be floodproofed so that below a minimum of one (1) foot above the 500-year flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall verify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator.
- B. All critical facilities shall have access routes that are above the elevation of the 500-year flood.
- C. No critical facilities shall be constructed in any designated floodway.

15.11-4. Hazardous Materials

All hazardous material storage and handling sites shall be located out of the special flood hazard area.

15.11-5. Cumulative Improvement

A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done within the last three (3) calendar years does not exceed fifty (50) percent of the structure's current market value. If the cumulative value of the improvement exceeds fifty (50) percent of the structure's current market value, the structure must be brought into compliance with section 15.12-1. which requires elevation of residential structures to one (1) foot above the base flood elevation or the elevation/floodproofing of non-residential structures to one (1) foot above the base flood elevation.

15.12 Specific standards.

15.12-1. In all areas identified as numbered and unnumbered A zones, AE, AO and AH Zones, where base flood elevation, as defined in Section 15.6, data have been provided, the following provisions are required:

- A. Residential Construction. New construction or substantial improvement of any residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above base flood elevation. All mechanical and heating ventilation equipment to be elevated to same level of one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.
- B. Non-Residential Construction. New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. All mechanical and heating ventilation equipment to be elevated or protected to one (1) foot above the base flood elevation. A registered professional engineer or architect shall verify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the floodplain administrator. Mechanical and HVAC equipment will be elevated or protected to same levels of freeboard above the base flood elevation.
- C. In those areas where base flood elevation data have not been provided, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer the provisions of Section 15.11.
- D. Agricultural Uses on a Special Use Permit Basis. Refer to Section 15.7-2 of this Ordinance.
- E. Enclosures Below Lowest Floor
Require, for all new construction and substantial-improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- 1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
- 2) The bottom of all opening shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

15.13 Manufactured or Mobile Homes.

- 15.13-1. Require that all manufactured homes to be placed within Zones A1-30, AH and AE on the community's FIRM, be elevated on a permanent foundation such that the lowest floor of the manufactured home is at least one (1) foot above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 15.13.1-A.
 - A. All manufactured or mobile homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured or mobile homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
 - 1) In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
 - a) Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side.
 - b) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side.
 - c) All components of the anchoring system be capable of carrying a force of 4,800 pounds.
 - d) Any additions to the manufactured home be similarly anchored.
 - 2) Require manufactured or mobile homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
 - a) Outside of a manufactured home park or subdivision;

- b) In a new manufactured home park or subdivision;
 - c) In an expansion to an existing manufactured home park or subdivision; or
 - d) In an existing manufactured home park or subdivision on which a manufactured or mobile home has incurred substantial-damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of one (1) foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. All mechanical and heating ventilation equipment to be elevated to same level of one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Mechanical and HVAC equipment to be elevated to same level as lowest floor.
- 3) Require that manufactured or mobile homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not subject to the provisions of 15.13-1 A of this Ordinance, be elevated so that:
- a) The lowest floor of the manufactured or mobile home is a minimum of one (1) foot above the base flood level. All mechanical and heating ventilation equipment to be elevated to same level of one (1) foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Mechanical and HVAC equipment to be elevated to same level as the lowest floor.

15.14 Areas of Shallow Flooding (AO and AH zones).

Located within the areas of special flood hazard as described in 15.7-1 are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

15.14-1. AO Zones

- A. All new construction and substantial-improvements of residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least one (1) foot above the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified) plus one (1) foot of freeboard. Mechanical and HVAC equipment to be elevated to same level as lowest floor.
- B. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least one (1) foot above the depth number specified in feet on the community FIRM (at least two (2) feet if no depth number is specified) plus one (1) foot of freeboard or together with attendant utilities and sanitary facilities be completely floodproofed to that so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Mechanical and HVAC to be flood protected or elevated to same freeboard level.
- C. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

15.14-2. AH Zones

- A. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in 15.12.
- B. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

15.15 Floodway.

Located within areas of special flood hazard established in 15.7-1 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:

- A. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.
- B. The community shall prohibit any encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed

encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.

- C. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of 44 CFR 65.12, and receives the approval of FEMA.
- D. The storage of materials that are in time of flooding buoyant, flammable, explosive or potentially injurious to human life or property shall be prohibited; storage of other materials may be allowed if not subject to major damage by floods, and if firmly anchored to prevent flotation, or is readily removable after flood warning.
- E. If 15.15 B. is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provisions of 15.11.
- F. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in section 15.11-1. B.

15.16 Recreational Vehicles.

15.16-1. Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and AO Zones on the community's FIRM either:

- A. Be on the site for fewer than 180 consecutive days, *or*
- B. Be fully licensed and ready for highway use*; *or*
- C. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this Ordinance.

*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

15.17 Certification and Information Required for Floodproofing.

- 15.17-1. Floodproofing. Applicants shall provide certification by a registered professional engineer or architect that the floodproofing plans are adequate to be watertight with walls impermeable to the passage of water and withstand the hydrodynamic forces associated with the 100-year flood.
- 15.17-2. Floodproofing of residential structures will not be allowed unless the community is specifically granted an exception from the provisions of this Ordinance by the Administrator of the Federal Insurance Administration.
- 15.17-3. Elevation of Property. The applicant shall provide information identifying the

elevation of the property in relation to mean sea level of the lowest flood (including basement of the proposed structure) to which structures are floodproofed. In addition, the applicant shall provide this information for the second lowest floor when the lowest floor is below grade on one or more sides.

- 15.17-4. The Floodplain Administrator will maintain the records of certification when issuing development permits in conformance with this section.

15.18 Violations.

- 15.18-1. The floodplain administrator may make reasonable entry upon any lands and waters in Newton, KS for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The floodplain administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the floodplain administrator shall affix a copy of the notice to one or more conspicuous places on the property a minimum of five (5) days prior to entry.
- 15.18-2. A structure or other development without a floodplain development permit or other evidence of compliance is presumed to be in violation until such documentation is provided.
- 15.18-3. The floodplain administrator shall provide written notice of a violation of this Ordinance to the owner, the owner's agent, lessee, or lessee's agent by personal service or by certified mail, return receipt requested. The written notice shall include instructions and a deadline to request a hearing before the appeals board, and if no hearing is requested, a deadline by which the violation must be corrected.

15.19 Penalties for Violation.

Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

- 15.19-1. Nothing herein shall prevent the governing body or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.
- 15.19-2. Notwithstanding any criminal prosecutions or in lieu of any criminal prosecutions, 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 period specified, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.

- 15.9-3. If the public officer or an authorized assistant abates or removes the nuisance pursuant to this section, notice shall be provided to the owner, the owner's agent, lessee, or lessee's agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred. The notice shall also state that the payment is due within 30 days following receipt of the notice. The cost of providing notice, including any postage, required by this section may also be recovered.
- 15.19-4. 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. (K.S.A. 12-1617f).

15.20 Floodplain nonconforming uses.

Whenever any structure subject to the Flood District requirements becomes a nonconforming use under these provisions it shall be subject to the requirements and provisions of Article XIII and XV of these Regulations.

- 15.20-1. A structure, or the use of a structure or premises that was lawful before the passage or amendment of the Ordinance, but which is not in conformity with the provisions of this Ordinance, may be continued subject to the following conditions:
- A. If such structure, use, or utility service has been or is discontinued for 36 consecutive months, any future use of the building shall conform to this Ordinance. "Discontinued" shall mean that utility meters have been removed and no attempt to restore service has been made.
 - B. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

15.21 Amendments.

The regulations, restrictions, and boundaries set forth in this Ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.

Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Newton. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this Ordinance are in compliance with the NFIP regulations.

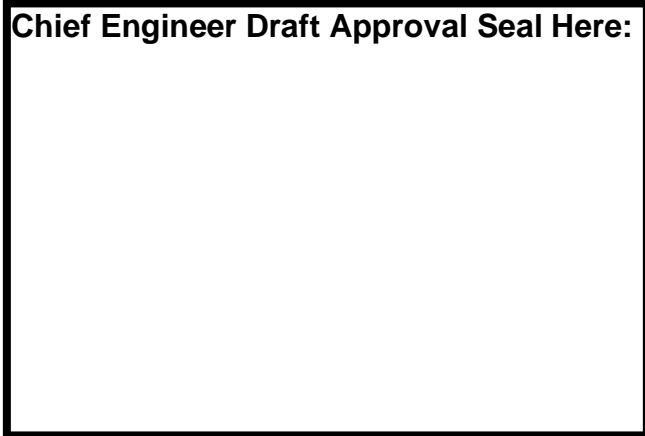
15.22 Certificate of adoption.

This Floodplain Management Ordinance for the community of Newton, Kansas.

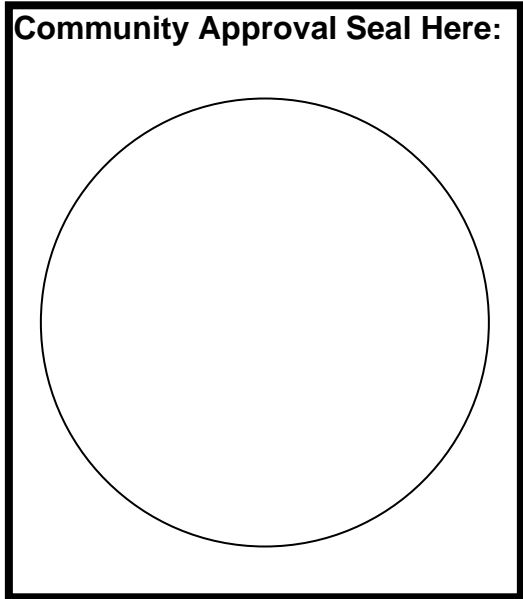
PASSED AND ADOPTED by the Governing Body of Newton, Kansas.

This _____ day of _____, 20_____.

Chief Engineer Draft Approval Seal Here:



Community Approval Seal Here:



APPROVED:

Signature of Chief Executive Officer/Chief Elected Official

Date

Chief Executive Officer/Chief Elected Official Name (Typed/printed)

Title

ATTEST:

Signature of Recording Clerk

Date

Recording Clerk Name (Typed/printed)

Title

Published in official news publication or on website _____(The Newton Kansan).

ARTICLE XVI - HISTORIC AND CULTURAL OVERLAY DISTRICTS

“Overlay zoning” means any zoning that function in addition to the existing land use zoning, as in the case of the following:

Downtown 1 & 2 Historic District Overlay

This district provides for the designation of multiple properties as a historic district. It does not change the base zoning, but requires submission and compliance of district preservation design guidelines.

McKinley Historic District Overlay

This district provides for the designation of multiple properties as a historic district. It does not change the base zoning, but requires submission and compliance of district preservation design guidelines.

Historic Landmark Overlay

This district provides for the designation of a single property or landmark/resource as a historic district. It does not change the base zoning, but requires submission and compliance of preservation review applicable to the single resource.

Downtown Redevelopment Overlay

This district provides for a revitalization and growth of Downtown Newton according to the Master Plan for Newton Downtown Redevelopment District. This document lays out strategies to rehabilitate the core of the community with mixed use development, well-maintained streetscape and landscaping, adequate parking, cohesive look of structures, signage, awnings etc. and ample gathering spaces and greenspace.

Transitional District Overlay

This district serves as a transition from the historical overlay districts and downtown overlay to create a compatible mix of residential, retail, office and mixed use development that complements the scale, siting and design of the core historic and downtown districts.

16.1 Historic Preservation Districts.

- 16.1-1. Intent. The 3 Historic Overlay districts are to provide a means of designating on the zoning map those properties determined by the National Park Service, Kansas State Historic Preservation Office, and the Historic Preservation Commission to be historic resources or districts. In these districts, no building, structure, land, or premises shall be used, and no building, structure or resource shall be erected, constructed, demolished, moved, or altered except in accordance with the regulations in the section and all uses shall be subject to the underlying zoning regulations and all development and maintenance standards set forth in those regulations.
- 16.1-2. Definitions. As noted in the Historic Preservation Ordinance 2020-
- 16.1-3. Use and Development Standards. The use and development of these districts is guided by the underlying zoning, the *Secretary of the Interior’s Standards for*

Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The Downtown 1 & 2 Historic District Overlay will be held to *The Design Guidelines for Newton Main Street Historic District I and II* and the McKinley Historic District Overlay to the *McKinley Homeowner's Handbook* in addition.

- 16.1-4. Geographic area. The following 3 historic overlays are as depicted on the map, Downtown 1 & 2 Historic District, McKinley Residential District and Historic Landmark.
- 16.1-5. Special Criterion/Review Required. The area defined in the three Historic Overlay districts are governed by Ordinance 5009-20. No permits shall be issued for any project within the boundaries of this district without a review of the project by the Historic Preservation Officer working within the capacity laid out through the Certified Local Government Agreement and/or the State Historic Preservation Officer working in the capacity laid out in Section 106 of the National Historic Preservation Act of 1966.

16.2 Downtown Redevelopment District.

- 16.2-1. Intent. This overlay district is to provide a means of designating on the zoning map the properties subject to the Master Plan for Newton Downtown Redevelopment District. This is to assist with implementation of this plan for the revitalization and rehabilitation of the core of the community while accounting for accessibility, biking, walking, parking, streetscape, mixed use development and greenspace through a cohesive look.
- 16.2-2. Geographic area. The overlay district is as depicted on the map, in accordance with the Downtown Redevelopment Plan.
- 16.2-3. Design and Development Guidelines. The design guidelines offer a vision for an approach to downtown design that can be beneficial both to developers and to the community. The concepts for downtown development encourage the highest level of design quality and creativity while emphasizing key downtown design concepts such as, but not limited to:
 - A. Maintaining the street wall at the front property line;
 - B. Enhancing the design of street facades;
 - C. Ensuring pedestrian compatibility;
 - D. Designing public spaces at a pedestrian scale;
 - E. Creating visual interest; and
 - F. Maintaining design integrity and compatibility with surrounding structures.
 - 1) A mix of uses (including office, retail, housing, or other uses) within a

given project is encouraged, whether it is a single building or a redevelopment district.

