

## CHAPTER 5. BUILDING AND CONSTRUCTION

- Article 1. Building Codes Adopted by Reference; Fees; Board of Code Appeals**
- Article 2. Permits, Applications and Procedures**
- Article 3. Architectural Standards for All Structures**
- Article 4. Solar and Other Alternative Energy Systems**
- Article 5. Minimum Standards for Property**
- Article 6. Clearing and Cleaning of Streets During and After Construction**
- Article 7. Use and Excavation of the Public Right-of-way**
- Article 8. Penalty**

### ARTICLE 1. BUILDING CODES ADOPTED BY REFERENCE; FEES; BOARD OF CODE APPEALS

**5-101. APPLICABLE CODES.** The following codes are adopted for the purpose of regulating building and construction practices and to provide for the public health, safety and welfare of the citizens of Westwood Hills, Kansas:

- a. The 2003 Edition of the International Building Code (the "IBC").
- b. The 2002 Edition of the National Electrical Code (the "NEC").
- c. The 2003 Edition of the International Residential Code for One- and Two-Family Dwellings (the "Residential Code").
- d. The 2003 Edition of the International Mechanical Code (the "IMC").
- e. The 2003 Edition of the International Fire Code (the "IFC").
- f. The 2003 Edition of the International Plumbing Code (the "IPC").
- g. The 2003 Edition of the International Fuel Gas Code (the "Fuel Gas Code").

No fewer than three copies of each adopted code shall be marked or stamped "Official Copy " with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change, and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. One such copy, however, may be on a CD-ROM or in another electronic form, provided that any changes or amendments are attached to or recorded in such electronic format so as to be readily understood. The police department, municipal judge and all administrative departments of the City charged with enforcement of the ordinance shall be supplied, at the cost of the City, such number of official copies of each adopted code similarly marked, as may be deemed expedient. The Edition of each code may be modified so as to adopt subsequent editions of the same by amending this Section of Chapter 5, Article 1.

**5-102. INCORPORATING THE INTERNATIONAL BUILDING CODE.** The IBC is hereby incorporated by reference, excluding all Appendices, as published by the International Code Council, Inc., save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed.

**5-103. REVISED, AMENDED, OR DELETED SECTIONS OF THE INTERNATIONAL BUILDING CODE.** The following sections of the IBC shall be revised, amended, or deleted:

- a. Section 101.1 shall be amended to read "These regulations shall be known as the Building Code of the City of Westwood Hills, Kansas."
- b. The "Exception" section of Section 101.2 shall be amended to read : "Exception: Detached one- and two-family dwellings and their accessory structures shall comply with the International Residential Code as amended."
- c. Section 101.4.1 shall be amended to read: "The provisions of the National Electrical Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto."
- d. Section 105.1.3 of the 2003 International Building Code is hereby added to read as follows:

"105.1.3 License Required. Effective January 1, 2007, all persons undertaking electrical or plumbing work which requires a permit as provided in any of the Codes adopted in Section 5-101 hereof, or seeking to obtain a permit from the City for such work, are required to have a currently valid license to perform such work or otherwise demonstrate to the Building Official that they are competent to perform such work.
- e. Section 105.2 entitled "Work exempt from permit," shall be revised and amended to delete the exemptions from the permit requirement numbered 1 through 13 under the sub-category "Building." The requirement for a permit is further set forth in Sections 5-201 through 5-205 of the Westwood Hills Municipal Code.
- f. Section 105.3.2, entitled "Time limitation of application," shall be amended to read as follows: "An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the Building Official is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each after consultation with the Planning Commission Chairman. The extension or extensions shall be requested in writing and justifiable cause demonstrated."
- g. Section 108.3, entitled "Building permit valuations," shall be amended to add the following sentence at the end of said provision: "Alternatively, building permit fees may be set and established administratively by the City according to the schedule as established by the City and as amended."
- h. Section 113.4, entitled "Violation penalties," shall be amended to add the following at the end of said provision:

In addition to any administrative remedies or other legal or equitable remedies provided, any Persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500, or be imprisoned not to exceed six months, or be both so fined and imprisoned. Each Person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the City ordinances is committed, continued or permitted by any such Person.

- i. Section 1612.3, entitled "Establishment of flood hazard area," shall be deleted, and in lieu thereof, shall be inserted the following: "To establish flood hazard areas, the City of Westwood Hills may adopt a flood hazard map and supporting data. If and when the City undertakes such a task, such shall comply with the requirements of Section 1612.3 and shall be incorporated into the City's code requirements."
- j. Section 3410.2, entitled "Applicability," shall be amended so that the first sentence thereof shall read: "Structures existing prior to the date of adoption of this code, in which there is work involving additions, alterations or changes of occupancy, shall be made to conform to the requirements of this section or the provisions of Sections 3403 through 3407."

**5-104. INCORPORATING THE INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS.** The Residential Code is hereby incorporated by reference (excluding Appendix Chapters F, H, and I but including Appendix Chapters A, B, C, D, E, G, J, and K) as published by the International Code Council, Inc., save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed.

**5-105. REVISED, AMENDED, OR DELETED SECTIONS OF THE INTERNATIONAL RESIDENTIAL CODE FOR ONE-AND TWO-FAMILY DWELLINGS.** The following sections of the Residential Code shall be revised, amended, or deleted:

- a. Section R101.1, entitled "Title," shall be amended to read: "These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the City of Westwood Hills, Kansas, and shall be cited as such and will be referred to herein as 'this code.'"
- b. Section R105.2, entitled "Work exempt from permit," shall be revised and amended to delete the exemptions numbered 1. through 9. under the sub-category "Building" from the permit requirement. The following categories of work do not require permits:
  - 1. Sidewalks and driveways, not located in the public right-of-way, repaired in-kind.
  - 2. Painting, papering, tiling, carpeting, installation of wood flooring, cabinets, countertops and similar finish work.

The requirement for a permit is further set forth in Article 2 of this Chapter 5.

- c. Section R108.3, entitled "Building permit valuations," shall be amended to add the following sentence at the end of said provision: "Alternatively, building permit fees may be set and established administratively by the City according to the schedule as established by the City and as amended."
- d. Section R113.4, entitled "Violation penalties," shall be amended to add the following at the end of said provision:

In addition to any administrative remedies or other legal or equitable remedies provided, any Persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500, or be imprisoned not to exceed six

months or be both so fined and imprisoned. Each Person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the City ordinances is committed, continued or permitted by any such Person.

- e. Section R201.3, entitled "Terms defined in other codes," shall be amended to read as follows: "Where terms are not defined in this code and are defined in the 2002 National Electrical Code, International Building Code, International Fire Code, the International Fuel Gas Code, the International Plumbing Code, or the International Mechanical Code, such terms shall have meanings ascribed to them as in those codes."
- f. The second sentence of Section 301.2, entitled "Climatic and geographic design criteria," shall be amended to read as follows: "The criteria herein shall be administratively established by the Building Official and inserted herein."
- g. Section R305.1, entitled "Minimum height," shall be amended to amend only the first sentence thereof to read as follows: "Habitable rooms, hallways, corridors, bathrooms, toilet rooms, laundry rooms and basements shall have a ceiling height of not less than 6 feet 8 inches." Also, the subparagraph of Section R305.1, entitled "Exception 3," shall be amended to read as follows: "Not more than 50% of the required floor area of a room or space is permitted to have a sloped ceiling less than 6 feet, 8 inches in height with no portion of the required floor area less than 5 feet in height."

**5-106. INCORPORATING THE INTERNATIONAL MECHANICAL CODE.** The IMC is hereby incorporated by reference, including Appendix Chapter A, but excluding Appendix Chapter B, as published by the International Code Council, Inc., save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed.

**5-107. REVISED, AMENDED, OR DELETED SECTIONS OF THE INTERNATIONAL MECHANICAL CODE.** The following sections of the International Mechanical Code shall be revised, amended, or deleted:

- a. Section 101.1, entitled "Title," shall be amended to read: "These regulations shall be known as the Mechanical Code of the City of Westwood Hills, Kansas, hereinafter referred to as 'this code.'"
- b. Section 106.5.2, entitled "Fee schedule," shall be amended to read as follows: "The fees for mechanical work and the permits therefor shall be set and established administratively by the City according to the schedule as established by the City and as amended."
- c. Section 106.5.3, entitled "Fee refunds," shall be amended to read as follows: "The Building Official is authorized to establish a refund policy with the concurrence of the City."
- d. Section 108.4, entitled "Violation penalties," shall be amended to read as follows:

Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof, or who shall erect, install, alter, or repair mechanical

work in violation of the approved construction documents or directive of the Building Official or of a permit or certificate issued under the provisions of this code, shall be guilty of a violation of this code. In addition to any administrative remedies or other legal or equitable remedies provided, any Persons violating the provisions of this code, upon conviction thereof, shall be fined in a sum not to exceed \$500, or shall be imprisoned not to exceed six months, or be both so fined and imprisoned. Each Person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the City ordinances is committed, continued or permitted by any such Person.

- e. Section 108.5, entitled "Stop work orders," shall be amended so that the final sentence thereof shall read: "Any Person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that Person is directed to perform to remove a violation or unsafe condition, shall be guilty of a violation of this code and punished in accordance herewith."
- f. Section 201.3, entitled "Terms defined in other codes," shall be amended to read as follows: "Where terms are not defined in this code and are used in the International Building Code, the National Electrical Code, the International Fire Code, the International Fuel Gas Code, or the International Plumbing Code, such terms shall have meanings ascribed to them as in those codes."

**5-108. INCORPORATING THE INTERNATIONAL FIRE CODE.** The IFC is hereby incorporated by reference, excluding all Appendix Chapters, as published by the International Code Council, Inc., save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed.

**5-109. REVISED, AMENDED, OR DELETED SECTIONS OF THE INTERNATIONAL FIRE CODE.** The following sections of the International Fire Code 2003 Edition shall be revised, amended, or deleted:

- a. Section 101.1, entitled "Title," shall be amended to read as follows: "These regulations shall be known as the International Fire Code of the City of Westwood Hills, Kansas, hereinafter referred to as "this code.""
- b. Section 105.1, entitled "Permits required," shall be amended to add a final sentence as follows: "The fees for this code and the permits therefor shall be set and established administratively by the City according to the schedule as established by the City and as amended."
- c. Section 109.3, entitled "Violation penalties," shall be amended to add the following:

In addition to any administrative remedies or other legal or equitable remedies provided, any Persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500, or be imprisoned not to exceed six months, or be both so fined and imprisoned. Each Person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the City ordinances is committed, continued or permitted by any such Person.
- d. Section 111.4, entitled "Failure to comply," shall be amended to read as follows:

"Any Person who shall continue any work after having been served with a stop work order, except such work as that Person is directed to perform to remove a violation or unsafe condition, shall be guilty of a violation of this code and punished in accordance herewith."