- 2) All guidelines are at the interpretation of the Historic Preservation Office.

16.2-4. Infill development

Exterior additions to existing buildings or adjacent infill construction should be compatible with the character of the site, and take into account the size, proportions, facade composition, rhythm and proportion of openings, materials, and colors of neighboring buildings. Techniques to help ensure compatibility with neighboring buildings include:

- A. Maintaining the street wall by locating the new building at the sidewalk;
- B. Ensuring the street level facade fits in contextually with neighboring properties
- C. Differentiating the upper stories of the building from the street level facade by setting back the upper stories at the plane above the street level facade; and
- D. Using different wall materials than the lower facade.

New on-site parking, loading docks or ramps should be designed to be unobtrusive and compatible with the primary use of the site. On-site parking should not be located along or adjacent to the street frontage. In those instances where parking is located along a street frontage, efforts to maintain the street wall will be imperative. Options include landscaping, low walls, etc.

16.2-5. Street orientation

- A. Buildings should generally be built up to the edge of the sidewalk in a consistent plan with the other buildings on the street.
- B. Other street-level setbacks, plazas and widened sidewalks from the building line should be strategically placed in accordance with an overall open space plan. The new open spaces should be located to relate to other land uses such as retail, entertainment and transit routes.

16.2-6. Street level form

- A. The street frontage of buildings should contain public or semi-public uses such as commercial, office, retail or entertainment uses with direct entry from the street. Nonpublic/semi-public uses are appropriate on the first floor if located to the rear of the street frontage use.
- B. New buildings should express a principal public facade and entrance on the adjacent street, and entries from parking facilities should be considered as secondary.

- C. Retail activities within buildings should be oriented towards the street and have direct access from sidewalks through storefront entries.
- D. Ground floor storefront restaurants are encouraged to have a strong connection between the interior of the structure and the exterior street environments.
- E. Upper floor balconies should not extend structural supports into the public right-of-way below.
- F. Sidewalk cafes should not impair pedestrian circulation nor store entrance access. There should be at least a six-foot contiguous and unobstructed walkway for use by pedestrians.

16.2-7. Buildings facades

- A. New buildings should be open and inviting in both their principal and secondary facades. Blank walls, or any wall with less than 30 percent glass, should not be placed along public streets, but may be placed along alleys and service lanes.
- B. Entryways should be generously proportioned and visually transparent to encourage connections to the public realm.
- C. Decorative and functional elements such as signage, awnings, and ornamentation should be used to create human scale elements on the street-level facades to further encourage openness.
- D. Loading docks and garage entrances should not be located on the major pedestrian street side of new buildings.
- E. New curb cuts that conflict with safe pedestrian travel and existing on-street parking are discouraged.
- F. Retail storefronts are strongly encouraged along the ground floor of all new and renovated buildings. These should be visually transparent to the interior with large areas of window display and should provide for direct entry from the sidewalk. The rhythm of windows and storefronts should be consistent.

16.2-8. Parking

- A. Surface parking lots should provide landscaping in compliance landscaping code. Required landscaping should take the form of planter strips, landscaped areas and perimeter landscaping.
- B. The existing street setback should be maintained along the principal street frontage in developed areas and established in new districts or developments. Tools for accomplishing this can include walls, fences, row of

trees, hedges or any combination of these elements. The height and placement of such features should be in accordance with CPTED (crime prevention through environmental design) principles.

- C. While it is important to provide adequate lighting for safety and comfort, it should be controlled to avoid spill out on the adjacent streets creating excessive glare.

16.2-9. Architecture and context

- A. The architectural design of new buildings and the rehabilitation of existing buildings should be sensitive to the existing built and natural environment within which they are constructed. The architecture of the existing downtown buildings should provide examples of architectural themes, rhythm, materials and forms.
- B. New construction is not required to implement any particular architectural style, but should be designed to be compatible with the scale, form and materials of surrounding structures, by applying these guidelines.

16.2-10. Public infrastructure improvements

- A. All new public infrastructure projects (roads, sidewalks, public buildings, and streetlights) should meet high standards of design quality and provide significant secondary benefits in the form of major public space improvements. These projects should be subject to the same standards of downtown design that would be required of all other projects.
- B. Public art projects may be incorporated into major public infrastructure

16.2-11. Public spaces/Greenspaces

- A. New public spaces should consist of renovated or enhanced streets, or strategically selected places that are directly linked to the street system.
- B. Generally, pedestrian ways should not be separated from streets and sidewalks. They should maintain direct access from the adjacent streets. They should be open along the adjacent sidewalk and allow for multiple points of entry. A passerby should be able to see directly into the space.
- C. New public spaces should be developed with pedestrian amenities, such as follows:
 - 1) Landscaping.
 - 2) Open space.

3) Seating.

4) Public art.

However, walls, fences and dense planting that visually seclude the interior space from the sidewalk should be avoided.

16.2-12. History and identity

- A. All projects are encouraged to express local history and identity through functional and ornamental design elements and works of public art.
- B. New development projects or renovation of existing structures should be designed to preserve the historic resources that exist on the site and reinforce the historical context within which they are developed.
- C. If it is not possible to preserve the entirety of a historic building, the retention of historic facades is encouraged.

16.3 Transitional District.

- 16.3-1. Intent. This overlay district is to provide a means of designating on the zoning map the properties in the transitional space from the historical and downtown redevelopment districts and the rest of the city. By limiting specific uses or requiring more development standards, this district is intended to a) ensure compatibility among incompatible or potentially incompatible land uses, b) ease the transition from one zoning district to another, c) address sites or land uses with special requirements and d) guide overall development in unusual or unique situations.
- 16.3-2. Geographic area. The overlay district is as depicted on the map, with the Southern border being Slate creek, the Eastern border, Logan Street the Northern border, 12 street and the Western border, Sand Creek.
- 16.3-3. Infill development. Exterior additions to existing buildings or adjacent infill construction should be compatible with the character of the site, and take into account the size, proportions, facade composition, rhythm and proportion of openings, materials, and colors of neighboring buildings. Techniques to help ensure compatibility with neighboring buildings include:
 - A. Maintaining the street wall by locating the new building at the sidewalk;
 - B. Ensuring the street level facade fits in contextually with neighboring properties
 - C. Differentiating the upper stories of the building from the street level facade by setting back the upper stories at the plane above the street level facade; and
 - D. Using different wall materials than the lower facade.

New on-site parking, loading docks or ramps should be designed to be unobtrusive and compatible with the primary use of the site. On-site parking should not be located along or adjacent to the street frontage. In those instances where parking is located along a street frontage, efforts to maintain the street wall will be imperative. Options include landscaping, low walls, etc.

16.3-4. Building facades

- A. New buildings should be open and inviting in both their principal and secondary facades. Blank walls, or any wall with less than 30 percent glass, should not be placed along public streets, but may be placed along alleys and service lanes.
- B. Entryways should be generously proportioned and visually transparent so as to encourage connections to the public realm.
- C. Decorative and functional elements such as signage, awnings, and ornamentation should be used to create human scale elements on the street-level facades to further encourage openness.
- D. Loading docks and garage entrances should not be located on the major pedestrian street side of new buildings.
- E. New curb cuts that conflict with safe pedestrian travel and existing on-street parking are discouraged.
- F. Retail storefronts are strongly encouraged along the ground floor of all new and renovated buildings. These should be visually transparent to the interior with large areas of window display and should provide for direct entry from the sidewalk. The rhythm of windows and storefronts should be consistent.

16.3-5. Parking

- A. Surface parking lots should provide landscaping in compliance landscaping code. Required landscaping should take the form of planter strips, landscaped areas and perimeter landscaping.
- B. The existing street setback should be maintained along the principal street frontage in developed areas and established in new districts or developments. Tools for accomplishing this can include walls, fences, row of trees, hedges or any combination of these elements. The height and placement of such features should be in accordance with CPTED (crime prevention through environmental design) principles.
- C. While it is important to provide adequate lighting for safety and comfort, it should be controlled to avoid spill out on the adjacent streets creating excessive glare.

16.3-6. Architecture and context

- A. The architectural design of new buildings and the rehabilitation of existing buildings should be sensitive to the existing built and natural environment within which they are constructed. The architecture of the existing downtown buildings should provide examples of architectural themes, rhythm, materials and forms.
- B. New construction is not required to implement any particular architectural style, but should be designed to be compatible with the scale, form and materials of surrounding structures, by applying these guidelines.

16.3-7. Public infrastructure improvements

- A. All new public infrastructure projects (roads, sidewalks, public buildings, and streetlights) should meet high standards of design quality and provide significant secondary benefits in the form of major public space improvements. These projects should be subject to the same standards of downtown design that would be required of all other projects.
- B. Public art projects may be incorporated into major public infrastructure

16.3-8. Public spaces/Greenspaces

- A. New public spaces should consist of renovated or enhanced streets, or strategically selected places that are directly linked to the street system.
- B. Generally, pedestrian ways should not be separated from streets and sidewalks. They should maintain direct access from the adjacent streets. They should be open along the adjacent sidewalk and allow for multiple points of entry. A passerby should be able to see directly into the space.
- C. New public spaces should be developed with pedestrian amenities, such as follows:
 - 1) Landscaping.
 - 2) Open space.
 - 3) Seating.
 - 4) Public art.

However, walls, fences and dense planting that visually seclude the interior space from the sidewalk should be avoided.

16.3-9. History and identity

- A. All projects are encouraged to express local history and identity through functional and ornamental design elements and works of public art.
- B. New development projects or renovation of existing structures should be designed to preserve the historic resources that exist on the site and reinforce the historical context within which they are developed.
- C. In the event that it is not possible to preserve the entirety of a historic building, the retention of historic facades is encouraged.

ARTICLE XVII - AIRPORT-1 (AIR-1) ZONING DISTRICT

17.1 Intent.

This district is intended to promote the use and development of land in a manner that is compatible with the continued operation and utility of the Newton City-County Airport so as to protect the public investment in, and benefit provided by the facility to the region. This district also protects the public health, safety, convenience, and general welfare of citizens who utilize the facility or live and work in the vicinity by preventing the creation or establishment of obstructions or incompatible land uses that are hazardous to the Airport's operation or the public welfare.

17.2 Applicability.

This Article is to be applied as a zoning district, to lands which include the Newton City-County Airport and any designated surrounding areas.

17.3 Definitions.

In addition to the definitions set forth within the Zoning Ordinances the following definitions shall apply specifically to this Article. In the event that there is a conflict between definitions within the Zoning Ordinances and this Article, those in this Article shall control.

Airport: The Newton City-County Airport.

Hazard to Air Navigation: An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

Height: To determine the height limits shown on the Official Newton City-County Airport Layout Plan (maximum thirty-five (35) feet in height), the datum shall be mean sea level elevation unless otherwise specified.

Nonconforming Use: Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Article.

Obstruction: Any structure, growth or object, including a mobile object, which creates a Hazard to Air Navigation.

17.4 Permitted Uses, Special Uses and Prohibited Uses.

In addition to the limitations on development and use as outlined in this Section, the following uses are explicitly permitted or prohibited within the Airport-1 Zoning District as follows:

17.4-1. Permitted uses:

- A. Agricultural, including incidental non-residential facilities.
- B. Air service buildings and facilities.
- C. Aircraft manufacturing.
- D. Aircraft maintenance facilities.
- E. Aircraft repair and refurbishment.
- F. Classrooms for aviation-related educational programs.
- G. General Aviation Activities.
- H. Parking lots and facilities.
- I. Airport owned or operated facilities.
- J. Automotive related; body repair shops, parts and supply distributors, rental/leasing agencies, sales and service.
- K. Commercial Printing.
- L. Hangars.
- M. Laundry cleaning and garment services.
- N. Machinery equipment and supplies.
- O. Aircraft Sales.
- P. Pilot training facilities.
- Q. Warehousing and storage.
- R. Any other commercial activity that does not encourage concentrations of people and is found appropriate by the Zoning Administrator.

17.4-2. Special Uses. All uses not specifically designated as Permitted or Prohibited shall be considered Special Uses in the Airport-1 Zoning District, including the following:

- A. Hotels, lodging/boarding houses, bed and breakfasts; and
- B. Restaurants, bars and other food & beverage operations

Provided, however, that no Special Use Permit (SUP) shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

17.4-3. Prohibited uses. The following land uses shall be prohibited from all land within the boundaries of the Airport-1 Zoning District:

- A. Residential uses.
- B. Manufactured Home Parks.
- C. Churches.

- D. Schools.
- E. Theaters.
- F. Amphitheaters.
- G. Campgrounds.
- H. Hospitals, nursing homes and retirement complexes.
- I. Places of public assembly and any other use, which may be susceptible to being adversely affected by loud and extensive noise or would interfere in the operation of the Airport.
- J. Landfills, garbage dumps, dump sites and other similarly titled facilities used for operations to process, bury, store or otherwise dispose of waste, trash and refuse that would attract birds or rodents.
- K. Use or installation of flashing or illuminated advertising or business signs, billboards, lights, or other types of illuminated structures, which would be hazardous for pilots in distinguishing between Airport lights and others, or which result in glare in the eyes of pilots using the Airport.

17.5 Use Limitations.

- 17.5-1. Notwithstanding any other provisions of these regulations, no use may be made of land or water in such a manner as to create electrical interference with navigational signals or radio communication between the Airport and aircraft; make it difficult for pilots to distinguish between Airport lights and other lights; result in glare in the eyes of pilots using the airport; create bird strike hazards; impair visibility in the vicinity of the Airport; or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the Airport.
- 17.5-2. Notwithstanding any other provisions of these regulations, no structure or any attachment thereto shall be at such a height as shall create a Hazard to Air Navigation.
- 17.5-3. As a condition of approval of a Special Use Permit, the Planning Commission shall require appropriate noise attenuation techniques in the design and construction of buildings for these uses.

17.6 Obstruction Marking & Lighting of Legally Nonconforming Structures.

The owner of any legally nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Governing Body to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction.

17.7 Removal of Abandoned or Destroyed Nonconforming Structures and Trees.

Whenever a legally nonconforming structure or tree is abandoned or has been damaged or destroyed, by any means, to the extent of more than 50% of its value, the Governing Body may require its removal unless it is made to conform with the applicable height limitations of these regulations.

ARTICLE XVIII - LANDSCAPE, SCREENING AND BUFFERING REQUIREMENTS

18.1 Purpose.

The purpose of this section is to ensure a minimum of open space and green area as an integral part of new development and to protect the health and welfare of its citizens through the regulation of landscaping of new multi-family residential, commercial, and industrial developments.

- 18.1-1 Landscaping enhances the environmental and visual character of the community.
- 18.1-2 Green space requirements preserve and stabilize the area's ecological balance by establishing a healthier environment.
- 18.1-3 Green areas help to mitigate the negative effects of air and noise pollution by using plants as buffers, and slow and reduce storm water runoff.
- 18.1-4 Fencing and landscaping provides visual screening and buffering, and screens between incompatible land uses.
- 18.1-5 Landscaping enhances parking lots.
- 18.1-6 Greenspace requirements can establish parks and other outdoor amenities for the citizens of the City.

18.2 Objectives.

Landscaping and screening should be an integral part of a development. This section is designed to promote high quality developments, protect property values and public investment in our community. Objectives of this section include, but are not limited to, the following:

- 18.2-1 To moderate the effects of the sun, wind, and temperature changes;
- 18.2-2 To filter pollutants from the air and release oxygen;
- 18.2-3 To stabilize soil and prevent erosion;
- 18.2-4 To encourage preservation of desirable trees; and
- 18.2-5 To provide buffering between different uses and developments.

18.3 Applicability.

The requirements of this section shall apply to:

- 18.3-1 New developments. All new public, private, and institutional developments;
- 18.3-2 New parking lots or the expansion of existing parking lots in any zone which increases the parking to 20 or more spaces, or to parking lots with fewer than 20 spaces, when the Planning Commission deems necessary for improved control and safety of pedestrians; and
- 18.3-3 Additions. All additions to existing buildings that exceed 50% of the original square footage or are in excess of 5,000 square feet.

18.4 Exemptions.

- 18.4-1 Any individual who purchases or remodels a single-family home located in any zoning district is exempt from all requirements of this section.
- 18.4-2 Residential. All newly constructed single-family and two-family (duplex) residential units shall be exempt from this Section.
- 18.4-3 Existing development; changes in use. Improvements or repairs to existing developments that do not result in an increase in floor area, and changes in use that do not result in an increase in intensity, shall also be exempt from all standards of this section.

18.5 General Provisions.

- 18.5-1 Sight distances. Safe sight distances at intersections and points of access must be maintained. No landscaping shall constitute a hazard to traffic, including, but not limited to, landscaping located within the sight triangle of an intersection.
- 18.5-2 Replacement. Vegetation planted or preserved according to an approved plan shall remain alive for a minimum of three years from the date of certificate of occupancy. Vegetation that is planted or preserved that does not remain alive for three years shall be replaced with equivalent vegetation.
- 18.5-3 Irrigation. Required landscaping shall be irrigated by one of the following methods:
 - A. For Commercial, Industrial, and Multi-Family Residential Apartments, one of the following are required.
 - 1) Underground sprinkler system
 - 2) Automatic drip system
 - 3) A hose bib attachment within 100 feet of all landscaped areas.

- B. Triplex, and quadplex residential units may use one of the methods listed above. At a minimum, the following is required:
 - 1) A hose bib attachment within 100 feet of all landscaped areas.
- C. Artificial plants. No artificial plants or vegetation shall be used to meet any standards of this section, unless expressly approved by the Planning Commission.
- D. Planting areas. Planting areas that contain trees shall be a minimum of four (4) feet wide and protected by raised curbs to prevent damage by vehicles when in or adjacent to parking or drive aisles.

18.6 Landscape Plans.

Subdivision and site plans submitted to the City of Newton for approval shall include a landscape plan. Such landscape plan shall show the approximate area of existing tree canopy, and any trees proposed to be planted and shall note the size and species of all trees indicated. The Planning Commission may require trees to be planted along any of the streets, parking lots, parks or other public places when reviewing and approving development plans.

18.6-1 The landscaping plan is required to address the following requirements:

- A. Landscape street frontage buffer;
- B. Interior parking lot landscaping; and
- C. Perimeter landscaping.

18.6-2 The following information is required on landscape plans. The Landscape Plan can be combined with the Stormwater Post Construction plan as long as the required standards for both are met. The area required to be provided for landscaping can also act as stormwater management areas.

- A. Approximate areas of existing vegetation. Approximate location, general type and quality of existing vegetation and tree canopy onsite;
- B. Preservation. Existing vegetation to be saved;
- C. Protection. Methods and details for protecting existing vegetation during construction and approved sediment control plan;
- D. Proposed plants. Location and labels for all proposed plants;
- E. Landscape details. Plant list with botanical and common names, quantity, spacing, and size of all proposed landscape improvements such as earth berms, walls, fences, screens, sculptures, fountains, street furniture, lights, and courts or paved areas;

- F. Installation details. Planning and installation details as necessary to ensure conformance with all required standards;
- G. Sight triangle. The sight triangle shall be indicated on the plan with dimensioned shaded area;
- H. Irrigation. The plans shall indicate the type of irrigation to be used. If a hose bib is proposed, the location shall be shown on the plan
- I. Three-year guarantee. Guarantee from the Developer that all plant materials will be warranted for a period of three years from the time of installation. If any material should fail to survive during that period, it would be replaced during the appropriate planting season.

18.7 Landscaped Street Frontage Buffer.

The street frontage buffer is the planting area parallel to the public street right-of-way.

- 18.7-1 Purpose. The landscaped street frontage buffer serves one primary purpose: it provides an aesthetically pleasing transition from the public right-of-way to private property.
- 18.7-2 Prohibitions. Parking, merchandise display, and off-street loading are prohibited in the landscaped street frontage buffer (sidewalks and driveways are allowed to cross the frontage buffer).
- 18.7-3 Exemptions.
 - A. Single-family residential homes and residential duplexes when only one residential structure is located on each lot are not required to provide a landscaped street frontage buffer.
 - B. Commercial developments in the C-3, Central Business District areas are not required to provide a landscaped street frontage buffer.
- 18.7-4 Buffer options: commercial, institutional, multi-family residential and similar uses. The site plan for any development, other than a development that is exempt, shall show a landscaped street frontage buffer along all public rights-of-way. The applicant may choose a combination of options below.
 - A. Buffer strip; minimum of ten (10') feet wide.
 - 1) Minimum number of shrubs. Five shrubs or small/medium trees per 30 linear feet of street frontage. Rather than equally spacing the required shrubs or small/medium trees, the City prefers they be placed as groups of plants. Sight visibility must be maintained.

18.7-5 Buffer options: industrial. The site plan for any development, other than a development that is exempt, shall show a landscaped street frontage buffer along all public rights-of-way. The applicant may choose a combination of options below.

A. Ten-foot buffer strip; minimum ten feet wide.

1) Minimum number of shrubs or small/medium trees. Five shrubs or five small/medium trees per 50 linear feet of street frontage. Rather than equally spacing the required shrubs or small/medium trees, the City prefers they be placed as groups of plants. Sight visibility must be maintained.

B. Earth berm. The berm shall be seeded or sodded as appropriate. Vegetation shall be established prior to occupancy.

1) Minimum height. Two and one-half feet higher than the finished elevation of the parking lot.

2) Minimum number of shrubs or small/medium trees. Three shrubs or three small/medium trees per 50 linear feet of street frontage. Rather than equally spacing the required shrubs or small/medium trees, the City prefers they be placed as groups of plants. Sight visibility must be maintained.

18.8 Interior Parking Lot Landscaping.

18.8-1 Purpose.

A. Provides necessary green space to give relief to expansive parking areas made solely of pavement;

B. Trees provide shade and serve as windbreaks

C. Landscaping can help provide stormwater controls; and

D. Planting islands assist with vehicular circulation and enhance safety.

18.8-2 Applicability. Interior parking lot landscaping requirements apply to all new parking lots or the expansion of existing parking lots in any zone which increases the total parking area to 20 or more spaces.

18.8-3 Exemptions. Parking lot landscaping shall not apply to multi-level parking structures, or areas devoted to drive-thru lanes.

18.8-4 Requirements.

- A. The site plan shall show interior parking lot landscaping.
 - 1) Planting islands are required for every 20 parking spaces.
 - 2) The minimum dimensions of a planting island are 8 feet by 18 feet and must be curbed to protect plantings.
 - 3) Each island shall have a minimum of two small/medium trees or one large tree.
- B. Groundcover. All interior parking lot landscaped areas shall be landscaped with groundcover. Groundcover areas must be well maintained and weeded regularly.
 - 1) Living materials such as grass/other living vegetation shall make up 60% of the groundcover for the interior parking lot landscaping.
 - 2) Non-living material shall be organic (mulch or other) and shall make up the remainder of the groundcover.
 - 3) Non-organic material (rocks, gravel, etc.) may be approved if the parking lot landscaping area functions as a bioswale/stormwater management.
- C. Parking lot lights are recommended to be placed within the parking islands.
- D. Vehicle and equipment sales lots or storage areas. Applicants shall select one of the following options for vehicular and equipment sales lots or storage areas.
 - 1) Compliance with standard. Comply with the interior parking lot landscaping requirements and the required street frontage requirements.
 - 2) Increase street frontage buffer. The applicant can request that the Planning Commission consider an increase of the street frontage buffer in lieu of the interior parking lot landscaping requirements. The required street frontage buffer shall a minimum of 15 feet wide and shall have installed the number of trees required for the interior landscape requirements along with the required landscaping required in the street frontage buffer.

18.9 Landscaped Perimeter Buffer.

Perimeter landscaping is a peripheral planting strip along rear and side lot lines that separates properties.

18.9-1 Purpose. Perimeter landscaping:

- A. Defines parking areas;
- B. Prevents two adjacent lots from becoming one large expanse of pavement;
- C. Provides protection for residential uses and other marginally compatible uses;
- D. Provides vegetation in densely developed areas; and
- E. Enhances the appearance of individual properties.

18.9-2 Exemptions.

Single-family and duplex residential subdivisions are not required to provide a landscaped perimeter buffer.

18.9-3 Requirements. The site plan for any development shall show perimeter landscaping in addition to the landscaped street frontage buffer required.

- A. Width. A five-foot landscaped strip is required along the side and rear lots lines of a development.
- B. Minimum number of trees. One large tree or two shrubs or small/medium trees per every 50 feet (of lot line not adjacent to a Right of Way).
- C. Groundcover. All perimeter landscaped areas not dedicated to preservation of existing vegetation shall be landscaped with groundcover.
- D. Living materials such as grass/other vegetation shall make up 60% of the groundcover for the perimeter landscaping. Groundcover areas must be well maintained and weeded regularly.
- E. Non-living material shall be organic (mulch or other) and shall make up the remainder of the groundcover.
- F. Non-organic material (rock, gravel, etc.) may be approved if the perimeter landscaping area functions as a bioswale/stormwater management.

18.9-4 Vehicular and pedestrian access. The perimeter landscaping requirement does not preclude the need for vehicular or pedestrian access to be provided between lots. Both sidewalks and driveways may cross this area when needed.

- 18.9-5 Adjacent properties. The five-foot perimeter strip is required for each development regardless if one is already in place from an adjacent, developed lot.
- 18.9-6 Pavement. No pavement may extend within five feet of the property line on any lot unless it is included with an ingress/egress location.
- 18.9-7 Compatibility standards: commercial, institutional, multi-family residential and industrial.
- A. When located adjacent to a residential use, increased landscaping standards shall be applied to reduce noise and light glare and to ensure residents' privacy.
- 1) Width. A fifteen-foot landscaped strip is required along the side and rear lots lines of a development.
 - 2) Physical barrier. A physical barrier shall be required along the abutting property line, that shall be a minimum of six (6) feet in height and may consist of wood or masonry fencing, rock or brick walls, berms with screening vegetation, or a combination of these methods. This barrier shall be at least fifteen (15) feet from any street line.
 - a) Berms may require irrigation, mowing, and/or other maintenance.
 - b) Trees and shrubs shall be placed in front of the barrier (on the developing side) to reduce parking lot noise.
 - c) Trees and shrubs or native plantings, planted shall provide 60% coverage of the physical barrier within three years.
 - d) Screening standards. Decorative walls, vegetative screening, fencing, or earthen berms shall be provided to completely screen off-street parking areas, mechanical equipment, storage areas, and refuse collection areas.
- 18.9-8 Site design standards. The following additional site design standards shall apply to development that is subject to the compatibility standards listed above:
- A. No swimming pool, tennis court, ball field, or playground area (except those that are accessory to a single-family dwelling unit) shall be permitted within 30 feet of the property line, and none shall encroach into access, utility, or drainage easements For a single-family dwelling, these items shall not encroach into any access, utility, or drainage easement, and shall be a minimum 5' from the property line.