- e. Section 201.3, entitled "Terms defined in other codes," shall be amended to read as follows: "Where terms are not defined in this code and are defined in the National Electrical Code, International Building Code, the International Fuel Gas Code, International Mechanical Code, or International Plumbing Code, such terms shall have meanings ascribed to them as in those codes."
- f. Section 3406.2.4.4., entitled "Locations where above-ground tanks are prohibited," shall be amended to read: "The storage of Class I and II liquids in above-ground tanks is prohibited everywhere in the City."

**5-110. INCORPORATING THE INTERNATIONAL PLUMBING CODE.** The IPC is hereby incorporated by reference, excluding all Appendix Chapters, as published by the International Code Council, Inc., save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed.

**5-111. REVISED, AMENDED, OR DELETED SECTIONS OF THE INTERNATIONAL PLUMBING CODE.** The following sections of the IPC shall be revised, amended, or deleted:

- a. Section 101.1, entitled "Title," shall be amended to read: "These regulations shall be known as the International Plumbing Code of the City of Westwood Hills, Kansas, hereinafter referred to as "this code.""
- b. Section 106.6.2., entitled "Fee schedule," shall be amended to read as follows: "The fees for all plumbing work and the permits therefor shall be set and established administratively by the City according to the schedule as established by the City and as amended."
- c. Section 106.6.3., entitled "Fee refunds," shall be amended to read as follows: "The Building Official is authorized to establish a refund policy with the concurrence of the City."
- d. Section 108.4, entitled "Violation penalties," shall be amended to read as follows:

Any Person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, or repair plumbing work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a violation of this code. In addition to any administrative remedies or other legal or equitable remedies provided, any Persons violating the provisions of this code shall, upon conviction thereof, be fined in a sum not to exceed \$500, or be imprisoned not to exceed six months, or be both so fined and imprisoned. Each Person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the City ordinances is committed, continued or permitted by any such Person.

- e. Section 108.5, entitled "Stop work orders," shall be amended so that the final

sentence thereof shall read: "Any Person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that Person is directed to perform to remove a violation or unsafe condition, shall be guilty of a violation of this code and punished in accordance herewith."

- f. Section 201.3, entitled "Terms defined in other codes," shall be amended to read as follows: "Where terms are not defined in this code and are defined in the National Electrical Code, International Building Code, International Fire Code, the International Fuel Gas Code, or the International Mechanical Code, such terms shall have meanings ascribed to them as in those codes."
- g. Section 305.6. 1., entitled "Sewer depth," shall be amended to read as follows: "Building sewers shall be constructed only in accordance with the requirements of Johnson County Wastewater."
- h. Section 904.1, entitled "Roof extension," shall be amended to read as follows:

All open vent pipes that extend through a roof shall terminate at a point no less than 18 inches above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extension shall be run at least 7 feet (2134 mm) above the roof.

**5-112. INCORPORATING THE INTERNATIONAL FUEL GAS CODE.** The Fuel Gas Code is hereby incorporated by reference, including Appendix Chapters A, B, and C, but excluding Appendix D, as published by the International Code Council, Inc., save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed.

**5-113. REVISED, AMENDED, OR DELETED SECTIONS OF THE INTERNATIONAL FUEL GAS CODE.** The following sections of the IFC shall be revised, amended, or deleted:

- a. Section 101.1, entitled "Title," shall be amended to read: "These regulations shall be known as the International Fuel Gas Code of the City of Westwood Hills, Kansas, hereinafter referred to as "this code.""
- b. Section 106.5.2, entitled "Fee schedule," shall be amended to read as follows: "The fees for all work pursuant to this code and the permits therefor shall be set and established administratively by the City according to the schedule as established by the City and as amended."
- c. Section 106.5.3, entitled "Fee refunds," shall be amended to read as follows: "The Building Official is authorized to establish a refund policy with the concurrence of the City."
- d. Section 108.4, entitled "Violation penalties," shall be amended to read as follows:

Any Person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, or repair work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a violation of this code. In addition to any administrative remedies or other legal or equitable remedies provided, any Persons violating the provisions of this code,

upon conviction thereof, shall be fined in a sum not to exceed \$500, or shall be imprisoned not to exceed six months, or be both so fined and imprisoned. Each Person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the City ordinances is committed, continued or permitted by any such Person.

- e. Section 108.5 entitled "Stop work orders," shall be amended so that the final sentence thereof shall read: "Any Person who shall continue any work 'in or about the structure after having been served with a stop work order, except such work as that Person is directed to perform to remove a violation or unsafe condition, shall be guilty of a violation of this code and punished in accordance herewith."
- f. Section 201.3, entitled "Terms defined in other codes," shall be amended to read as follows: "Where terms are not defined in this code and are defined in the National Electrical Code, International Building Code, International Fire Code, International Mechanical Code, or International Plumbing Code, such terms shall have meanings ascribed to them as in those codes."

**5-114. INCORPORATING THE NATIONAL ELECTRICAL CODE.** The NEC is hereby incorporated by reference, including all Appendix Chapters A, B, C, D, and E, as published by the National Fire Protection Association, Inc., save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed.

**5-115. DELETING REFERENCES TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE.** Wherever reference is made to the International Property Maintenance Code in any of the aforementioned codes, there shall be substituted therein "all property maintenance codes of the City of Westwood Hills, Kansas."

**5-116. PROVISIONS CONCERNING MOVING OF STRUCTURES**

- a. Moving buildings - moving permits. No person shall move any building or structure having a floor area of 200 or more square feet, upon, across, or over any highway, street, alley, or sidewalk in the City without first obtaining a permit to do so, issued by the Building Official.
- b. Moving permit applications. All applications for permits to move buildings or other structures described in Section 5-116 shall be made to the Building Official, and such application shall state and be in compliance with the following procedures prior to issuance of the permit:
  - 1. The dimensions of the building or structure as to length, height at its highest point when loaded for moving, and width;
  - 2. The definite description of the building or structure proposed to be moved giving street number, construction materials, dimensions in square feet, number of rooms and condition of exterior and interior;
  - 3. The plot plan to scale with legal description of the lot from which the building is to be moved, giving the lot number, block number and subdivision, if located within the City;



4. The plot plan to scale with the legal description of the lot to which it is proposed such building be moved, giving the lot number, block number and subdivision, if located within the City;
5. Provide evidence that all utilities have been disconnected;
6. The day and hour when the moving is to commence and length of time of the move. In no event will a moving be allowed on a Saturday or Sunday or a holiday unless specifically allowed by the Building Official;
7. The highways, streets, alleys or sidewalks over, along, or across which the building or structure is proposed to be moved;
8. The application shall be made not less than 14 calendar days prior to the commencement of the moving and shall be accompanied by a fee as established by resolution of the Governing Body;
9. The application must include copies of any written notice that have been given by the applicant to the owners of adjacent lots and to the owners of wired or other facilities, whenever such building moving will affect the public utilities located within the City limits, should a permit be granted for the removal of building or structure;
10. The applicant for the building or structure to be moved shall file with the application sufficient evidence that the building or structure and lot from or to which it is to be moved are free of any entanglements and that all taxes and any City charges against the owner are paid in full.

The applicant shall file with the City a certificate of insurance, demonstrating evidence of satisfactory Commercial General Liability and Automobile Liability insurance. No permit shall be issued until such evidence is filed.

Policies of insurance must contain the following limits of protection and conditions:

- (a) Commercial General Liability including Products/Completed Operations and Independent Contractors protection:
  - Bodily Injury: each occurrence \$250,000  
aggregate \$500,000
  - Property Damage: each occurrence \$250,000  
aggregate \$250,000
  - Or
  - Bodily Injury and Property Damage, Combined Single Limit:  
each occurrence \$500,000  
aggregate \$500,000
- (b) Commercial Automobile Liability - including Hired and Non-Owned:
  - Bodily Injury: each person \$250,000  
each occurrence \$500,000
  - Property Damage: each occurrence \$250,000
  - Or
  - Bodily Injury and Property Damage, Combined Single Limit:  
each occurrence \$500,000

The City will only accept coverage from an insurance carrier meeting these criteria:

- (1) Is licensed to do business in the state of Kansas; and
- (2) Carries a Best's policyholder and financial rating of B+ or better; and
- (3) Is a company mutually agreed upon by the City and the applicant.

The City shall be notified by the insurance carrier in writing not less than 30 days prior to cancellation or material modification of any policy provisions

11. The applicant, if other than the owner, shall file with the application a written statement or bill of sale signed by the owner, or other sufficient evidence, that he is entitled to move the building or structure;

12. The applicant shall file with the application written permission from the private property owner to trim any trees on private property necessary to provide clearance for movement of the building or structure.

13. The applicant shall file with the application written permission from the Building Official and adjacent contiguous private property owners to trim trees in the public right of way necessary to provide clearance for movement of the building or structure.

c. Bond required. It shall be the duty of any person at the time of making application for a permit as provided in Section 5-116 to execute in favor of this City a good and sufficient bond to the City in the sum of \$5,000, with good and sufficient security, conditioned, among other things, that the principal shall pay any and all damages which may be caused to any property, public or private, within the City when such injury or damage shall be inflicted by the principal or his agent, servant, employee, workman, contractor, or subcontractor, and such bond shall be conditioned also that the principal will save, indemnify, and protect the City from any and all liability, and that he will, in all respects, comply with all ordinances of the City and comply with the terms of his permit, and such bond shall be conditional upon his faithful performance of the move. The form of such bond must be approved by the City Attorney.

d. Conditions of the permit. In addition to other provisions of the code, the permit holder shall be responsible for compliance with the following:

1. Move a building or structure only over streets approved by the service providers engaged by the City and acting in the capacity of the Director of Public Works and the Chief of Police and designated for such use in the written application.

2. Notify the Building Official within 48 hours of move in writing of a desired change in moving date and hour and route of move as proposed in the application. Such change must be approved by the Building Official.

3. Notify the Building Official in writing of any and all damages done to property belonging to the public and private property within 24 hours after the damage or injury has occurred.