- B. Dumpsters and refuse receptacles shall be located a minimum of ten (10') feet from the property line and screened from view with opaque fencing and an opaque gate. All refuse shall be contained inside the dumpster enclosure.
- C. Outdoor areas accessory to any use or used for the deposit and collection of trash shall be screened with a physical barrier as described above, as to not be visible from adjacent properties or from any public street or other public space. Such enclosure or screening shall be designed so as to prevent trash or refuse from blowing onto other areas of the site or onto adjacent properties or public street spaces.
- D. Outside storage areas that are visible from any residential uses or public right of way shall be screened with a physical barrier as described above.

18.10 Minimum Greenspace for Multi-Family (greater than two-family) Residential.

Multi-Family Residential structures shall reserve a minimum 35% of the total site area for open space, green space, or common space.

18.11 Landscape Installation Requirements.

All landscaping shall be installed according to sound nursery practices in a manner designed to encourage vigorous growth. All plants shall be nursery grown and adapted to the local area. All landscape material, both living and non-living, shall be in place prior to issuance of a final certificate of occupancy. A temporary certificate of occupancy may be issued prior to installation of required landscaping if binding, written assurances are submitted, that ensure planting will take place when an appropriate planting season arrives.

18.11-1 Location.

- A. Drainage. Trees shall not be placed where they interfere with site drainage.
- B. Overhead utilities.
 - 1) Trees shall not be placed where they require frequent pruning in order to avoid inference with overhead power lines. In such locations, small ornamental trees are encouraged. Every effort shall be made to avoid placing trees directly under overhead utilities.
 - 2) Substitution of large trees. Where large trees are required, and placement under or near overhead utilities is necessary to meet the landscaping requirements, two small/medium trees may be used to substitute for one required large tree.

- C. Underground utilities. Landscaping shall be installed at locations that avoid placement directly above water and sewer lines. Where possible, tree plantings shall be located a minimum of five feet from all underground utilities.
 - D. Public utilities. Landscaping shall not block access to public utilities, and any landscaping in easements may be removed in the course of servicing said utilities. The utility company shall not be liable for replacing landscaping removed in the course of servicing the utilities.
 - E. Fire hydrants. Landscaping shall not be placed such that, at maturity, the vegetation will be within five feet of a fire hydrant.
- 18.11-2 Minimum size. Upon planting, plant material shall meet the following minimum requirements.
- 18.11-3 Shrubs. Shrubs planted to satisfy the standards of this section shall be a minimum of three gallons in size.
- A. Small/medium deciduous or ornamental trees. Small/medium deciduous and ornamental trees planted to satisfy the standards of this section shall have a minimum height of four feet, and a minimum caliper of one and one-half inches.
 - B. Conifers or evergreens. Conifers or upright evergreen trees planted to satisfy the standards of this section shall have a minimum height, after planting, of six feet.
 - C. Medium and large deciduous trees. Medium and large deciduous trees planted to satisfy the standards of this section shall have a minimum height of six feet, and a minimum diameter of three inches, measured at a point that is at least four feet above existing grade level.
- 18.11-4 Use of existing plant material. Trees that exist on a site, prior to its development, may be used in part to satisfy the landscaping standards of this section provided they meet the size, variety, and location requirements of this section. Proper protection of existing trees being preserved to meet this requirement shall be required. The dripline of the existing trees shall be marked with tree protection fencing, and care taken to avoid disturbance of the root system.
- 18.11-5 Species mix. When more than ten trees are required to be planted to meet the standards of this section, a mix of species shall be provided. For each ten, or fraction thereof, another differing species shall be used.

18.12 Maintenance and Replacement.

Trees, shrubs, fences, walls, and other landscape features (which includes screening) depicted on plans approved by the City shall be considered as elements of the project in the same manner as parking, building materials, and other details of the plan are considered elements. The landowner or successors in interest, or agents, if any, shall be jointly and severally responsible for the following:

- 18.12-1 Regular maintenance of all landscaping in good condition, and in a way that presents a healthy, neat, and orderly appearance. All landscaping shall be maintained free from disease, pests, weeds, and litter. This maintenance shall include weeding, watering, fertilizing, pruning, mowing, edging, mulching, or other maintenance, as needed and in accordance with acceptable horticultural practices;
- 18.12-2 The repair or replacement of required landscape structures (for example, fences and walls) to a structurally sound condition;
- 18.12-3 The regular maintenance, repair, or replacement, where necessary, of any landscaping required by this section; and
- 18.12-4 Continuous maintenance of the site. Three-year guarantee. Guarantee from the Developer that all plant materials will be warranted for a period of three years from the time of installation. If any material should fail to survive during that period, it would be replaced during the appropriate planting season.

18.13 Alternative Methods of Compliance.

Alternative compliance. Applicants shall be entitled to demonstrate that the intent of this section can be more effectively met, in whole or in part, through alternative means. If approved by the Planning Commission, an alternative compliance landscape plan may be substituted, in whole or in part, for the landscaping requirements of this section.

18.13-1 Procedure.

- A. Alternative compliance landscape plans shall be considered through the site plan review process.
- B. Review criteria. In reviewing proposed alternative compliance landscape plans, favorable consideration shall be given to exceptional landscape designs that attempt to preserve and incorporate existing vegetation in excess of minimum standards and plans that demonstrate innovative design and use of plant materials. Alternative compliance landscape plans may be approved upon a finding that any of the following circumstances exist on the proposed building site or surrounding properties:

1. Natural land characteristics or existing vegetation on the proposed development site would achieve the intent of this section;
2. Innovative landscaping or architectural design is employed on the proposed development site to achieve a buffering effect that is equivalent to the buffering or screening standards of this section;
3. The required landscaping or buffering would be ineffective at maturity due to topography or the location of improvements on the site;
4. The site involves unusually shaped parcels that make full compliance impossible or impractical;
5. Due to a change of use of an existing site, the required landscaping exceeds the amount that can be approved;
6. Safety considerations require a change; or
7. The proposed alternative represents a plan that is as good or better than a plan prepared in strict compliance with the other standards of this section.

18.14 Recommended Trees and Shrubs.

18.14-1 Criteria. The following lists indicate plantings that meet the landscaping requirements. These are recommendations. Other species may be considered by the City, unless specifically prohibited in other official City documents or Ordinances. No known invasive species shall be allowed.

- A. All plant materials should be spaced appropriately in accordance with mature plant size.
- B. Plant materials intended for screening as required should be spaced appropriately to form the appropriate screen upon maturity.
- C. Perennials and grasses. No restrictions, natives and drought tolerant species preferred.

18.14-2 Recommended plant lists. While the city recommends using the “Preferred trees for South Central Kansas” Guide produced by the Kansas Forest Service, the city reserves the right to deny the placement of trees that may cause concerns for the area in which they are proposed.

The “Preferred Trees for South Central Kansas” guide produced by the Kansas forest Service is recommended for placing appropriate plant material:

The list current at the time of the adoption of this section, published in 2016 is below, however the applicant shall be responsible for using the most updated recommendations if the list is updated in the future.

Preferred Trees for South Central Kansas



Growing trees successfully depends on the selection of the right trees for the intended site. It is important to match the growing conditions and space available on the site with the cultural requirements and projected size of each tree to be planted. The following four charts show the tolerances of individual trees to various environmental conditions as well as the major landscape attributes of each tree. Not all recommended trees for South Central Kansas are included. The preferred trees listed were recommended by industry professionals such as city foresters, local tree boards, county and horticulture extension agents, commercial arborists and retail/production nursery interests. For a more extensive list see *Shade & Ornamental Trees for Kansas MF-2688*

KEY TO USING THIS INFORMATION:

TREE SPECIES AND CULTIVARS: The names of the trees are listed in the center of four different charts. Three of the charts list deciduous trees grouped by average mature height. The fourth chart lists evergreen trees. Cultivars are listed if they possess improved plant characteristics like better fall color; a unique form; more attractive flowers, fruit; greater heat tolerance; or increased pest resistance.

ENVIRONMENTAL TOLERANCES: The left side of each chart indicates the recommended environmental conditions of each tree; including full sun (**S**), light shade (**L**), soil pH adaptability, and soil moisture tolerances (**Dry** or **Wet**). Each chart also shows how resistant each tree is to insect and disease pests. A "**G**" (for good) under the appropriate column indicates the tree is strongly tolerant of the characteristic indicated. An "**F**" (for fair) signifies that the tree shows some tolerance. A blank space in a column indicates the tree is not tolerant and should not be subjected to that environmental condition. Specific information on the "pH adaptable", "soil moisture", and "pests" categories follows:

pH ADAPTABLE: (**G**) = tree may tolerate soils with a pH up to 8.0 or more; (**F**) = tree generally will tolerate an alkaline soil up to a pH of 7.5; (blank) = tree may not tolerate alkaline soils; do not plant in alkaline soils to avoid the problem of iron or manganese chlorosis.

SOIL MOISTURE: while most trees prefer a moist and well drained soil, some of these species will tolerate moderate drought (**D**) or occasional wet (**W**) periods. Some trees will tolerate both to some extent and they are indicated with **DW**. See *Drought-Tolerant Tree for South-Central Kansas (MF-3246)* for a list of drought tolerant trees.

PESTS: (**G**) = tree is usually free of insect and disease problems; (**F**) = tree encounters insect or disease pests on an infrequent basis and often is not permanently damaged; (blank) = tree may suffer from pests which may permanently damage or kill the tree and/or the tree may exhibit minor insect and disease problems on a frequent basis which may affect the aesthetics of the tree or insects may commonly be a nuisance.

LANDSCAPE ATTRIBUTES: The right side of each chart includes average mature height and spread of each tree, which can be variable depending on growing conditions and other factors. Landscape attributes of flowers, fruit, and fall color are also listed.

FLOWERS: (**G**) = the flowers are showy; (**F**) = the flowers are not particularly showy, but may possess other desirable characteristics such as fragrance; (blank) = the flowers are generally considered insignificant.

FRUIT: (**G**) = fruits are generally aesthetically pleasing; (**F**) = fruits are not considered showy, but may provide other interest or benefits such as attracting wildlife; (blank) = no showy or useful fruit.

FALL COLOR: (**G**) = the autumn leaf color is typically quite good; (**F**) = the fall color may provide interest in some years; (blank) = autumn foliage color is generally not considered an asset of this particular tree.

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ENVIRONMENT				SMALL DECIDUOUS TREES (usually under 20 feet at maturity)	LANDSCAPE ATTRIBUTES				
SUN / LIGHT SHADE	pH ADAPTABLE	SOIL MOISTURE	PEST RESISTANCE		HEIGHT	SPREAD	FLOWERS	FRUIT	FALL COLOR
SL	F	DW	F	Amur Maple (<i>Acer tataricum</i> subsp. <i>ginnala</i>) Cultivars: 'Compactum'; 'Flame'. Seeds readily.	15-20	15-25	F		G
SL	G	D	F	Tatarian Maple (<i>Acer tataricum</i>) Cultivar; Hot Wings has attractive red fruit.	20-25	15-25	F	F	F
SL	G	D	F	Eastern Redbud (<i>Cercis canadensis</i> var. <i>alba</i> (white flowers); Cultivars: 'Forest Pansy' and 'Merlot' have red/purple new growth.	20-25	20-25	G		F
SL	G	D	G	Oklahoma Redbud (<i>Cercis canadensis</i> var. <i>texensis</i> 'Oklahoma') Glossy green leaves, more intense flower color, insect resistance	15-20	15-20	G		F
SL	G	DW	G	Chinese Fringetree (<i>Chionanthus retusus</i>) Cultivar 'Tokyo Tower'	15-20	15-20	G		F
SL	G	D		Winterberry Euonymus (<i>Euonymus bungeanus</i>). Seeds readily.	15-20	10		G	F
S	F	D	F	Flowering Crabapple (<i>Malus</i> spp.) For disease resistant cultivars see Crabapple publication MF-875.	varies	varies	G	G	F
SL	G	D	G	Smoketree (<i>Cotinus</i> spp.) American Smoketree (<i>C. obovatus</i>) and Red Smoketree varieties (<i>C. coggygria</i>). Hybrid 'Grace' has vigorous purple growth.	20	15	F		G

ENVIRONMENT				MEDIUM DECIDUOUS TREES (usually 20 to 40 feet at maturity)	LANDSCAPE ATTRIBUTES				
SUN / LIGHT SHADE	pH ADAPTABLE	SOIL MOISTURE	PEST RESISTANCE		HEIGHT	SPREAD	FLOWERS	FRUIT	FALL COLOR
SL	F	D	G	Trident Maple (<i>Acer buergerianum</i>) Some trees could suffer winter damage north of Newton.	20-35	20-30			G
SL	G	D	G	Hedge Maple (<i>Acer campestre</i>)	25-35	25-35			G
SL	F	D	G	Shantung Maple (<i>Acer truncatum</i>) Hybrids also available: Norwegian Sunset; Pacific Sunset (hybrids with Norway Maple). Range of fall color, yellow-red.	25-30	25-30			G
SL	F	DW	G	European Hornbeam (<i>Carpinus betulus</i>) Cultivars 'Fastigiata' and 'Frans Fontaine' are columnar cultivars.	30-40	20-30			F
S	G	D		Goldenrain Tree (<i>Koelreuteria paniculata</i>) Host to boxelder bugs. Seeds readily.	30-40	30-40	G	G	F
S	G	DW	G	Osage Orange (<i>Maclura pomifera</i>) Cultivars: 'Wichita' and 'Whiteshield'. Use fruitless and thornless cultivars only.	30-40	20-40			G
S	F	D		Flowering Crabapple (<i>Malus</i> spp.) For disease resistant cultivars see Crabapple publication MF-875.	varies	varies	G	G	F
S	G	D	G	Chinese Pistache (<i>Pistacia chinensis</i>) Do not plant north of Harvey County. Use cold-hardy seed source if possible. Seeds readily. Cultivar 'Keith Davey' is seedless and has red fall color.	30-35	30-40		F	G
S	F	D	F	Callery Pear (<i>Pyrus calleryana</i>) Cultivars: 'Aristocrat'; 'Capital'; 'Chanticleer'; and 'Cleveland Select'. Cultivar 'Bradford' is not recommended. Seeds readily.	30-40	10-45	G		G
S	G	D	G	Chinkapin Oak (<i>Quercus muehlenbergii</i>)	35-40	40-45		F	F
SL	F	D	F	Japanese Tree Lilac (<i>Syringa reticulata</i>) Cultivar: 'Ivory Silk'	25	20	F		

ENVIRONMENT				LARGE & VERY LARGE DECIDUOUS TREES (usually 40 feet and larger at maturity)	LANDSCAPE ATTRIBUTES				
SUN / LIGHT SHADE	pH ADAPTABLE	SOIL MOISTURE	PEST RESISTANCE		HEIGHT	SPREAD	FLOWERS	FRUIT	FALL COLOR
SL	F	DW		Freeman Maple (<i>Acer x freemanii</i>) Cultivars: Autumn Blaze; Autumn Fantasy. The cultivars are prone to bark sunscald/frost cracking due to exposure and frequent winter temperature fluctuations.	50-60	40-50			G
SL		W		Red Maple (<i>Acer rubrum</i>) Cultivars: 'Autumn Flame'; 'October Glory'; Red Sunset; Burgundy Belle. The species and cultivars are prone to bark sunscald/frost cracking due to exposure and frequent winter temperature fluctuations.	40-60	35-50	F		G
SL	F	D	F	Sugar Maple (<i>Acer saccharum</i>) Caddo (seedling). Cultivars: 'Legacy'; 'John Pair'; 'Autumn Splendor'; All are more heat tolerant and leaf tatter resistant cultivars.	40-60	30-50			G
S		W	F	River Birch (<i>Betula nigra</i>). Cultivar Heritage has larger leaves, better salmon-white bark.	40-60	40-50			F
SL	G	DW		Common Hackberry (<i>Celtis occidentalis</i>) Cultivar Prairie Sentinel is columnar.	40-60	40-50		F	F
S	G	D	G	Ginkgo (<i>Ginkgo biloba</i>) Cultivars: 'Autumn Gold'; 'Princeton Sentry' (narrow pyramidal form). Slow-growing. Use named MALE cultivars only.	50-60	25-40			G
S	G	DW		Thornless Honeylocust (<i>Gleditsia triacanthos</i> var. <i>inermis</i>). Cultivars Skyline; 'Shademaster'; Honeylocusts are susceptible to many pests.	40-60	30-50			F
SL	G	DW	G	Kentucky Coffee Tree (<i>Gymnocladus dioica</i>) Seedless is available.	50-60	30-45		F	F
S		W	F	Sweetgum (<i>Liquidambar styraciflua</i>) Fruit can be a nuisance.	50-75	35-50		F	G
SL	G	DW	G	London Planetree (<i>Platanus x acerifolia</i>) Cultivar 'Bloodgood' has resistance to anthracnose. Exclamation has disease resistance and strong central leader.	60-80	50-65		F	
S	F	DW	G	Sawtooth Oak (<i>Quercus acutissima</i>)	40-50	30-45		F	F
S	F	DW	G	White Oak (<i>Quercus alba</i>)	50-60	40-60		F	F
S	F	DW	F	Swamp White Oak (<i>Quercus bicolor</i>)	50-60	40-60		F	F
S	G	D	G	Texas Red Oak (<i>Quercus buckleyi</i>)	50-60	40-60		F	G
S	F	DW	F	Shingle Oak (<i>Quercus imbricaria</i>)	50-60	40-60			F
S	G	DW	G	Bur Oak (<i>Quercus macrocarpa</i>) Large fruit can be a nuisance.	60-80	50-70		F	
S	G	D	F	English Oak (<i>Quercus robur</i>) Many columnar cultivars available: Crimson Spire; 'Fastigiata'; Kindred Spirit; Regal Prince	40-60	45-65		F	
S	F	D	F	Red Oak (<i>Quercus rubra</i>)	60-75	40-60		F	G
S	G	DW	F	Shumard Oak (<i>Quercus shumardii</i>)	60-80	40-60		F	G
SL		DW	F	Willow Oak (<i>Quercus phellos</i>)	50-60				
S		DW	G	Baldcypress (<i>Taxodium distichum</i>) Cultivar 'Frio River' has excellent pH tolerance. 'Shawnee Brave' has upright pyramidal growth. Knees can be a problem in the landscape.	50-70	20-50		F	G
SL	F	W	F	American Linden (<i>Tilia americana</i>) Cultivar 'Redmond' pyramidal form. Lindens are favored by honey bees.	50-60	35-40	F		F
SL	G	W	F	Littleleaf Linden (<i>Tilia cordata</i>) More rounded. Cultivar: 'Greenspire' (pyramidal). Lindens are favored by honey bees.	35-45	25-40	F		F
S	G	DW	G	Silver Linden (<i>Tilia tomentosa</i>) 'Sterling' is an improved cultivar. Lindens are favored by honey bees.	40-45	25-35	F		
S	G	DW	F	American Elm (<i>Ulmus americana</i>) Cultivars: 'Jefferson'; 'New Harmony'; Prairie Expedition; 'Princeton'. Choose disease resistant cultivars.	60-80	40-60			F
S	G	DW	G	Elm hybrids (<i>Ulmus</i>) Accolade; Danada Charm; 'New Horizon'; 'Patriot'; 'Prospector'. Bred for attractive foliage and disease resistance.	>45	>40			F
SL	G	DW	F	Lacebark Elm (<i>Ulmus parvifolia</i>). Also available: cultivars Athena; Allee; 'Emerald Prairie'; many others.	40-60	35-50			F
SL	F	D	F	Japanese Zelkova (<i>Zelkova serrata</i>) Cultivars 'Green Vase', 'Halka', and 'Village Green' have improved growth habit. 'Musashino' is columnar.	40-45	25-30			G

ENVIRONMENT				EVERGREEN TREES	LANDSCAPE ATTRIBUTES				
SUN / LIGHT SHADE	pH ADAPTABLE	SOIL MOISTURE	PEST RESISTANCE		HEIGHT	SPREAD	FLOWERS	FRUIT	FALL COLOR
S	G	D	G	Incense Cedar (<i>Calocedrus decurrens</i>)	30-40	20-30			
S	G	D	F	Arizona Cypress (<i>Cupressus arizonica</i>) Cultivars 'Blue Ice'; 'Blue Pyramid'; and 'Cooke Peak'	20-30	15-20			
S	G	D		Upright Chinese Juniper (<i>Juniperus chinensis</i>). Very rust resistant. Cultivars: 'Keteleeri'; 'Robusta Green'; 'Wintergreen'; other disease resistant cultivars are available.	varies	varies		G	
S	G	D		Eastern Red Cedar (<i>Juniperus virginiana</i>) Also available: cultivar 'Canaertii' (irregular form); 'Taylor' (upright growth) many others also. Seeds readily.	30-40	25		G	
SL	G	DW	G	Southern Magnolia (<i>Magnolia grandiflora</i>) Cultivars 'Bracken's Brown Beauty' and 'Edith Bogue' are the most cold hardy.	30-40	30-40	G	G	
S				Black Hills Spruce (<i>Picea glauca</i> var. <i>densata</i>)	30-40	15-20		F	
S	G	D		Pinyon Pine (<i>Pinus edulis</i>) Slower growing.	10-20	10-15		F	
S	F	D	F	Vanderwolf's Pyramid Limber Pine (<i>Pinus flexilis</i> 'Vanderwolf's Pyramid') Vigorous upright selection of Limber Pine.	30-40	15-30		F	
S	F	D		Austrian Pine (<i>Pinus nigra</i>) Limited use - subject to tip and needle blights as well as pine wilt disease.	40-60	25-40		F	
S	F	D	F	Southwestern White Pine (<i>Pinus strobiformis</i>)	40-60	25-40		F	
SL	G	DW	G	Oriental Arborvitae (<i>Platycladus orientalis</i> or <i>Thuja orientalis</i>) Many ornamental cultivars available.	20-30	20-25			

This publication is coordinated and updated by the Kansas Forest Service. For further information and assistance, or to provide feedback and recommendations to the preferred tree listing please contact:

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Preferred tree lists are available for other areas of the state. Visit us on the web for more information at:
www.kansasforests.org



Kansas Forest Service Community Forestry Districts.

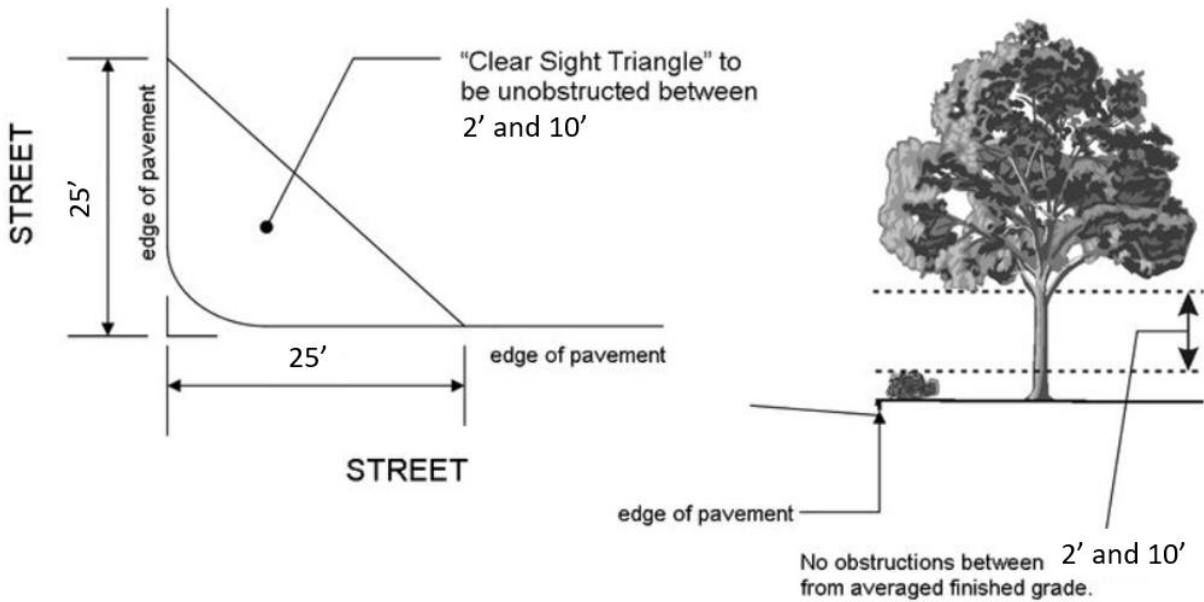


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revised February 2016

18.15 Visibility at Intersections – Sight Triangle

On corner lots at intersecting two-way streets, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two feet and ten feet above curb grade within the triangular area formed by an imaginary line that follows street side property lines, and a line connecting them, 25 feet from their point of intersection. This sight triangle standard may be increased by the City in those instances deemed necessary for promoting traffic safety and may be lessened at intersections involving one-way streets.



Source: Conceptdiagram

ARTICLE XIX - OUTDOOR LIGHTING

19.1. Definitions.

Accent Lighting - Directional lighting which emphasizes a particular object or draws attention to a particular area.

B.U.G. rating - A luminaire classification system that classifies backlight (B), uplight (U) and glare (G). The acronym describes the types of stray light escaping from an outdoor lighting luminaire.

- "B" stands for backlight, or the light directed in back of the mounting pole.
- "U" stands for uplight, or the light directed above the horizontal plane of the luminaire, and
- "G" stands for glare, or the amount of light emitted from the luminaire at angles known to cause glare.

Cutoff - A fixture's light distribution where no more than 2.5% of the fixture's total lumens are emitted at a cutoff angle of 90° or greater. Additionally, no more than 10% of the total fixture lumens may be emitted at a cutoff angle greater than 80°.

Full Cutoff - A fixture's light distribution where no light is emitted above the horizontal.

Light Fixture - A light fixture or luminaire is an electrical device that contains an electric lamp that provides illumination. Light fixture and luminaire may be used interchangeably within this chapter.

Light Pollution - Manmade light that falls outside the area of intended illumination.

Light Trespass - The shining of light produced by a light fixture beyond the boundaries of the property on which it is located.

Lumen - A unit of measure of the intensity of light produce by a lamp (bulb) as indicated by the manufacturer.

Luminaire - A light fixture or luminaire is an electrical device that contains an electric lamp that provides illumination. Light fixture and luminaire may be used interchangeably within this chapter.

Outdoor Lighting - The night-time illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

Shielded - An installed outdoor light fixture that is shielded or constructed with an opaque housing or attachment so that all light emitted is projected below the placement of buildings therein.

19.2 Purpose and Intent.

The regulations for outdoor lighting are intended to:

- 19.2-1 Reduce light pollution;
- 19.2-2 Protect drivers, pedestrians, senior citizens, and the visually impaired from the glare of non-vehicular light sources that can impair safe travel;
- 19.2-3 Minimize urban sky-glow to help protect the scenic view of the night sky.
- 19.2-4 Protect the privacy of property owners by limiting the potential for glare and light trespass onto neighboring properties;
- 19.2-5 Promote efficient and cost-effective lighting; and
- 19.2-6 Allow for flexibility in the style of lighting fixtures.