4. It shall be the duty of any persons moving any building or structure to display red lanterns or other warning devices used in compliance with City traffic ordinances or state statutes on such building or structure in such a manner as to show the extreme height and width thereof from 30 minutes after sunset to 30 minutes before sunrise. Any such move shall have sufficient escort as provided by City ordinance, state statutes, or as determined as necessary for the public safety by the Chief of Police.

5. No building or structure or any part of any building or structure being moved shall be left in the parkway, street, or on the dedicated right-of-way line between the curb and the front property line of any lot.

6. Remove all rubbish and materials and fill in excavations to existing grade at the original building or structure site so that the premises are left in a safe and sanitary condition within 30 days from the date of the move or obtain a separate permit covering demolition of the site prior to issuance of the moving permit.

**5-117. FEES.** Notwithstanding any provision to the contrary, a fee or fees shall be charged for any permit under any of the codes herein and shall be subject to the following: "The fees for all work pursuant to these codes and the permits therefor shall be set and established administratively by the City according to the schedule as established by the City and as amended."

**5-118. PENALTIES.** Unless a penalty provision is otherwise provided for in any of the above codes, in addition to any administrative remedies or other legal or equitable remedies provided, any Persons violating the provisions of these codes shall, upon conviction thereof, be fined in a sum not to exceed \$500, or be imprisoned not to exceed six months, or be both so fined and imprisoned. Each Person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the City ordinances is committed, continued or permitted by any such Person.

**5-119. BOARD OF CODE APPEALS ESTABLISHED.** In furtherance of Section 112 of the IBC, there is hereby established and created a Westwood Hills, Kansas "Board of Code Appeals".

**5-120. BOARD OF CODE APPEALS; MEMBERSHIP.** The board shall consist of three members to be appointed by the mayor and with the consent of the governing body. The members first appointed shall serve for terms of one, two and three years. Thereafter, members shall be appointed for terms of three years each. Vacancies shall be filled by appointments for the unexpired term. The members of the board shall serve without compensation. In the absence of a duly appointed Board of Code Appeals, the City Council shall serve as the Board of Code Appeals.

**5-121. SAME; POWERS AND DUTIES.** The powers and duties of the Board of Code Appeals shall be in accordance with the codes adopted in Section 5-101. Any applicant and any owner within an 100 foot radius of the property of the applicant or any other Person significantly

harmful by a decision of the Building Official or a notice or order issued under these codes directly pertaining to the interpretation or application of technical provisions of these codes shall have the right to appeal to the Board of Code Appeals. Any Person directly affected by any decision of the Building Official or a notice or order issued under these codes not under the jurisdiction of the Board of Code Appeals shall have only such rights of appeal as are specified in any applicable laws, statutes, or ordinances.

**5-122. BUILDING OFFICIAL.** The Building Official shall be the contract employee, agent or city official charged with issuing building permits on behalf of the City and the City Planning Commission and fulfilling all responsibilities of administering the City Codes described in Articles 1, 2, 3, 4, 6 and 8, which responsibilities are not otherwise explicitly reserved to the City Council, Planning Commission, City Clerk or the Board of Code Appeals.

## **ARTICLE 2. PERMITS, APPLICATIONS AND PROCEDURES**

**5-201. PERMIT REQUIRED.** In addition to permits required by the codes as adopted in Section 5-101, except as herein otherwise provided, no

- a. building,
- b. structure (including but not limited to decorative structures, garden structures, storage units, flagpoles, light poles, sports or play structures and equipment, signs or antennas);
- c. appurtenance (including but not limited to exterior siding material, roofing, skylight, decking, courtyard, door, gate, railing, shutter, awning, window, guttering, lighting, fireplace);
- d. fencing in excess of 16 inches in height or hedge in excess of 16 inches in height;
- e. wall (free standing or retaining) in excess of 16 inches in height or landscaping wall in excess of 16 inches in height;
- f. landscaping, including, but not limited to, man-made elements or non-living elements, rock, stone, irrigation system, artificial turf or changes to the existing grade;
- g. surfacing (including but not limited to, driveways, terraces, steps, sidewalks, pathways, entrance ways and patios) but excluding repair in-kind of the same;
- h. water feature (including but not limited to, pools and fountains and swimming pools);
- i. Change to the siding or skin materials of any structure;
- j. garage, or
- k. exterior functional equipment (whether or not visible) that is or is associated with any mechanical, electrical, solar, gas, heating and cooling, sewage, telecommunication, water system or other system;

shall be constructed, erected, enlarged, allowed, installed, placed, applied, altered, remodeled, removed, replaced, or repaired on property, except solely to restore the original nature and condition thereof in a manner that does not change the appearance or nature of the then existing features of the property, unless the Owner, contractor or the duly authorized agent of either shall first have applied for and received from the City Planning Commission a permit therefor as herein provided.

Except as herein otherwise provided, no interior functional equipment that is or is associated with any mechanical, electrical, solar, gas, heating and cooling, sewage,

telecommunication or water system, and no interior structural changes, shall be constructed, erected, enlarged, allowed, installed, placed, applied, altered, remodeled, removed, replaced, or repaired on property, except solely to restore the original nature and condition thereof, unless the owner shall first have applied for and received from the Building Official proper permits therefor as provided herein.

**5-202. SEPARATE PERMITS.** There shall be separate permits required for each building or structure to be constructed, erected, or altered, partially demolished or demolished, except accessory buildings and appurtenances which may be included in the permit for the principal building when construction and/or demolition is simultaneous, and provided further that there shall be but one fee required for simultaneous applications for permits on the same property.

**5-203. MINOR ALTERATIONS.** No permit shall be required for minor alterations such as painting, decorating, minor landscaping, patching, maintenance, installation of room air conditioners, replacing air conditioner compressors in the same location with the same size unit, installing or replacing screens, storm doors or storm windows or other repair or replacement in-kind.

**5-204. NO PERMIT REQUIRED TO INITIATE EMERGENCY REPAIR.** In the event of an emergency, including but not limited to a request by the Governor of Kansas that a national disaster be declared, no permit shall be required to initiate temporary repairs. Within 30 days of such repairs, the Building Official must be consulted, and the terms and conditions of this Article 2 shall apply to all permanent repairs, and the Building Official shall inspect any temporary repairs made.

**5-205. PERMITS REQUIRED FOR DEMOLITION, MOVING STRUCTURES.** A permit pursuant to Section 5-201 hereof is required for the demolition or removal of a building or structure.

a. Definitions:

1. Demolition or Partial Demolition: means the destruction, removal or relocation, in whole or in part, of a building or structure or of a significant feature of a building or structure that is of important architectural character.

2. Significant Feature: includes chimneys; roof style, slope, and overhang; construction materials; window style; vent style; balconies; towers; wing wall; eave overhangs; window sashes; front porches; crowns; pilasters; and other exterior architectural features.

b. Demolition Permit – In reviewing an application for a Demolition Permit to demolish a structure, the City Planning Commission shall review the circumstances and the condition of the structure, or part proposed for demolition, and make its determination based on consideration of any or all of the following criteria:

1. Is the building of such architectural or neighborhood interest that its removal would be to the detriment of the public interest?

2. Is the building of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?

3. Would retention of the building help preserve and protect the neighborhood?
  4. Does the residence contribute to the architectural significance of the neighborhood?
- c. Permit to Move a Structure--In reviewing an application for a Permit to move or relocate a structure, the City Planning Commission shall consider the following criteria:
1. Would the proposed relocation have a detrimental effect on the architectural character of the neighborhood?
  2. Does the structure contribute to the architectural character of the neighborhood or street to which it is proposed?
  3. Does the move impose an undue burden on existing residents because of the need for utility disruptions, street closures or potential hazards?
  4. Can and will the applicant post a bond in an amount sufficient to safeguard the City and the applicant against all reasonable claims of damage?

In order to obtain a permit to move a structure, the applicant must comply with the requirements of Section 5-116. hereof.

#### **5-206. APPLICATIONS FOR PERMITS.**

- a. Application Contents. All applications for building permits shall contain the legal description of the lot, the street address of the lot, the names of the Owners-applicants, a general description of the building or construction and/or demolition to be undertaken thereon including the approximate size, shape, square foot area, list of materials for construction, the location of the new construction upon the lot, the name of the architect and contractor, if any, and the actual or estimated cost of the construction or improvement. Any contractor identification shall include the name of one person who will be on the job site and who is fluent in English in order to facilitate communication with the Building Official and necessary inspections. Any contractor performing plumbing, electrical or mechanical work shall be required to present a currently valid license to perform such work or otherwise demonstrate the Building Official that he or she is competent to perform such work prior to beginning on-site work.
- b. Required Documents. Permit applications for a complete building or for alteration of or addition to any existing building amounting to two hundred fifty (250) square feet or more, or any structural change in the façade of any structure facing any street in the City, shall be accompanied by a complete set of construction documents. These construction documents shall be drawn and sealed by an architect registered in the State of Kansas and shall include:
  - a site plan,
  - detailed floor plans,
  - elevations (front, rear and side),