19.3 Applicability.

The outdoor lighting regulations apply to:

- 19.3-1 All new construction, except agricultural uses.
- 19.3-2 All new outdoor lighting fixture installations, except agricultural uses.
- 19.3-3 All replacement fixtures, in cases of total replacement, except agricultural uses.
- 19.3-4 Outdoor lighting regulations and sign ordinance regulations shall be considered separate and distinct from one another.
- 19.3-5 Areas within the Newton Main Street Historic Districts I & II, and the Historical and Cultural Overlay Districts, shall comply with the Design Guidelines specified for development in those districts.
- 19.3-6 In the case of individual single family residential units and two (2) family, duplex residential units, only the following shall apply:
 - A. All outdoor lighting shall be installed in a manner to minimize or eliminate light trespass and glare on neighboring properties.

19.4 Exemptions.

The following conditions are exempt from these requirements:

- 19.4-1 Street and pedestrian lighting along N. Main Street within the Historic Districts shall be exempted from the regulations in this section.

- 19.4-2 Agricultural uses.
- 19.4-3 Security lights of any wattage that are controlled by a motion-sensor switch and which do not remain on longer than twelve (12) minutes after activation.
- 19.4-4 The temporary use of low wattage or low voltage lighting for public festivals, celebrations, and the observance of holidays are exempt from regulation except where they create a hazard or nuisance from glare. Where possible, lighting should be cutoff.
- 19.4-5 Temporary emergency lighting, used by police, firefighting or medical personnel for as long as the emergency exists.
- 19.4-6 Routine maintenance, including changing the lamp ballast, starter, photo control, fixture housing, lens and other required components.
- 19.4-7 Airport lighting provided the owner or occupant demonstrates that the federal aviation administration (FAA) regulations can only be met through the use of lighting that does not comply with this chapter.
- 19.4-8 Neon lights only as permitted by the sign regulations.
- 19.4-9 Illuminated signs only as permitted by the sign regulations.
- 19.4-10 The outdoor illumination of digital signs, specifically excluding billboards, in compliance with the sign code.
- 19.4-11 Flags. Governmental flags should be taken down at sunset to avoid the need for lighting. If flags remain up overnight, they should be lighted. Up-lighting of governmental flags should have a maximum lumen output of 1,300 lumens with a cone of light directed on the flag itself. Down-lighting of flag poles is encouraged.

19.5 Accent Lighting.

- 19.5-1 Landscape/facade lights. Landscape and facade lighting fixtures shall be selected, located, aimed and shielded so that direct illumination is focused solely on the building façade, plantings, and other intended site feature, and away from adjoining properties and the public street right-of-way. Down-lighting is encouraged.
- 19.5-2 Landscape elements. Accent lighting onto landscaping and foliage may be permitted. All non-cutoff luminaries shall be shielded and directed so that the light distribution is focused toward the functional landscape area being illuminated. All landscape accent fixtures shall be permanently fixed such that they are resistant from tampering or redirection of the light source. Accent lighting shall not be located in such a way as to have the bulb or lamp visible from pedestrian or vehicular egress.

- 19.5-3 Building mounted accent lighting. Accent lighting which is attached to building facades, structures or other architectural elements may be permitted. All non-cutoff luminaires shall be shielded and directed so that the light distribution is focused toward the functional area being illuminated. Fixtures designed to illuminate the vertical building surface, such as sconces, may be permitted provided that the bulb is shielded with an opaque surface that restricts horizontal light emissions.
- 19.5-4 Ground mounted accent lighting. Ground mounted accent lighting for buildings, when so approved, shall be directed onto the building. Direct light emissions shall not be visible above the roof line or beyond the building edge. All upward aimed light shall be fully shielded, fully confined from projecting into the sky by eaves, roofs or overhangs, and all fixtures shall be located as close to the building being illuminated as possible. All ground mounted accent fixtures shall be permanently fixed such that they are resistant from tampering or redirection of the light source. Ground mounted spotlights shall not be located in such a way as to have the bulb or lamp visible from a pedestrian or vehicular egress.
- 19.5-5 Pole mounted accent lighting. Pole mounted accent lighting for a building is not permitted.
- 19.5-6 Pedestrian walkway lighting 42 inches or less in height above the adjacent walkway grade may be permitted. This includes lighting applications such as bollards, light fixtures located in retaining and landscape walls, and lighting fixtures located on or within structures utilized for pedestrian safety, for example, stairwell lighting.
- 19.5-7 Neon and light emitting diode (led) lighting shall be considered accent lighting in this Ordinance and is permitted to accent architectural elements of nonresidential structures as long as it meets the following requirements:
- A. Neon or led lighting shall only be used to accent architectural elements of nonresidential structures.
 - B. Neon or led lighting used to accent architectural elements shall be mounted or affixed to the structure such that the material behind the lamp or tubing is non-reflective.
 - C. Neon or led lighting shall be designed, installed, located, and maintained such that all direct illumination is kept within the boundaries of the fixture owner's property.
 - D. Neon or led used in signs shall be regulated pursuant to the sign ordinance.
 - E. Neon and led accent lighting shall be limited to one linear foot of lighting per linear foot of façade being illuminated and shall not exceed a maximum of 75% of the entire building's linear façade length.

19.5-8 Festoon Lighting. Strands of individual, low-intensity, white or yellow decorative lights used to illuminate the outdoor patio space of bars, restaurants, or other commercial occupancies during their normal business hours. Festoon lighting may also be installed permanently in businesses such as restaurants or other commercial occupancies. The bulbs are generally 15-45 watts and attached to size 12 wires. Depending on the spacing, a support wire may also be required. Festoon wiring must be installed in accordance with the adopted Electrical Code and an electrical permit is required.

- A. Festoon lighting systems shall be designed and operated so that the area twenty feet beyond the property line of the premises receives no more than one-half of a foot-candle of light from the premises lighting system.

19.6 Prohibitions.

19.6-1 The operation of searchlights for advertising purposes is prohibited.

19.6-2 Illumination of attraction devices that flash, blink, fluctuate, or that are animated shall be prohibited

19.7 Applications.

Applications for building permits, commercial site plans or applications for review by the Planning Commission which include the installation of outdoor lighting fixtures for new construction, shall provide evidence of compliance with the requirements of this Ordinance. The submittal shall contain the following information and shall be submitted as part of the site plan to the Administrative Official.

19.7-1 Outdoor lighting plan

- A. Plans indicating the location, type, and height of the luminary including both building and ground mounted fixtures;
- B. A description of the luminary, including lamps, poles or other supports and shielding devices, which may be provided as catalogue illustrations from the manufacturer;
- C. Photometric data, such as that furnished by the manufacturer; and
- D. Any additional information as may be required by the Administrative Official in order to determine compliance with this Ordinance.

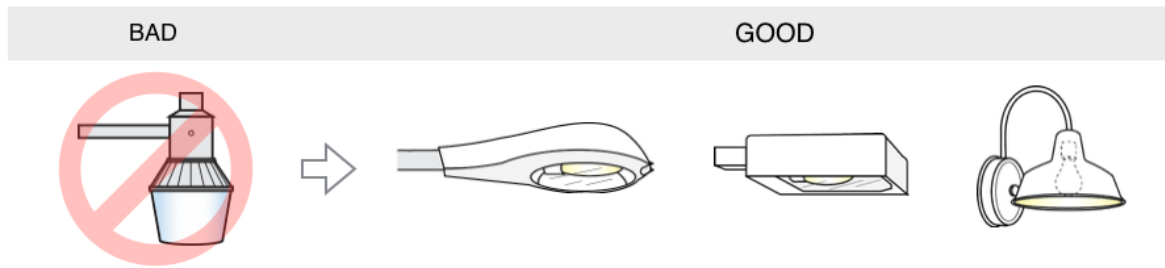
19.8 Standards.

The following standards shall apply to all outdoor lighting installed after the effective date of this Ordinance, unless otherwise exempted above, or as related to individual single family and two (2) family duplex units:

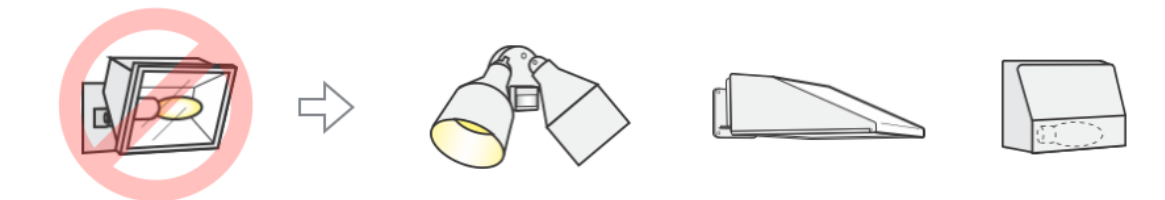
- 19.8-1 Cutoff required. All nonexempt outdoor light fixtures with an initial output greater than or equal to 2,000 lumens shall be full cutoff, as defined by IESNA.
- A. Cutoff exemption. Recreational facilities are exempt from the cutoff requirement above, however, the use of cutoff fixtures is encouraged. The shielding requirement above is applicable to recreational facilities.
- 19.8-2 Installation. All outdoor light fixtures that have cutoff restrictions shall be installed and maintained in such a manner as to be horizontal to the ground so that the cutoff characteristics of the fixture are maintained.
- 19.8-3 Shielding. Beyond the cutoff requirements above, all light fixtures shall be located, aimed or shielded so as to minimize light trespass across property boundaries. Where applicable, all commercial installations shall utilize house side shielding to minimize light trespass on residential properties.
- A. Outdoor lighting shall be hooded, shielded, and aimed downward. Awnings, canopies, roof structures and other opaque surfaces that are designed to shield the direct horizontal surface of the light source and direct light downward toward the building or other opaque surface may also be considered for compliance with this requirement.
- B. The hood or shield shall mask the direct horizontal surface of the light source. The light shall be aimed to ensure that the illumination is only pointing downward onto the ground surface.
- C. Existing fixtures may be adapted to comply with this Ordinance by adding a properly designed hood or shield, or by pointing any upward-mounted, shielded fixture downward onto the ground surface.
- 19.8-4 All outdoor lighting fixtures shall be designed, installed, located and maintained such that all direct illumination is kept within the boundaries of the fixture owner's property.
- 19.8-5 Luminaires shall have a B.U.G. rating associated for backlight, up light, and glare. The B.U.G. acronym describes the amount of light emitted from a street luminaire's housing.
- 19.8-6 All lighting shall be within the 3,000K to 4,000K range of color temperatures for uniformity.
- 19.8-7 All lighting shall be 75-80 CRI minimum on the color rendering index (CRI).

- 19.8-8 This section may be enforced on the basis of a formal complaint filed in with the Administrative Official.
- 19.8-9 Sports field lighting shall be designed in accordance with IENSA standards located in IENSA Rp-6-01 “sports and recreational area lighting”.
- A. Glare control. All outdoor recreational facilities lighting fixtures shall be equipped with a glare control package (louvers, shields, or similar devices). The fixture shall be aimed so that the beams are directed and fall within the primary playing or performance area.
 - B. Hours. All activity and lights shall be turned off one hour after the end of the last event.
- 19.8-10 Canopy structures. Canopy lights, such as service station lighting, shall be fully recessed or fully shielded so as to ensure that no light source is visible from or causes glare on public rights-of-way or adjacent properties.

19.9 Diagrams.



Tip : Make sure the fixture is aligned horizontally and choose the intensity of the lamp wisely.



Tip : A motion detector is ideal to use the light only when needed.



Tip : Choose a light fixture where the lamp is hidden to reduce glare.



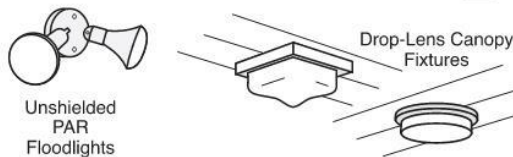
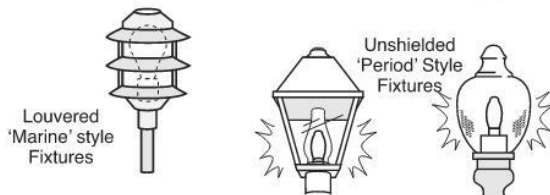
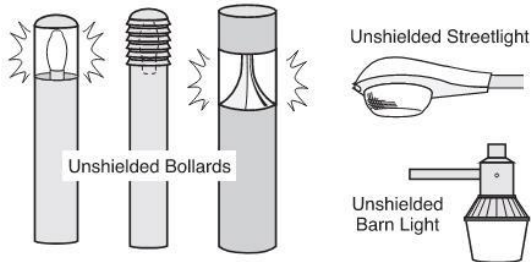
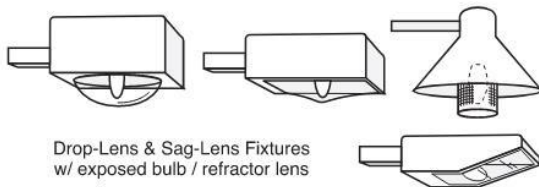
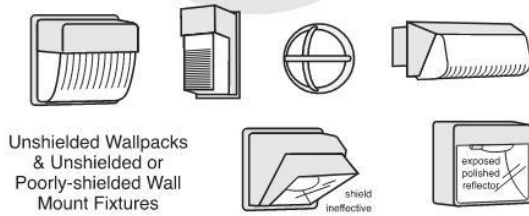
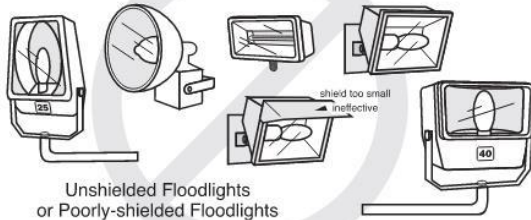
Tip : Yellow light bulbs are an efficient and cheap way to reduce the negative impacts of light at night.

*graphics created by Bob Crelin. Used with permission.

Examples of Acceptable & Unacceptable Lighting Fixtures

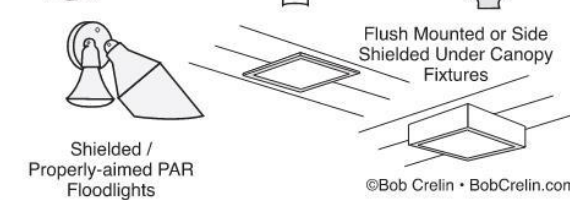
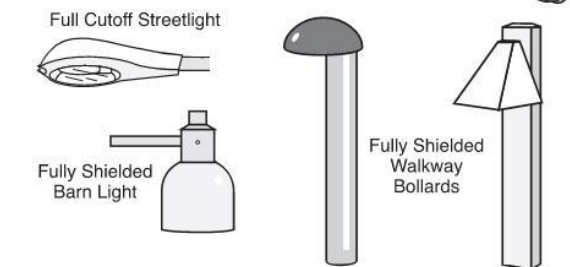
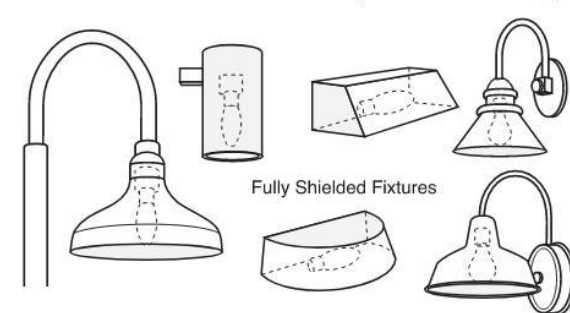
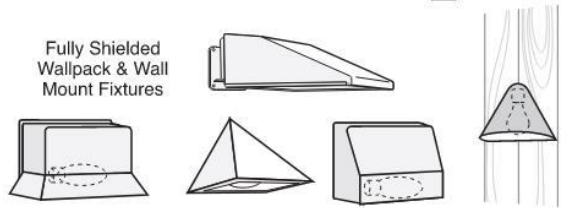
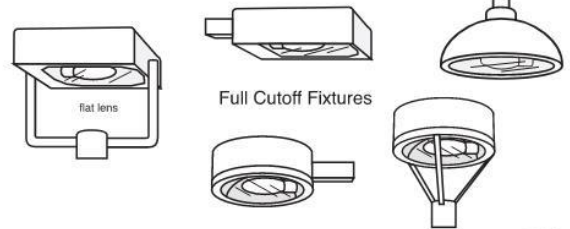
Unacceptable/Not Compliant

Fixtures that produce glare and light trespass



Acceptable/Compliant

Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night



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19.10 Nonconforming Outdoor Light Fixtures.

All nonconforming outdoor light fixtures for which a building permit has been approved or are lawfully installed prior to and operable on the effective date of this chapter are exempt from all outdoor lighting requirements in this section.

19.10-1 Option 1. In the event that an outdoor lighting fixture is abandoned or damaged to the point of requiring repairs for safe operation, the repaired or replacement fixture shall comply with the provisions these regulations.

19.10-2 Option 2. In the event that 25% or less of existing nonconforming outdoor lighting fixtures on a site (including those located on the exterior of any building) are replaced, compliance with this chapter is not required. In the event that 26% or more of the existing nonconforming outdoor lighting fixtures on a site (including those located on the exterior of any building) are replaced, compliance with this chapter is required for all fixtures being replaced.

ARTICLE XX - ADMINISTRATIVE PROVISIONS AND ENFORCEMENT

20.1 Enforcement.

- 20.1-1. Administrative Official: These regulations shall be enforced and administered by the Administrative Official who shall be appointed by the City Manager and who may be provided with the assistance of such other persons as the Commissioners may direct in order to carry out the following duties and responsibilities:
- A. Conduct inspections of structures and uses of land to determine compliance with the provisions of this Ordinance.
 - B. Receive, file, and forward to the Board of Zoning Appeals the records in all appeals and all applications for variances, temporary structure and use permits, and substitution of nonconforming uses.
 - C. Maintain permanent and current records of the Zoning Ordinance including but not limited to all zoning maps, amendments, variances, appeals and applications thereof and records of hearings thereon.
 - D. Prepare and have available in book, pamphlet or map form each year:
 - 1) The compiled text of the Zoning Ordinance and amendments thereto, including all amendments.
 - 2) A zoning map or maps showing the zoning districts, divisions and classifications.
 - E. Maintain a supply of copies of the compiled text of the Zoning Ordinance and the rules of the Board of Zoning Appeals. A fee for each copy shall be charged to defray the cost of printing.
 - F. Provide such clerical, technical and consultative assistance as may be required by the Board of Zoning Appeals and other boards, commissions and officials in the exercise of their duties relating to this Ordinance.
 - G. Whenever the Administrative Official shall find that any of the provisions of this Ordinance have been or are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He may order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings, structures or additions or alterations thereto; discontinuance of any illegal work being done; or take any other appropriate action authorized by this Ordinance to insure compliance with, or to prevent violation of its provisions.

- 20.1-2. Approval of Building Permits. The Administrative Official shall examine all applications for building permits submitted to him by the Building Inspector as provided by the Building Code to insure that the proposed construction and use is in conformance with all the provisions of the Zoning Ordinance. Within ten (10) days after receipt of such application, the Administrative Official shall either approve the same and return the application to the Building Inspector, or shall disapprove the same and return it with his findings and determination of non-compliance.
- 20.1-3. Appeal for Disapproval. Any applicant may appeal the findings and determination of non-compliance to the Board of Zoning Appeals in accordance with Article XVI of this Ordinance.

20.2 Violations.

- 20.2-1. Complaints of Violations. Any person may file a written complaint with the Administrative Official of an alleged violation of this Ordinance stating fully the causes and basis for such violation. The Zoning Administrator shall record such complaint, investigate it and take appropriate action as provided by these Regulations.
- 20.2-2. Penalties. Any person who violates, disobeys, omits, neglects or refuses to comply with or resists the enforcement of any of the provisions of this ordinance shall be guilty of a misdemeanor and shall be punished by a minimum fine of one hundred dollars (\$100), not to exceed five hundred dollars (\$500) for each offense, or imprisonment up to six (6) months. Each and every day that such violation or failure to comply continues to exist after notification shall constitute a separate offense.
- 20.2-3. Remedies. In the event that any building or structure is constructed, reconstructed, relocated or maintained or any building, structure, lot or land is used in violation of any of the provisions of this Ordinance, an appropriate action or proceeding in law or in equity may be instituted to prevent such unlawful development, construction, reconstruction, alteration, relocation, maintenance or use, or to restrain, abate, enjoin or correct such violation, or to prevent the occupancy of such building or structure or unlawful use of such land and to prevent illegal acts, conduct, business or use in and about the premises. These remedies shall be in addition to the penalties prescribed in Section 20.2-2 above.

ARTICLE XXI - RULES AND DEFINITIONS

21.1 Rules.

For the purpose of this Ordinance the following rules shall apply:

21.1-1. Words and numbers used singularly shall include the plural. Words and numbers used plurally shall include the singular. Words used in the present tense shall include the future.

21-1-2. The word "persons" includes a corporation, members of a partnership or other business organization, a committee, board, trustee, receiver, agent or other representative.

21-1-3. The word "shall" is mandatory.

21-1-4. The words "use," "used," "occupy" 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.

21.2 Definitions.

For the purpose of this Ordinance, certain terms or words used herein shall be interpreted or defined as follows, unless the context clearly indicates otherwise.

Accessory Building: A subordinate building or portion of the main building, the use of which customarily is incidental to that of the main building or to the main use of the premises. An accessory building shall become a part of a main building when the structures are substantially joined and of such design and so constructed and joined as to present a uniform architectural effect of one building, all parts of which are accessible to each other within the confines of the walls of the structure. An accessory building shall not be constructed prior to the construction of a primary structure unless the applicant owns an adjacent lot with an existing primary structure, or by Special Use Permit. Accessory buildings shall adhere to all setbacks within the zone they are located.

Accessory Dwelling Unit (ADU): A smaller, independent, single-family, residential dwelling unit located on the same lot as a primary detached single-family home.

Accessory Use: A use of land customarily incidental and subordinate to the use of the principal building on the same lot or tract.

Administrative Official: The person or persons designated by the City Manager to administer the Newton Subdivision and Zoning Code.

Alley: A public thoroughfare which provides only a secondary means of access to abutting property not intended for general traffic circulation, the right-of-way of which is twenty (20) feet or less in width.

a) **OPEN ALLEY:** An existing, paved alley, that is open on both ends of the block.

b) **PRIVATE ALLEY:** A private alleyway, to be maintained by private individuals. Requires a private access easement and maintenance agreement to be filed.

Alterations: As applied to a building or structure, a change or rearrangement in the structural components, or an enlargement, whether by extending on a side or by increasing in height, or the moving of one location or position to another, shall be considered as an alteration.

Ambulatory surgical care facility: Any establishment with an organized medical staff of physicians and permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures, with continuous physician services available on call and registered professional nursing services available on site whenever a patient is in the facility, and which provides services or other accommodations for patients to recover for a period not to exceed twenty-three (23) hours after surgery.

Animal Hospital or Clinic: An establishment where animals are admitted principally for examination, treatment, board or care by a Doctor of Veterinary Medicine.

Applicant: The owner or duly designated representative of land proposed to be subdivided, or for which a special permit, zoning amendment, variance, temporary structure and use permit, substitution of a nonconforming use, building permit or certificate of occupancy has been requested.

Area: A piece of land capable of being described with such definiteness that its location may be established and boundaries definitely ascertained.

Automobile Service Station: Buildings and premises where gasoline, oil, grease, batteries, tires and automotive accessories may be supplied and dispensed at retail; and where, in addition, servicing, repair, and replacement of parts may be done.

Awnings, Canopy and Marquee Sign: See Section 12.2(2).

Basement: That portion of a building which has more than one-half (1/2) of its interior height, measured from floor to finished ceiling, below the average finished grade of the ground adjoining the building.

Bed-and-Breakfast Facility: A residential structure constructed and maintained in the manner and form as a single-family dwelling which is used and held open to the public on a regular basis by the occupants to house and provide limited meal service for overnight guests for hire.

Buffer Area: Open and unobstructed ground area, in addition to any required yards or road widenings around the perimeter of any lot.

Buildable Area: The portion of a lot remaining after required yards have been allocated.

Building: Any structure built for the support, shelter or enclosure of persons, animals, chattels, or movable property of any kind, and including any structure.

Building Height: The vertical dimension measured from the curb level opposite the center of the front of a building, or where no curb level has been established, from the mean elevation of the finished lot grade at the front of the building to the highest point of the underside of the ceiling beams; in the case of a flat roof, to the deck line of a mansard roof; and to the mean level of the underside of the rafters between the eaves and the ridge of a gable, hip or gambrel roof.

Building, Principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Bulk: The size and shape of buildings and their physical relationship to lot lines, setback requirements and other buildings, structures and uses on the same lot and on adjoining lots. Bulk regulations prescribe requirements for lot area, lot area per dwelling unit, lot frontage, width, depth and height of buildings.

Bulk, Nonconforming: That part of a building, structure or use that does not conform to one or more of the applicable bulk regulations herein.

Bulk Regulations: Regulations controlling the size of structures and the relationships of structures and uses to each other and to open areas and lot lines, including regulations controlling maximum height, maximum lot coverage and minimum yards and setbacks.

Campground: Any premises where two or more camping units are parked or placed for camping purposes, or any premises used or set apart for supplying to the public camping spaces, which include any buildings, structures, vehicles or enclosures used or intended for use for the accommodation of transient campers and camping vehicles.

Certificate of Occupancy: A permit issued by the Zoning Administrator after certification that such land, use, structure or building is fit for human occupancy and complies with all of the provisions of the zoning and subdivision regulations and other applicable codes and regulations.

Child Care Center: A day nursery providing care for seven (7) or more children, for part or all day or night away from the home of the parent or guardian; and includes full day child care, nursery schools, play groups, Head Start, and other establishments offering care to groups of children for part or all of the day or night.

City: The City of Newton, Kansas.

Club or Lodge: A nonprofit association or organization formed for either fraternal, social, education, philanthropic or other similar purposes, including unions and professional organizations.

Community hospital facility: Any hospital facility (as herein defined) which (i) provides care and treatment for a broad range of medical conditions of different types, (ii) provides emergency room services, and (iii) provides a substantial amount of services on a free or reduced cost basis for those who do not have adequate insurance or other means to pay the normal charges for such services.

Comprehensive Plan: A plan for the future development of the City and adopted by the Newton Area Planning Commission and City Commission.

Day Care Home: A home in which care is given for less than 24 hours a day to six (6) or fewer children away from their own homes, who are not related to the persons giving care. The number of children includes the family's own preschool children.

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

District: Any area designated on the zoning map for which detailed regulations are established herein pertaining to the uses permitted, the bulk of buildings and structures, and the size of yards and buildable area.

Dormitory: A building on a college or university property in which students attending the college or university reside. A lot on which a dormitory is erected shall contain a minimum of sixty-five hundred (6500) square feet.

Drive-in Establishment: A place of business operated for the sale and purchase at retail of food and other goods, services or entertainment, which is laid out and equipped so as to allow its patrons to be served or accommodated while remaining in their automobiles, or which allows the consumption of any food or beverage in automobiles or on the premises, but outside of any completely enclosed structure.