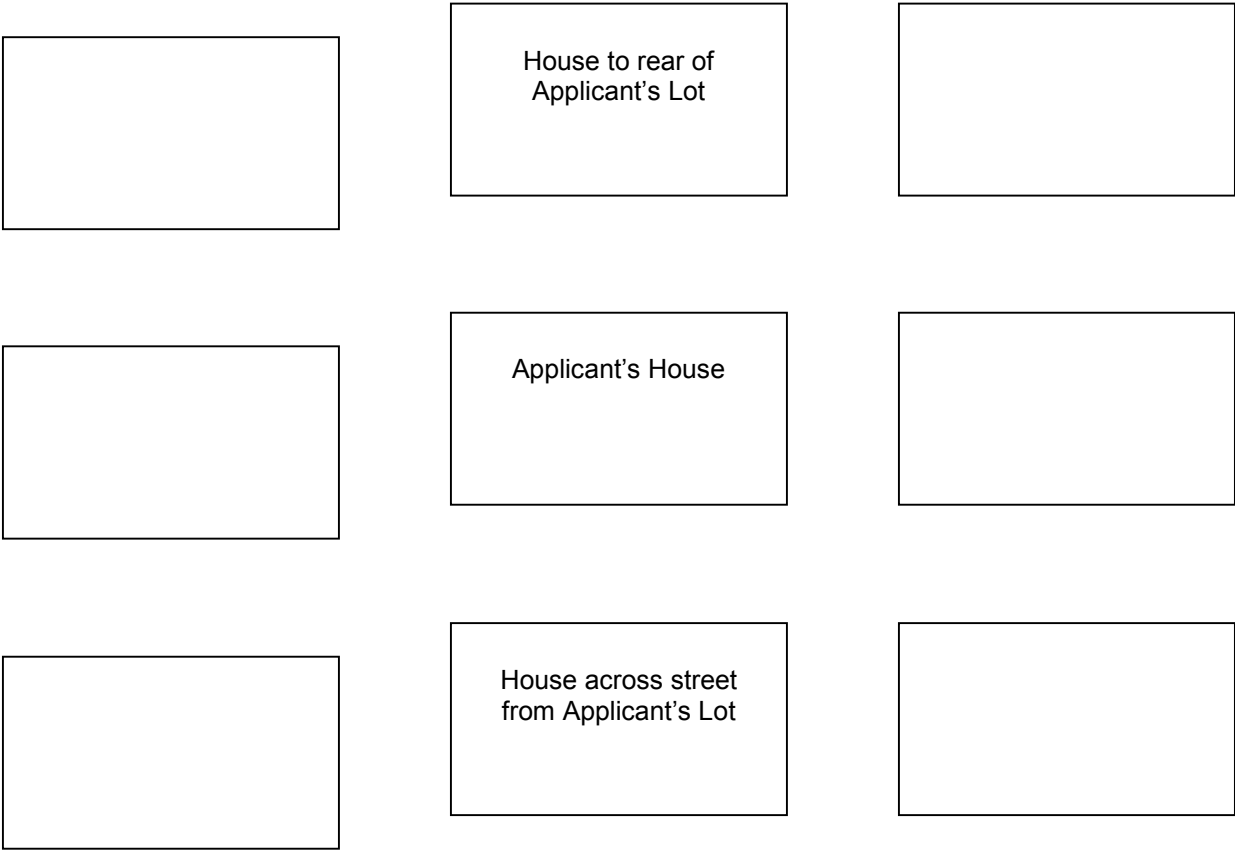
- building specifications.
- Itemized list of all exterior building materials, and
- Structural, mechanical and electrical drawings will be required as needed.

Enclosure of screened porches and major landscaping and patio installation shall be subject to the preceding requirements except the plans need not be sealed by a registered architect.

- c. Filing of Applications. All applications for permits shall be filed with the Building Official, the Chairman, the Vice-Chairman or the Secretary of the City Planning Commission, or in the event of their absence from the City, with any member of said Commission.
- d. Involvement of Adjoining Property Owners. It is the desire of the City that the Owners of the land surrounding the property of a proposed project be informed about the project for any exterior work not considered minor work. Accordingly, the Owner shall share the contents of the proposed building plans with such Owners of the land surrounding the property of a proposed project and shall document such consultation with Owners of the land surrounding the property by obtaining such Owners' signatures on the application form. Owners of the land surrounding the property, as defined in Section 5-206(e)(iii), can by their actions, as specified in Sections 5-206(e)(i) and (ii), either require hearings before the Planning Commission or can expedite the approval of a project. Owners of the land surrounding the property are encouraged to voice their views on a particular project, but requests to the Planning Commission to approve or disapprove a permit should be supported by reference to this Chapter 5 or to the City's zoning regulations as set out in Chapter 8 of the City Code.
- e. Consideration of Applications - Alternative Procedure for Minor Work.
1. Minor Work. On applications for permits for any of the following: fences, retaining and landscaping walls, hedges over 48 inches high or that may grow to be over 48 inches high, patios, decks, roofing, detached children's play houses not exceeding eighty (80) square feet in area, landscaping, installation of siding, installation of air conditioner compressors, interior remodeling not involving a change in the exterior of the building, or construction of dormers, skylights, sidewalks or driveways not located in the public right-of-way; if the applicant has obtained the consent of the Owners of the land surrounding the property as defined in subparagraph (iii) hereof or if such consent is not required, the Chairman of the Planning Commission after review of the application may issue an order granting the application for the building permit. An aggregation of these items may not be considered minor work.
  2. Scheduling Planning Commission Meeting. Upon receipt of an application for a permit for construction of an item other than one specifically referred to in subparagraph (i) hereof, or when the consent of all of the Owners of the land surrounding the property as defined in subparagraph (iii) hereof has not been obtained, the City Planning Commission shall schedule a hearing to consider the application as soon as practicable, and, except on those applications where the applicant has obtained the consent of the Owners of all the land surrounding the property as defined in subparagraph (iii) hereof, the City Clerk on behalf of the

commission shall mail or otherwise deliver to the applicant, to the Owners of the land surrounding the property, and to any Owner within a 100 foot radius of the property upon which construction or alteration is proposed a written notice of the time, date and place of such hearing as well as a description of the construction or alteration proposed by said application. Such hearing shall take place no sooner than five (5) days after the mailing or delivery of such notice, unless signed consents to said building or construction from the Owners of the land surrounding the property have been obtained, in which event said hearing may be had immediately upon the filing of said application.

3. "The land surrounding the property" as used in Section 5-206(e)(i) and (ii) hereof means the three (3) lots, tracts or parcels located nearest to the back property line of the property; the three (3) lots, tracts or parcels located nearest to the front property line of the property, and the lots, tracts or parcels adjoining the side property lines of the property, such properties being depicted in the following diagram.



**5-207. ISSUANCE OR DENIAL OF PERMIT.** After the hearing on said application, the Commission shall enter an order either granting or denying said application based on the proposed project's conformity with the City's codes requirements as set forth in this Chapter 5 and with all zoning regulations as set forth in Chapter 8 of the City Code. If the Planning Commission deems it necessary to hear additional information so that it may reach a conclusion regarding an order, it may continue a meeting related to an application.



a. The City Planning Commission and the Chairman of the City Planning Commission shall use the following criteria (items numbered 1 through 4 of which shall be satisfied) in determining whether to issue a permit in accordance with this Section 5-207:

1. A finding by the Building Official that the plans and other documents presented in the application which was submitted in accordance with Section 5-206 are complete and are in conformity with all of the City's codes as set forth in Article 1 of this chapter.

2. A finding by the Chair of the Planning Commission in accordance with Section 5-206(e)(1) or by the Planning Commission that the project is in conformity with all codes requirements as set forth in this Chapter 5 and with all zoning requirements and regulations of the City as set forth in Chapter 8 of the Code of Ordinances.

3. A finding by the Chair of the Planning Commission in accordance with Section 5-206(e)(1) or by the Planning Commission that the project is in conformity with the style and quality of construction of the original structure. The standards in Article 3 of this Chapter 5 shall be applied to make decisions regarding conformity.

4. A finding by the Chair of the Planning Commission in accordance with Section 5-206(e)(1) or by the Planning Commission that the project is in conformity with the character of the surrounding neighborhood.

5. Conformity means the use of the same materials as in the original construction or other materials that look like part of the original construction, applied in the same manner as the original construction, all as deemed conforming by the Planning Commission.

b. In the event that said application is approved and no objection, in writing, to the granting of said application is made within five (5) days of such approval, said permit shall issue forthwith, and construction or alteration may begin in accordance with the permit.

c. In the event that said application is granted and within five (5) days any land Owner within a one hundred (100) foot radius of the property upon which construction or alteration is proposed objects in writing thereto, such permit will be issued on the tenth day following the granting thereof provided that no notice of appeal, as hereinafter provided, to the Board of Zoning Appeals is filed.

d. In the event that said application is denied, the Commission's findings and reasons for denial shall be stated in writing to the applicant if written request is made therefor within ten (10) days of said action. If said application is denied, the applicant may appeal the Commission's determination by filing a notice of appeal, as hereinafter provided, to the Board of Zoning Appeals within ten (10) days of said denial.

**5-208. APPEAL TO BOARD OF ZONING APPEALS.** The Board of Zoning Appeals shall have the power to hear and decide appeals alleging there is an error in any order, requirement, decision or determination made by a Building Official or the Planning Commission Chairman or the Planning Commission in the enforcement of the provisions of this Chapter.

a. Any applicant, or any property Owner within one hundred (100) feet of the property

upon which the construction or alteration is proposed, may appeal the findings and determination of the Building Official, the Planning Commission Chairman or the Planning Commission to the Board of Zoning Appeals. Such appeal shall:

1. be in writing and include a clear statement of the basis of the appeal, including the nature of the error applicant believes such official or Commission made or why an action is arbitrary, unreasonable or capricious; and,

2. be filed within ten (10) days of the decision of such official or Commission with the City Clerk of the City of Westwood Hills, Kansas.

b. Upon the filing of such notice of appeal, the City Clerk shall promptly transmit said notice of appeal to the Chairman of the Board of Zoning Appeals. As soon thereafter as practicable, the Board shall schedule a hearing on said appeal and shall give written notice of the date, time, and place of such hearing to the applicant, all Owners of land surrounding the property as defined in Section 5-206(e)(iii), and all other land Owners within one hundred (100) feet of the applicant's land who shall have objected or protested the proposed construction or alteration before the City Planning Commission.

c. Upon hearing an appeal by the applicant, the Board of Zoning Appeals may grant the issuance of the permit if the Board determines that the issuance of the permit is warranted and that the applicant has complied with the zoning requirements of Chapter 8 and all building requirements under Articles 1 and 3 of this Chapter.

d. Upon hearing an appeal by a property Owner within one hundred (100) feet of the property of the applicant, the Board of Zoning Appeals may overturn the granting of the permit if the Board determines that the permit violates the zoning requirements of Chapter 8 and/or the applicant has not complied with all the building requirements under Articles 1 and 3 of this Chapter, and, therefore, granting a permit is not warranted.

e. The cost of notification shall be born by the party filing the appeal. If multiple parties file appeals, the cost of notification shall be prorated among the parties.

**5-209. FEES FOR BUILDING PERMITS.** Every application for a building permit shall be accompanied by the necessary fee as described herein.

a. Residential District. The City shall adopt administratively a fee schedule for building permits in the residential district.

b. Retail District. The City shall adopt administratively a fee schedule for building permits in the retail district.

c. Inspection Fees. All fees and expenses incurred for inspection to assure compliance with the Codes provided for in Chapter 5 and the Zoning provided for in Chapter 8 shall be borne by and be the liability of the applicant for the building permit for the structure upon which an inspection is required. Prior to the granting of a building permit, the Planning Commission may require the applicant to post such additional sum to secure payment of such fees and expenses as the Commission may deem necessary.

**5-210. REVOCATION OF PERMITS.** A permit may be revoked by either the Building Official, City Planning Commission or the Board of Zoning Appeals at any time prior to the completion of the building or structure for which the same was issued when it shall appear to the Building Official, City Planning Commission or Board of Zoning Appeals that the same was procured by false representation, or was issued by mistake, or that any other provisions of the Building Codes or the zoning ordinances are being violated; provided, however, that twenty-four (24) hours written notice of such revocation shall be served upon the Owner, his agent or contractor or upon any Person employed upon the building or structure for which such permit was issued, and thereafter no such construction shall proceed.

**5-211. EXPIRATION OF PERMITS.** Permits are issued with the understanding that substantial construction is to begin promptly. Any permit for which construction does not begin within one hundred eighty (180) days shall expire automatically, and a new permit shall be required before work can commence. Unless otherwise provided at the time of the issuance of the permit, if construction is not completed within one (1) year from the issuance of the permit, the permit shall expire, and a new permit shall be required before work can continue. Prior to its expiration, a permit may be extended once for a period of three (3) months upon request to the Building Official. Fees are forfeited if permits are allowed to expire.

**5-212. POSTING OF BUILDING PERMIT REQUIRED.** Every Person obtaining a building permit as required by this Article shall do so prior to commencing any construction and shall post such permit in a manner that it will be clearly visible from the street adjoining the property upon which the construction is to take place. Such Person shall leave the permit so posted until construction is completed, whereupon such Person shall remove such permit.

**5-213. FAILURE TO OBTAIN PERMIT.** Any Person failing to obtain a permit as required by Sections 5-201, 5-202 and/or 5-205 shall be fined in addition to being subjected to any increased fees required under the provisions of the applicable City code.

**5-214. PENALTY FOR VIOLATIONS.** Any Person, firm or corporation violating any provision of this article or failing or refusing to perform any duty imposed by this article shall be fined in a sum not to exceed \$500 or imprisoned for not more than 180 days or be both fined and imprisoned. A separate offense shall be deemed committed each and every day during which a violation occurs or continues.

### **ARTICLE 3. ARCHITECTURAL STANDARDS FOR ALL STRUCTURES**

**5-301. PURPOSES OF THIS ARTICLE.** The City desires to protect the public health, safety and general welfare of the City by preserving its character and the stability of residential and commercial districts within the City. The Planning Commission and its Chairperson shall apply standards related to scale, massing, and encroachment planes in its consideration of all permits. These requirements are to be utilized during the development/design review process as criteria against which to review new construction and rehabilitation requiring discretionary approval.

**5-302. ARCHITECTURAL STANDARDS FOR NEW CONSTRUCTION.** The single most important issue of new in-fill development is one of compatibility. New in-fill structures shall support the distinctive architectural characteristics of development in the surrounding neighborhood, including building mass, scale, proportion, decoration/detail, door and window

spacing/rhythm, exterior materials, porches, and roof pitch and style. Therefore, the standards contained in this section apply to construction of new main structures.

a. Style: All new construction must be compatible with existing houses on the block.

b. Site plan considerations: New development shall continue the functional, on-site relationship of the surrounding neighborhood. Common patterns that shall be continued are entries facing the public right-of-way, and front porches or stoops.

1. Front setbacks for new in-fill development shall follow either of the following criteria:

(a) Equal to the average front setback of all residences on both sides of the street within 100 feet of the property lines of the new project; or

(b) Equal to the average front setback of the two immediately adjoining structures on each side of the new project.

2. In cases where averaging between two adjoining existing structures is chosen, the new structure may be averaged in a stepping pattern.

c. Lot Coverage: The general rule for maximum lot coverage is 25 percent. See Chapter 8, Article 2 regarding Lot Coverage Area.

d. Height: No building, main structure or appurtenance to the main or primary structure shall be erected on a lot, tract or parcel of land which building, main structure or appurtenance exceeds the lesser of two and one-half stories or thirty (30) feet in height as measured from the average grade level at the front elevation of such building structure or appurtenance.

e. Stories: The front façade of the main structure shall be the dominant building height.

f. Massing & Articulation: The massing and articulation of buildings is important. The purpose of this design standard is to create a greater variety of massing and articulation that is compatible with the existing houses in Westwood Hills.

1. Massing: The design should break the main façade of the house into three or four distinct elements: entry, main building, single story element, and the roof.

2. Articulation: The massing should be further varied by articulation of elements such as bays, dormers, etc. Changing materials on these elements provides further articulation.

3. Undesirable:

- Square or “blocky” houses, with minimal architectural detailing, creating a lack of character.

4. Desirable:

- Porches, bays, dormers & vertical articulation to help give the house a less “bulky” appearance.

- High pitched gable roofs that add vertical proportion and articulation to the house.

- Articulation of elements along corner lot side yards should be comparable to front yard design.

g. **Massing by Number of Stories:** The height of new structures should be considered within the context of their surroundings. The City consists of a mix of one, one and one-half, and two story houses. It is desirable for this mix to continue within existing blocks of comparable scale and height. The purpose of this design standard is to establish building height standards that address grade variations and architectural elements such as gabled roofs and cornices.

1. **One Story Street Massing:** On street faces with a majority of single story residences, single story massing elements shall be emphasized on the front façades, using porches, or single story living areas seen from the street.

2. **Two Story Street Massing:** On street faces with a majority of two story residences, two story massing elements shall be emphasized on the front façades.

3. **Transitions:** Taller buildings shall step-down to provide a height transition to existing adjacent single-story buildings. This standard applies to new and vertically expanded buildings.

h. **Materials & Variety:** The proper use of building materials can enhance desired neighborhood qualities. Structures within the City consist of a variety of materials within their façade palettes. The design of in-fill structures should incorporate a mixture of the predominant materials in the surrounding block. The purpose of this design standard is to promote compatibility of new in-fill development and to have materials used in a manner so as not to look applied.

1. **Variety of Material:** New development should include a variety of materials used on the façades. Materials should be used in their appropriate manner and style. Each house façade should have a minimum of two materials, including a primary and secondary material. Example: stucco façade with a stone base.

2. **Undesirable:**

- Use of nearly all of a single material, creating monotony.

3. **Desirable:**

- Materials should be used so as not to appear to be “applied”, by using heavier materials as bases and ending materials on inside corners.

i. **Roof Materials and Form:** Roof forms and materials have a great impact on the appearance of and variety within a neighborhood. Structures in the City include a variety of distinctive roof forms. The purpose of this design standard is to promote a variety of roof forms and materials that are compatible with adjacent properties within the block.

1. **Roof Forms:** A variety of gables should be used, particularly on the front/street façade to break up further the mass of the structure. Roofs extended over windows and associated brackets are strongly encouraged to add visual character and interest. One story roof elements over porches or bays are also encouraged.

2. **Undesirable:**

- Flat roofs.
- Low pitched roof.

3. Desirable:

- A variety of gables should be used.
- Changing roof directions adds variety of roof form.
- Corner lots should maintain a consistent variety of roof forms and

design elements as typical of the front façade.

- First floor roofs over porches, bays or extended roof and trellis are encouraged to “bring the building to the ground” and break up the massing.

j. Entries & Porches: Entries and porches are strongly encouraged to be the primary element of the structure on the street façade. The purpose of this design standard is to promote the location and size of an entry of the structure and to assist in breaking down the scale and massing of the building.

1. Entry/Porch: Locate entries and porches on the front/street faces.

2. Porch Massing & Articulation: Features should primarily be single story elements or incorporated into two story vertical elements to break up the building mass along the street. Railings, short walls, trellises and roofs all add architectural detail and character to the residences, providing visual interest.

3. Undesirable:

- Entry that is not within view of the street.
- Poorly proportioned columns or entry details.

4. Desirable:

- Trellises, brackets, columns and posts and other details that add visual interest to the house that minimize the appearance of bulky density.
- Appropriately proportioned columns, trellises, railings and other elements so that they do not appear too heavy or too light for the building.

**5-303. ARCHITECTURAL STANDARDS FOR NEW ADDITIONS.** Additions and modifications shall be made with care so as not to compromise a structure’s architecturally valuable features, finishes, or materials. Additions to structures shall incorporate the distinctive architectural features of the original structures, especially with regard to the items specified hereafter:

a. Applicability: The standards contained in this section apply to construction of new additions to existing structures.

b. Style: All new construction must be compatible with the existing residence or structure.

c. Site plan considerations: Additions shall be carefully placed to minimize changes in the appearance of the structure from the public right-of-way. Additions shall be placed to the side or rear of the structure and should not obstruct the appearance of the structure from the public right-of-way. Except for porches or front stoops, no building addition shall be constructed

within the 30-foot front yard setback.

1. Front yard setback for main structure: The existing front yard setback established by the existing residence shall be maintained.

2. Side yard setback: 4 feet to the side property line.

3. Rear yard setback: 25 feet to the rear property line.

4. Corner lot setback: For corner lots, no building, garage, structure or appurtenance shall be erected on a lot, tract or parcel of land closer than 20 feet to the side street or closer to the said side street than the majority of the buildings or structures facing on such side street, whichever distance provides the greater setback.

d. Lot Coverage: The general rule for maximum lot coverage is 25 percent. See Chapter 8 Article 2, Lot Coverage Area.

e. Height: No building, structure or appurtenance shall be erected on a lot, tract or parcel of land which building, structure or appurtenance exceeds the lesser of two and one-half stories or thirty (30) feet in height as measured from the average grade level at the front elevation of such building structure or appurtenance.

f. Stories: The front façade of the main structure shall remain the dominant building height.

g. Door and window shape, size, and type:

1. No reflective, mirrored or tinted glass is allowed in windows and doors. No leaded or stained glass is allowed unless such glass matches existing design elements of the house. Clear glass is encouraged.

2. Height of individual windows should be greater than the window width unless this deviates from the original design.

3. All windows must fit the wall opening. In-fill surrounding the window is not allowed.

4. Window air conditioning units are not allowed.

5. Window muntins and mullions must be expressed by a minimum of one-fourth inch. Window assemblies must have a profile depth of at least three inches.

h. Exterior Materials:

Addition Façades: Addition façades shall be fully articulated on all sides with architectural detailing. Varied, durable, and appropriate materials shall be utilized. Additions must match the original materials. Brick and stone shall match the original in size, color, coursing, texture, mortaring, and joint detailing. Structures with existing stucco or lap siding must match the original in texture, color, and appearance.