Dwelling: Any building or portion thereof, other than a mobile home, which is permanently affixed to a foundation imbedded in the soil and used exclusively for residential purposes.

Dwelling, Multiple Family: A building or portion thereof having accommodations for and intended to be used for occupancy by five (5) or more families living independently from one another.

Dwelling, Single Family: A building having accommodations for and occupied exclusively by one (1) family.

Dwelling, Two Family (duplex): A building having accommodations for and intended for use or occupancy by two (2) independent families.

Dwelling, Three Family (triplex): A building having accommodations for and intended for use or occupancy by three (3) independent families.

Dwelling, Four Family (quadplex): A building having accommodations for and intended for use or occupancy by four (4) independent families.

Dwelling Unit: A building, or part thereof, containing complete housekeeping facilities for a single family.

Easement: Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property.

Exceptions: Uses that are not appropriate generally in a particular district without restriction, but which, if controlled as to number, area, location, relation to adjoining properties and other factors can be appropriate. Such uses that may be permitted in particular districts as exceptions are allowed only if expressly provided for herein.

Family: One or more persons related by blood, marriage, or adoption, living together as a single housekeeping unit; or a group of not more than four (4) unrelated persons living together as a single housekeeping unit.

Fence: A free-standing structure of metal, masonry, composition or wood or any composition thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

Final Plat: The map or plan or record of a subdivision, and accompanying documents and materials, as described and defined in the subdivision regulations.

Frontage: That side of a lot abutting on a street and ordinarily regarded as the front of the lot.

Garage, Private: An accessory building designed and used for the storage of not more than four (4) motor-driven vehicles owned and used by the occupants of the building to which is it accessory.

Governing Body: Newton City Commission

Grade: The slope of a road, street or other public way.

Ground Sign: See section 12.2

Projecting Sign: See Section 12.2

Health care facility: Any establishment at which one or more physicians maintain facilities for the purpose of providing on-site medical evaluation and/or medical care or treatment to patients who come to such establishment for such services. The term “health care facility” shall not include a licensed nursing or retirement home facility, but would include any portion of the overall premises of a nursing or retirement home facility which portion is provided for use by one or more physicians as a medical clinic outside of the licensure of the nursing or retirement home facility.

Home Occupation: A profession or other occupation not otherwise permitted in the district, which is conducted as an accessory use on a residential lot by one (1) or more members of the family residing on the premises and which conforms to the requirements established in Section 3.2-3.

Hospital: An establishment used primarily for inpatient care and provides health, medical and surgical care of the sick or injured.

Hospital facility: Any institution, place, building or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted for overnight stay or longer in order to obtain medical evaluation, medical care, surgical care, obstetrical care, or acute nursing care for illness, disease, injury, infirmity or deformity. The term “hospital facility” also includes (i) all places where pregnant females are admitted and receive care incident to pregnancy or delivery regardless of the number of patients received or the duration of their stay, and (ii) general medical surgical hospitals, specialized hospitals, critical access and emergency hospitals, and birthing centers.

Hotel or Motel: A building or portion thereof, or group of buildings which has living and sleeping accommodations for hire for ten (10) or more persons, which is open for year-round occupancy, whether designated as hotel, motel, inn, automobile court, motor lodge, motor court, tourist cabin or other similar designation.

Incompatible Use: A use which is unsuitable for direct association with certain other uses because it is contradictory, incongruous, or discordant.

Institution (Nonprofit): A building occupied by a nonprofit corporation or a nonprofit establishment for public use.

Board of Zoning Appeals: The Board established in accordance with K.S.A. 12- 759 et. seq. and with the powers and authority therein granted.

Junk Yard (Salvage yard): An area of land with or without buildings, used or occupied by a deposit, collection or storage, outside a completely enclosed building or used for discarded materials; used building materials, house furnishings, machinery, vehicles or parts thereof whether with or without the dismantling, processing, salvage, sale or other use or disposition of same.

Kennel: Any premise, except a veterinary hospital, where there is being harbored either a total of more than two (2) dogs over the age of six (6) months, or a total of more than three (3) dogs over the age of six (6) months if at least one (1) such dog is specially trained and certified to perform functions and duties for a public safety agency or to assist disabled persons and if such certification is on file with the City Clerk.

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

Light Assembly Operations: Those businesses that assemble products which would be legal for sale within the C-3 district.

Loading Space: Space logically and conveniently located for building pickups and deliveries and accessible to delivery vehicles when required off-street-parking spaces are filled.

Local Road: A road intended to provide access to other roads from individual properties.

Lodging House (including Boarding, Rooming, Fraternity and Sorority Houses): In a residential building, or portion thereof, other than a motel, apartment hotel, or hotel, as containing lodging rooms which accommodate persons, not exceeding 20 in number, who are not members of the keeper's family. An establishment where meals are served for compensation for more than 20 people shall be deemed a restaurant.

Lodging Room (Rooming Unit): A room rented as sleeping and living quarters, but without cooking facilities and with or without an individual bathroom. In a suite of rooms without cooking facilities, each room which provides sleeping accommodations will be counted as one "lodging room" for the purposes of this ordinance.

Lot: A portion of a subdivision intended as unit for the purpose, whether immediate or future, of transfer of ownership or building development or use. The area bounded by the front, side and rear lot lines.

Lot, Corner: A lot situated at the intersection of two (2) streets.

Lot, Depth: The distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and in the rear of the lot.

Lot Improvement: Any building, structure, or other object or improvement of the land on which they are situated constituting a physical betterment of real property.

Lot Interior: A lot other than a corner lot, having a single frontage on a street.

Lot Line, Front: A street right-of-way line forming the boundary of a lot.

Lot Line, Side: A lot line which is neither a front or rear lot line.

Lot of Record: A lot which is part of a subdivision, the plat of which has been recorded in the Office of the Register of Deeds or a parcel of land, the deed to which was recorded prior to adoption of these Regulations.

Lot Width: The distance between straight lines connecting front and rear lot lines at each side of the lot measured across the rear of the required front yard.

Major Recreational Equipment: Boats and boat trailers, travel trailers, pickup campers or coaches, designed to be mounted on automotive vehicles, motorized dwellings, tent trailers and the like and recreational vehicles.

Manufacture: Any method of processing, developing, fabricating, assembling, either raw materials, semi-finished materials or parts into a semi-finished or finished product.

Medical, Dental or Health Clinic: Any building designed for use by one or more persons lawfully engaged in the diagnosis, care and treatment of physical or mental diseases or ailments of human beings; including, but not limited to, doctors of medicine, dentists, chiropractors, osteopaths, optometrists and podiatrists; and in which no patients are lodged overnight.

Mobile Home Dwelling: Any vehicle, trailer or similar portable structure, mounted or designed for mounting on wheels, used or intended for use for single-family dwelling purposes only, including structural additions, except parked or unoccupied camping-type trailers. Any such vehicle, trailer or structure shall be deemed to be a mobile home whether or not resting upon a temporary or permanent foundation.

Mobile Home Site: A plot of ground designed for accommodation of a single mobile home dwelling.

Mobile Home Park: An area of land upon which two (2) or more mobile home dwellings are parked and connected to utilities or which is held out or used for the purposes of supplying to the public, parking spaces for two (2) or more mobile homes, and shall include all buildings, structures, land uses and equipment utilized in connection with such park.

Nonconforming Lot of Record: An unimproved lot which does not comply with the lot size requirements for any permitted use in the district in which it is located.

Nonconforming Structure: A structure which does not comply with the lot size requirements or bulk regulations applicable to new structures in the zoning district in which it is located.

Nursing Homes: An establishment or agency licensed by the State of Kansas for the reception, board, care or treatment of three (3) or more unrelated elderly individuals.

Parking Garage: A building used for the storage of motor vehicles which contains space rented to the general public.

Parking Lot: Any surfaced area used for the storage of motor vehicles by employees or the general public.

Parking Space: A surfaced area, enclosed in the main building or in an accessory building, or unenclosed, exclusively of driveways, permanently reserved for the temporary storage of one automobile and connected with a street or alley by a surfaced driveway which affords satisfactory ingress or egress for automobiles.

Planned Development: District allowing flexible development of certain tracts of land, when planned and designed as a unit for one or more land uses under the provisions of these regulations.

Planning Commission: The Newton Area Planning Commission as established in K.S.A. 12-744, et. seq.

Platting: Whenever the term platting, platted or subdivided is used in this Zoning Ordinance, it shall refer to the process established by the duly adopted Subdivision Regulations by the Newton Planning Commission.

Pole Sign: See Section 12.2.

Portable Sign: See Section 12.2.

Preliminary Plat: The preliminary drawings and information which indicate the proposed layout of a subdivision, as described and defined in the subdivision regulations.

Projecting Sign: See Section 12.2.

Professional Office: Any building or part thereof used by one (1) or more persons engaged in the practice of law, accounting, architecture, engineering or other occupation customarily considered as a profession.

Public Improvement: Any drainage facility, roadway, street, sidewalk, sewer or water facility or other improvement for which the government body may ultimately assume the responsibility of maintenance and operation.

Public Utility: Any business which furnishes to the general public (a) telephone service, telegraph service, (c) electricity, (d) natural gas, (e) water, (f) sewer and (g) other services so affecting the general public interest as to be subject to the supervision or regulation of a State agency.

Railroad Right-of-Way: A strip of land with tracks and auxiliary facilities for track operation, but not including freight depots or stations, loading platforms, train sheds, warehouses or car yards.

Recreation Vehicle: See Major Recreational Equipment.

Remodeling: Any change in a structure (other than incidental repairs and normal maintenance) which may prolong its useful life; or the construction of any addition to, or enlargement of, a structure; or the removal of any portion of a structure.

Residence: See Dwelling Unit.

Restaurant: A public eating establishment at which the primary function is the preparation and serving of food.

Right-of-Way: A strip of land occupied or intended to be occupied by a street, road, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for other similar use.

School: A public elementary or secondary educational facility which is under direction and control of the State Board of Education and the State Superintendent of Public Instruction and/or a parochial elementary or secondary educational facility which offers the same general curriculum as that provided by a comparable public educational facility.

Screening: Decorative fencing or dense vegetation maintained for the purpose of concealing certain structures or uses from view.

Service Station: An establishment consisting of a building or group of buildings and surfaced area where automotive vehicles may be refueled and serviced; such service shall not include tire recapping, body repairs or major overhaul.

Setback: The distance between any lot line and the foundation of the principal building and accessory buildings on the lot.

Sign: See Section 12.2.

Sketch Plat: A sketch preparatory to preparation of the preliminary plat to enable a subdivider to reach general agreement with the Planning Commission at the earliest possible time.

Special Exception: See Exceptions.

Storage Garage: A building, or portion thereof, designed and used exclusively for housing motor driven vehicles, recreational vehicles, boats, trailers, and camper tops and all related accessories.

Street: A right-of-way dedicated to the public use which provides vehicular and pedestrian access to adjacent properties.

Structure: Anything constructed or erected above or below ground, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.

Structural Alterations: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any complete rebuilding of the roof or the exterior walls. For the purpose of this ordinance, the following shall not be considered structural alterations.

- 1) Attachments of a new front where structural supports are not changed.
- 2) Addition of fire escapes where structural supports are not changed.
- 3) New windows where lintels and support walls are not materially changed.
- 4) Minor repair or replacement of nonstructural members.

Subdivision: Any land, vacant or improved, which is created into one lot or which is divided or proposed to be divided into two (2) or more lots for the purpose of offer, sale, lease or development.

Tavern: An establishment in which the primary function is the public sale and serving of malt beverages.

Temporary Use: A use permitted in a zoning district subject to a specific time limit.

Tiny Home: A single-family dwelling unit with a maximum of 400 sq ft of floor area, excluding lofts that shall comply with regulations found in IRC 2018, Appendix Q.

Townhome: Two (2) or more single or multi-story dwelling units attached at the side or sides. Each unit is located on an individual lot, has a separate outdoor entrance, and is designed to be occupied and owned by one family.

Tract: A plot or parcel of land, other than a lot, in a subdivision which has been recorded prior to November 25, 1977, in the office of the Register of Deeds of Harvey County as a single plot or parcel of land under individual ownership.

Trailer: A vehicle standing on wheels or on rigid supports which is used for transporting boats, cargo or property.

Usable Open Space: That part of the ground area of a lot or development devoted to outdoor recreational space, but excluding private or public roadways, accessory off-street parking and loading and other uses and structures.

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

Use Regulations: Regulations identifying permitted and exceptional uses, accessory uses, use limitations and use conditions.

Variance: A relaxation of the literal terms of the zoning regulations where applicable to avoid undue hardship to a property owner and where the public interest will be served.

Wall Sign: See Section 12.2.

Warehouse: A structure or room for the storage of merchandise commodities, household goods and personal property.

Yard: Open space on a lot which is unoccupied and unobstructed from the ground to the sky, except for permitted obstructions.

Yard, Front: A yard extending along the full length of the front lot line from said line to a line drawn parallel to it equal to the depth of the required front yard. On corner lots, the Zoning Administrator shall determine the front yard requirement subject to the limitation that at least one front yard shall have the required front yard depth and the other shall have no less than fifteen (15) feet.

Yard, Rear: A yard extending across the full width of the lot, the depth of which is the least distance between the rear lot line and the rear setback line, except for three and five sided lots, in which the following shall apply: A yard extending across the full width of the lot between the rear of the principle building and the rear lot line which contains at least 1625 square feet, with no part of the principle building lying within fifteen (15) feet of any rear lot line.

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

Zone: See District.

Zoning Regulations: The official Zoning Regulations of the City of Newton together with all amendments thereto.