- i. Roof materials, pitch & style:
  - 1. The roof of a structure, especially its pitch and style, is an important architectural element that should be taken into consideration when planning an addition.
  - 2. The pitch and style on the addition should match the original.
  - 3. Roof materials should also match the original as closely as possible.
  - 4. No corrugated plastic, standing-seam metal rolled, or tar-and-gravel roofing is allowed.
  
- j. Second Story Additions: Because adding an additional story to an existing structure will always change the structure's proportion, such additions should be carefully designed to follow similar two-story examples of the particular style that may be found on the block.
  - 1. The new second story additions shall be integrated into the original design of the structure.
  - 2. The additions shall be set back from the front façades so that they are less noticeable from the public right-of-way.

**5-304. REHABILITATION STANDARDS FOR EXISTING STRUCTURES.** Rehabilitation efforts should aim toward protecting the essential architectural features of a structure that help to identify its individual style and thereby further its contribution to the character of the City.

a. **Applicability:** The Planning Commission and its Chairperson shall use the following criteria during the development/design review process for plans for rehabilitation requiring discretionary approval.

b. **General Principles:** Rehabilitation should try to retain and restore original elements first. If damage or deterioration is too severe, the element should be replaced to match the color, design, texture, and any other important design features of the damaged element. When replacement is necessary and original materials cannot be obtained, substitution material shall incorporate the color, design, and texture that convey the visual appearance of the original material.

c. **Exterior Materials:**

- 1. The original exterior building materials should be retained whenever possible. Mismatched materials of different finishes, shapes, sizes, or textures shall not be installed.
- 2. Structures with original wood siding shall not be stuccoed in an attempt to modernize their appearance. Likewise, plastic shingles shall not be used to replace wood siding or shingles.
- 3. Replacing wood siding with metal or vinyl siding is not allowed.



4. Brick surfaces shall not be sandblasted in an attempt to remove old paint. Mechanical grinders should not be used to remove mortar as this can damage the brick surrounding the joint.

d. Ornamentation and Trim: Authentic decoration and trim on a structure lends character and identifies the structure with its particular architectural style. Original ornamentation shall be preserved and retained whenever feasible.

e. Roofs: Great care should be taken to ensure that roofing materials are compatible with the original style of the structure. If replacement is necessary, roofing materials shall be selected that are appropriate to the structure's architectural style and match the original materials or completely replace the original materials.

f. Windows:

1. The shape, size, and style of windows are an important feature of most architectural styles, and the original type window should be maintained whenever feasible.

2. When window replacement is necessary, it is preferred that the new window be an exact match of the original.

3. An alternative to special milling may be the use of an "off-the-shelf" standard window that closely matches the original.

4. Aluminum and plastic frame windows should not be used as replacements. The use of such materials is highly visible, and the contrast of materials and styles can permanently affect the architectural integrity of the structure. The use of traditional materials is preferred. If other metal windows are used, they must appear to match the original windows when viewed from the street.

**5-305. ARCHITECTURAL STANDARDS FOR FRONT PORCH ADDITIONS.** During the construction of a porch to be added to an existing structure, the design integrity of the front porch shall not be compromised. The Planning Commission and its Chairpersons shall follow the standards enumerated herein in reviewing plans for the same.

a. Applicability: The standards contained in this section apply to construction of new front porches and to additions to existing front porches.

b. Style: All new construction must be compatible with the existing house.

c. Stories: The front façade of the main structure shall remain the dominant building height.

d. Exterior materials: Porch additions must match the original materials. Brick and stone shall match the existing brick and stone in size, color, coursing, texture, mortaring, and joint detailing. Porch additions to structures with existing stucco or lap siding must match the original in texture, color, and appearance. Varied, durable, and appropriate materials shall be utilized.

e. Roof materials, pitch & style:

1. The roof of a structure, especially its pitch and style, is an important architectural element that should be taken into consideration when planning a porch addition.

2. The pitch and style on the addition should match the original or be compatible with the existing.

3. Roof materials shall match the primary structure as closely as possible.

4. No corrugated plastic, standing-seam metal rolled, or tar-and-gravel roofing is allowed.

f. Proportion & Scale: Because adding a porch addition to an existing structure will always change the structure's proportion, such additions should be carefully designed to follow similar examples of the particular style that may be found in the neighborhood. The new porch addition shall be integrated into the original design of the structure.

**5-306. REHABILITATION STANDARDS FOR EXISTING PORCH STRUCTURES.** In general, preservation and rehabilitation efforts should protect the essential architectural features of a structure that help to identify its individual style and thereby further its contribution to the character of the City.

a. Applicability: The City Planning Commission and its Chairperson shall use these guidelines during the development/design review process as criteria against which to review rehabilitation requiring discretionary approval.

b. General Principles: Rehabilitation should try to retain and restore original elements first. If damage or deterioration is too severe, the element should be replaced to match the color, design, texture, and any other important design features of the original element. When replacement is necessary and original materials cannot be obtained, substitution material shall incorporate the color, design, and texture that convey the visual appearance of the original material.

c. Exterior Materials:

1. The original exterior building materials should be retained whenever possible. Mismatched materials of different finishes, shapes, sizes, or textures shall not be installed.

2. Structures with original wood siding shall not be stuccoed in an attempt to modernize their appearance. Likewise, plastic shingles shall not be used to replace wood siding or shingles.

3. Replacing wood siding with metal or vinyl siding is not allowed.

4. Brick surfaces shall not be sand- or shot-blasted in an attempt to remove old paint. Mechanical grinders should not be used to remove mortar as this can damage the brick surrounding the joint.

d. Ornamentation & Trim: Authentic decoration and trim on a structure lends character and identifies the structure with its particular architectural style. Original ornamentation shall be preserved and retained whenever feasible.

e. Roofs: Great care should be taken to ensure that roofing materials are compatible with the primary structure. If replacement is necessary, roofing materials shall be selected that are appropriate to the structure's architectural style and match the original materials or completely replace the original materials.

f. Doors:

1. The front door of the structure is the most ornate with secondary doors usually more utilitarian in appearance. The shape, size, and style of doors are important features of all architectural styles, and the original design/type shall be maintained.

2. Original doors shall be repaired in-place whenever possible. When replacement is necessary, the replacement door shall match the original design and material.

### **5-307. ARCHITECTURAL STANDARDS FOR NEW DETACHED GARAGE CONSTRUCTION.**

a. Applicability: The City Planning Commission and its Chairperson shall use the standards contained in this section to review the plans for construction of new detached garage structures.

b. Style: All new detached garage construction must be compatible with the existing primary structure. New detached garages shall incorporate the distinctive architectural features of the main structure including building mass, scale, proportion, decoration/detail, door and window spacing/rhythm, exterior materials, and roof pitch and style.

c. Site plan considerations:

1. The maximum allowable size of the detached garage shall be 576 square feet.

2. Site plans and building designs shall minimize the impacts of the parking apron and garage on the streetscape.

Undesirable:

- Large parking aprons with large garage doors facing the street creating a stark appearance and significantly impacting the building and landscape design of individual lots and streetscape.

Desirable:

- Side-drive designs with rear-yard garages are preferred.

3. Setbacks for new garage development shall follow either of the following criteria contained herein whichever distance provides the greater setback. No detached garage shall be erected, altered, structurally changed, repaired, restored or improved on a lot, tract or parcel of land closer than:

(a) 30 feet to the front property line on those lots, tracts or parcels of land included as a part of the plat of Westwood Hills, a subdivision of land in Johnson County, Kansas, and 25 feet to the front property line on those lots, tracts or parcels of land included as a part of the plat of Westport Annex, a subdivision of land in Johnson County, Kansas, provided no building, structure or appurtenance shall be hereafter located upon a lot platted as a part of Westport Annex closer to the front Property line than the majority of the buildings or structures facing the street upon which the lot is situated.

(b) 4 feet to the side property line.

(c) 4 feet to the rear property line.

(d) on corner lots no building, garage, structure or appurtenance shall be erected on a lot, tract or parcel of land closer than:

(1) 20 feet to the side street, or

(2) closer to the said side street than the majority of the front façades of the buildings or structures facing on such side street.

d. Lot Coverage: The general rule for maximum lot coverage is 25 percent. See Chapter 8, Article 2, Lot Coverage Area.

e. Height: No detached garage should be erected, altered, structurally changed, repaired, restored or improved to a total maximum height taller than 22 feet. Eave height at the garage entrance shall not exceed 8 feet. Actual permissible height may be less than 22 feet depending upon the construction style and in each particular case shall be determined by the Planning Commission, which shall use as its standard the requirement of an architectural style, materials, and roof pitch all the same as that of the primary residence.

f. Materials and Variety: Structures within the City consist of a variety of materials within their façade palettes. The design of detached garages shall incorporate an appropriate mixture of the predominant materials visible in the existing residence. The purpose of this design standard is to promote compatibility of new detached garages with the primary residence or structure.

1. Façades: Façades shall be fully articulated on all sides with architectural detailing matching the existing residence. Varied, durable, and appropriate materials shall be utilized. Materials should be used so that they do not appear to be “applied” and are used in their appropriate manner and style.

2. Carports: New carport structures are not allowed.

g. Roof materials, pitch & style:

1. The pitch and style of the detached garage shall match the existing residence.

2. Roof materials should also match the existing residence as close as possible.

3. No corrugated plastic, standing-seam metal rolled, or tar-and-gravel roofing is allowed.

h. Door and window shape, size, and type:

1. No reflective, mirrored or tinted glass is allowed in windows and doors. No leaded or stained glass is allowed unless such glass matches existing design elements of the house. Clear glass is encouraged.

2. Individual window height must be greater than the window width.

3. All windows must fit the wall opening. In-fill surrounding the window is not allowed.

4. Metal window frames must have a finish that is indistinguishable from the finish on original wood windows.

5. Window air condition units are not allowed.

6. Window muntins and mullions must be expressed by a minimum of one-fourth inch.

7. Solid, slab, two or three car garage doors are not allowed.

**5-308. DRIVEWAY REPAIR, REPLACEMENT AND ALTERATION.** No vehicle shall be parked on an area within a residential property except on driveways, for all areas zoned in the Residential district.

a. Each single family dwelling is limited to one curb cut or entrance with a corresponding one-lane driveway having a maximum width of up to twelve (12) feet.

1. However, a single family dwelling may have two single lane (up to a 12 foot maximum each) curb cuts provided that:

(a) No curb cut may be located within 30 feet of an intersection

(b) 75 feet of contiguous property is immediately adjacent to the public right-of-way

(c) There must be at least 36 linear feet of public right-of-way between the driveways measured at the edge of the right-of-way on any given tract.

b. For multiple curb cut properties, each driveway must either:

1. end at a garage, or

2. be configured so that one driveway arcs or circulates in such a fashion that it connects to the other driveway in the front and/or front-side yard (in the case of a corner lot)

while the other driveway ends at a garage.

c. The total impervious area of the yard(s) in which the multiple curb cuts and corresponding driveways are located (measured from the edge of the rights-of-way shall not exceed 40% of the total area of the front, side or back yards on which any part of said driveway lies. This area calculation is derived by dividing the total area of the driveway by the sum of the total areas of any front, side or back yards on which any part of the driveway or driveways lie on that property.

d. In the event of an arched (or circular) driveway, the arched driveway must be:

1. No wider than 12 feet from the edge of the right-of-way to where it meets with the other driveway, and

2. Arched so that there is at least 17 feet between the inside of the arch and the public right-of-way for at least 18 linear feet, ie the inside radius of the arch must be sufficient to maintain at least a 17 foot setback from the nearest right-of-way for a distance of 18 feet along the right-of-way.

e. Houses with a single car width garage may have driveways that widen to a maximum of eighteen (18) feet. This widening is allowed only for the final 18 feet of the driveway closest to the garage. Such driveways may gradually widen for an additional 9 feet of transitional length in which the driveway widens from one lane to the prescribed width.

f. Houses with garages built to hold more than one car side-by-side may have driveways which widen up to the width of the garage, or twenty four (24) feet, whichever is less. An exception to this rule is as follows: Houses with only one curb cut which have garages for two cars side-by-side with street access from the front, which have the garage door face at or in front of the closest adjacent rear corner of the house, may have a maximum of up to twenty four (24) feet wide driveway width, or the width of the garage (whichever is less) from the edge of the right-of-way to the garage, with a curb cut of equal width.

g. Driveways shall be paved and shall be constructed of pavers, concrete, asphalt, brick, or similar hard surface, hard surface interspersed with green space or vegetation, or combination thereof.

h. Pavement is allowed up to one foot from the side yard property line on all residential lots. Notwithstanding this, however, common drives which lie on both sides of a property line to serve both the adjacent properties are allowed.

i. Houses with garage door access on the rear or side of the house, with lots having only drive access from the front, shall also be constructed with driveways having a maximum width of twelve (12) feet from the edge of the right-of-way to the face of the garage, subject to the other rules set forth in this Section. The path of travel from the back of the house to the garage door shall be by the most direct path, considering turn radius, entry grade, and the geometry of the existing structures and the lot. For garages facing the rear of the property, "horseshoe" or "U" shaped drives, are to be used whenever possible with the distance between the portions going from the street and the reversed portion going into the garage, or the "tips" of the horseshoe, being as narrow as possible. Also the distance of the driveway before reversing, or the depth of

the curvature, shall be as short as possible. For garages facing out from the side of the house, right angle or "L"-shaped driveways are to be built whenever possible.

j. Houses without garages shall be treated the same as houses with a single car garage, except that

1. all garage-less driveways shall be straight and perpendicular to the curb cut,

2. the driveway shall be located as closely as possible to one or the other of the side property lines of the house, and

3. the driveway may widen for the final 18 feet of the driveway farthest from the street, and such driveways may gradually widen for an additional 9 feet of transitional length in which the driveway widens from one lane to the prescribed maximum width. Such driveways shall terminate at least 5 feet from any rear yard property line, and shall not be constructed in a fashion that violates any easement rights of any other parties.

k. Notwithstanding anything to the contrary herein, the entrance to a driveway may flare or widen at the street entrance.. Any measurements hereunder shall be made from the edge of the right-of-way whenever applicable. Nothing herein shall be deemed to permit any parking or storage of vehicles on any right-of-way or in any other areas of public use.

**5-309. EXCAVATION IN PUBLIC RIGHT-OF-WAY.** Any work or construction in the public right-of-way shall conform to the requirements of Article 8 of this Chapter 5.

#### **ARTICLE 4. SOLAR AND OTHER ALTERNATIVE ENERGY SYSTEMS**

**5-401. PURPOSE.** The purpose of this article is to establish provisions for using an alternative source of energy apart from the prevailing energy sources of natural gas and electricity, especially solar energy, and to provide standards for the construction and use of solar or other energy conversion systems.

**5-402. REGULATION OF ALTERNATIVE ENERGY SYSTEMS.** Except as provided herein, no alternative energy system or wind or solar collection device shall be erected, constructed, altered or maintained on any lot within the City of Westwood Hills, Kansas.

**5-403. SOLAR ENERGY SYSTEMS; STANDARDS AND CONDITIONS.** All solar energy systems or solar collection devices shall meet the following standards and conditions:

a. All solar energy systems or solar collection devices shall be incorporated into a building (which may be either a principal or accessory building) and shall be integrated into the basic form and main structure of such building.

b. Any panel or apparatus which is used to receive, collect or transfer solar energy shall be mounted on the roof of a building, and such panels or apparatus shall be integrated into the roof: either directly mounted against the roof or integrated into the roof so that such panel or apparatus forms a part of the roof itself.

- c. Mounting arrangements which allow panels or apparatus to project above the roof line, such as "stand-off" or "rack" mounting arrangements, are prohibited.
- d. No panels or apparatus shall be free standing or mounted on the ground.
- e. All mechanical piping, electrical conduits, motors and similar items which comprise a solar energy system shall be concealed.
- f. All exposed metal, including the framework of active collector panels or exposed mullions and framework of passive systems, shall be finished so as to blend with the color of the surface to which they are applied or attached. Unpainted aluminum is prohibited.
- g. All solar energy system components shall be located as to be accessible for required routine maintenance without trespassing on adjoining property or disassembling any major portion of the structure or building.
- h. All solar energy system components must be obtained from manufacturers which regularly engage in production of solar energy apparatus.
- i. The construction or erection of a solar energy system or solar collection device shall conform to the requirements of the Codes provided in Chapter 5 of the Municipal Code of the City of Westwood Hills, Kansas.

**5-404. PERMIT REQUIRED.** No alternative energy system, including but not limited to solar or wind collection device, shall be constructed, erected, added to or materially altered, structurally or otherwise changed, or improved nor any other work commenced upon any lot, tract or parcel of land unless the Owner, contractor or agent of either shall first have applied for and received from the City Planning Commission a permit therefor as provided in Article 2 of Chapter 5 of the Municipal Code of the City of Westwood Hills, Kansas and the remaining sections of this Article 5.

**5-405. CONTENTS OF APPLICATION.** Any application for the permit required hereunder shall show that the proposed construction meets the requirements set forth in Section 5-403 hereof if a solar energy system. If some other alternative energy system is proposed, no permit shall issue which violates the intent of this Article 5.

**5-406. PLANNING COMMISSION DETERMINATION; PERMIT ISSUANCE.** Any permit issued pursuant to the provisions of Article 2 of Chapter 5 of the Municipal Code of the City of Westwood Hills, Kansas for the construction, erection or modification of an alternative energy system or solar collection device shall only be issued after the City Planning Commission has determined that the proposed construction meets the requirements of Chapters 5 and 8 of the City Code.

**5-407. PENALTY.** Any violation of this ordinance shall be deemed a misdemeanor, and upon conviction thereof any Person violating any provision of this Article shall be fined in an amount not to exceed \$500.00. Each day a violation continues to occur shall constitute a separate offense.



## CHAPTER 5. BUILDING AND CONSTRUCTION

### ARTICLE 5. MINIMUM STANDARDS FOR PROPERTY - MINIMUM PROPERTY MAINTENANCE CODE

**5-501. PURPOSES OF ARTICLE.** The general purpose of this Article is to protect the public health, safety and the general welfare of the people of the City. These general objectives include, among others, the following specific purposes:

- a. To protect the character and stability of residential and Commercial or Retail Areas within the City by legislation which shall be applicable to all dwellings and buildings now in existence or hereafter constructed.
- b. To provide minimum standards for the maintenance of exteriors of all existing buildings, including Commercial or Retail Areas, and for the maintenance of the grounds related to such buildings in order to prevent the creation of blight.
- c. To provide minimum standards for the maintenance of the interiors of all existing buildings, including Commercial or Retail Areas.
- d. To preserve the property value of land and buildings throughout the City.
- e. To provide determinable minimum maintenance standards for dwellings and non-residential structures, and the grounds related to them, and thus to facilitate enforcement of legal rights and remedies.
- f. To provide mechanisms for the enforcement and administration of the Code to ensure that the above purposes are accomplished.

This Article shall be construed so as to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of Buildings and Structures. Existing Buildings and Structures which do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

**5-502. DEFINITIONS.** For the purpose of this Article, the following words and phrases shall have the meaning respectively ascribed to them by this section. When not inconsistent with the context, words used in the present tense include the past tense, and words in the singular number include the plural number. The usage of the word "shall" indicates mandatory rather than permissive requirements. Any terms not defined in this Section or Article shall have ordinarily accepted meanings as the context implies.

**Architectural Detail:** A fixture or appurtenance of a structure that contributes to the distinctive architectural character of the Structure.

**Accessory Structure:** A subordinate Structure located on the same lot as the main Structure or attached to a portion of the main Structure, which subordinate Structure is clearly incidental to,

and customarily found in connection with, the main Structure or principal use of the land.

**Building:** Any Structure used or intended for supporting or sheltering any use or occupancy.

**Building Code:** The Building Code of the City of Westwood Hills as described in Section 5-101, *et seq.*

**Commercial or Retail Area:** Any structure, building, or property devoted, designed or utilized for any non-residential use, excluding an appropriately licensed, home-based business to which the City has granted a business occupational license.

**Deterioration:** The condition of a Building or part thereof, characterized by evidence of physical decay or neglect, excessive use, or lack of maintenance.

**Duplexes:** A Building or portion thereof designed or altered for occupancy by two (2) families living independently of each other in separate Dwelling Units.

**Dwelling:** Any Building or portion thereof containing one (1) or more Dwelling Units.

**Dwelling Unit:** A Building or portion of a Building which is primarily arranged, occupied, or intended to be occupied as living quarters for one family; with a separate, independent living quarter consisting of one or more connected rooms with permanently installed bathroom and kitchen facilities.

**Enforcement Officer:** The official designated herein or otherwise charged with the responsibilities of administering this Article or his/her authorized representative(s).

**Exterior Appurtenances:** Objects which are added to a structure for aesthetic or functional purposes. These include, but are not limited to, awnings, trellises, and television antennae.

**Extermination:** The control and elimination of insects, rodents or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food, by poisoning, spraying, fumigating, trapping or implementing any other recognized and legal pest elimination methods approved by the Enforcement Officers of this City.

**Family:** One or more Persons who are related by blood or marriage, including not more than one non-related lodger or boarder, living together and occupying a single housekeeping unit with single kitchen facilities, or a group of not more than two (2) Persons living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities. However, nothing herein shall preclude or prohibit any living arrangement otherwise protected by or provided for by state or federal law.

**Fence:** An independent Structure forming a barrier at grade between lots, between a lot and street or an alley, or between portions of a lot or lots. A barrier includes a wall or latticework screen but excludes a hedge or natural growth or a barrier less than eighteen (18) inches in height which is used to protect plant growth.

**Garbage:** Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Gutter: A trough attached to an eave to carry off water.

Habitable Building: Any Structure or part thereof that may be used as a home or place of abode by one (1) or more Persons.

Habitable Room: Every room in any Building in which Persons sleep, eat or carry on their usual domestic or social vocations or avocations. "Habitable Room" shall not include private laundries, bathrooms, toilet rooms, water closet compartments, pantries, storerooms, foyers, closets, corridors, rooms for mechanical equipment for services in the Building, or other similar spaces not used by Persons frequently or during extended periods.

Harborage Places for Insects. Pests or Rodents: Any place where insects, pests or rodents can live, nest or seek shelter.

Interior Maintenance Standards: Standards of maintenance of the inside elements and for occupancy of rented or leased Dwelling Units only where the Owner does not reside.

Landlord: Any Person who has charge, care, or control of a Building, or part of a Building, which is leased, licensed or offered for occupancy.

Minimum Standards: The least quality permissible by this Article.

Occupant: Any Person living or sleeping in a Dwelling Unit or having actual possession of said Dwelling Unit.

Operable Area: That part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

Ornamental Grass: As opposed to a lawn grass, a grass that is not mown but is allowed to grow to its full potential and is used in the landscape in the same way as perennials or other ornamental plants.

Owner: Any Person who, alone, jointly or severally with others, is in actual possession of, or has charge, care or control of, any building, dwelling or dwelling unit within the City as Owner, employee or agent of the Owner, or as trustee or guardian of the estate or Person of the title holder. All such Persons shall be bound to comply with the provisions of this Article to the same extent as the Owner.

Person: A corporation, firm, partnership, limited liability company, association, organization and any other group acting as a unit as well as any individual. "Person" shall also include an executor, administrator, trustee, receiver or other representative appointed according to law. Whenever the word "Person" is used in any section of this Article prescribing a penalty or fine, as to partnerships or associations, the word shall include the partners or members thereof, and as to corporations, the word "Person" shall include the officers, agents or members thereof who are responsible for any violation of such section.

Premises: A lot, plot or parcel of land or any part thereof, including the Buildings or Structures thereon.

Public Hall: A hall, corridor or passageway for ingress to and egress from a Dwelling or Dwelling Unit not within the exclusive control of one (1) family or Dwelling Unit.

Public Nuisance: The term "Public Nuisance" includes the following:

(1) The physical condition or use of any Premises regarded as a public nuisance at common law or by other provisions of the Westwood Hills Municipal Code; or

(2) Any physical condition, use or occupancy of any Premises or its appurtenances considered an attractive nuisance to children, including but not limited to abandoned wells, swimming pools, shafts, excavations, unsafe fences or structures, etc., or

(3) Any Premises designated as unsafe for human habitation or use; or

(4) Any Premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or unsecured so as to endanger life, limb or property; or

(5) Any Premises which are unsanitary, which are littered with Rubbish or Garbage, which have an excessive accumulation of animal waste, or which have an uncontrolled growth of weeds or other flora; or

(6) Any Structure or Building that is in a state of dilapidation, deterioration or decay; that is open, vacant or abandoned; that has been damaged by fire to the extent so as to not provide shelter; that is in danger of collapse or failure and is dangerous to anyone on or near the Premises; or that is faultily constructed.

Rank Weeds: Include but are not limited to the following: large crabgrass, large hairy crab grass, barnyard grass (*Echinochloa crusgalli*), Pennsylvania smartweed (*Polygonum pennsylvanicum*), ladythumb, smartweed (*Polygonum persicaria*), curled dock (*Rumex crispus*), lambsquarter (*Chenopodium album*), rough pigweed, common ragweed (*Ambrosia artemisiifolia*), giant ragweed, horseweed, Kingshead (*Ambrosia trifida*), dandelion, cocklebur, clotbur (*Xanthium pennsylvanicum*), velvet leaf, blue stickseed (*Lappula echinata*), kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium avense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmannseggia densiflora*), musk (nodding), thistle (*Carduus nutans* L.), stink grass, lovegrass (*Eragrostis ciliaris*), witchgrass, tube paicgrass (*Panicum capillare*), giant fox tail (*Setaria faberii*), hp sedge, sloughgrass (*Carex lupulina*), hemp (*Cannabis sativa*), stinging nettle, and Johnson grass (*Sorghum halepense*).

Repair: To restore to a sound and acceptable state of operation or serviceability. Repairs shall be expected to last approximately as long as the replacement by new items would last.

Replace: To remove an existing item or portion of a system and to construct or install a new item of quality which is similar to or better than the existing item when new. Replacement will ordinarily take place when the item is beyond Repair.

Rubbish: Nonputrescible solid wastes consisting of both combustible and noncombustible

wastes.

Smoke Detector: A device which detects visible or invisible particles of combustion and which device may be either the ionization chamber or the photoelectric type device.

Strict Liability Offense: An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited or failed to do an act which the defendant was legally required to do.

Structure: Anything constructed or erected with a fixed location on the ground or attached to something with a fixed location on the ground. Structures include, but are not limited to, buildings, walls, fences, poster panels, and similar uses. Sidewalks, pavement, and public improvements such as utility poles, street light fixtures, and street signs are excluded from the term "Structure."

Substandard: All Structures which do not conform to the Minimum Standards established by this Article or any other Westwood Hills ordinance.

Unlawful Structure: An Unlawful Structure is one found in whole or in part to be occupied by more Persons than permitted under this code or which was erected, altered, or occupied or is being maintained in violation of this Article or any other applicable laws, statutes, ordinances or regulations.

Workmanlike: Whenever the words "workmanlike state of maintenance and repair" or "workmanlike manner" are used in this Article, they shall mean that such maintenance and repair shall be made in a reasonably skillful manner.

Yard: An open space at grade on the same lot(s) as a Building or Structure located between the main Building and the adjoining lot line and/or street line. The measurement of a Yard shall be the minimum horizontal distance between the lot line and the Building or Structure.

**5-503. APPLICABILITY OF THIS ARTICLE.** Every Building or Premises shall conform to the requirements of this Article, regardless of when such Building or Premises shall have been constructed, altered or repaired. Nothing in this Article shall be construed to require existing Buildings or Premises to comply with the requirements of the current building code, electrical code, plumbing code, or mechanical code; provided, however, that, after the effective date of the ordinance of which this Article is a part, repairing, reconditioning or maintaining of existing Buildings shall be completed as required by this Article 5.

a. Equipment, systems, devices and safeguards required by this Article or a previous ordinance under which the Building or Structure was constructed, altered or repaired shall be maintained in good working order. No Owner or Occupant shall allow or cause any service, facility, equipment or utility which is required under this Article to be removed from or shut off from or discontinued for any occupied Dwelling, except for such temporary interruptions as necessary while repairs or alterations are in progress.

b. Landlord-tenant Relations. Nothing in this ordinance or its enforcement shall be construed in any way to affect landlord-tenant relations, nor shall this Article 5 relieve the tenant of any implied contractual obligations with the Landlord.

c. Landlord of a Habitable Building. All operators of a habitable Building shall obtain annually a rental property license pursuant to Chapter 6, Article 5 of the City of Westwood Hills Ordinances. The City requires as a precondition to the issuance of such license that the habitable building to be rented or let first be inspected inside and outside by the Enforcement Officer and that a rental property license be obtained pursuant to Section 5-506(bb) of this Chapter. If the Enforcement Officer finds the premises or the habitable Building to be in violation of this Article 5, then the Enforcement Officer will advise the City Clerk in writing, and the Clerk shall refuse issuance of the rental property license. It shall be a violation of this Article for a Landlord to rent or let any Dwelling Unit or habitable Building without the prescribed license.

#### **5-504. INTERPRETATION.**

a. Scope. This Article establishes Minimum Standards for principal buildings and accessory buildings and premises and does not replace or modify standards otherwise established for the construction, replacement or repair of buildings except such as are in conflict with the provisions of this Article. If any provision of this Article is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or any other Article of the Code of Ordinances of the City existing on the effective date of this Article, then the provision which establishes the higher standard for the promotion and protection of the safety, health and welfare of the people shall prevail. It is not the intention of this Article to require reconstruction or replacement of existing facilities or structures in sound condition or good repair in order to meet specific requirements of any of the above-mentioned codes unless there is an existing or probable health or safety hazard to the occupants or any residents of the City.

b. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Article should be declared invalid for any reason whatsoever, such invalidity shall not affect the remaining portions of this Article, which shall remain in full force and effect.

#### **5-505. MINIMUM STANDARDS FOR EXTERIORS OF ALL BUILDINGS AND PREMISES.**

a. Applicability. It shall be unlawful for any Person to own, occupy, rent, lease, or hold out to another for occupancy, any Building for any purpose, including, but not limited to, for the purposes of carrying on a business, living, sleeping, cooking or eating, which Building is not safe, sanitary and fit for human occupancy and which Building does not comply with the particular requirements of the following paragraphs of this section.

b. Foundation, Exterior Walls. The foundation and exterior walls shall be substantially water tight and weather tight as can be determined from a ground level inspection, shall be protected against rodents, and shall be kept in sound condition and repair. The foundation elements shall adequately support the Building at all points.

c. Protective Treatment. All exterior surfaces, including but not limited to doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking, cracked, and chipped paint areas in excess of 20 percent (20%) of any individual surface area shall be eliminated, and such surfaces repainted. The area of peeling, flaking or chipped paint shall be calculated by drawing one rectangle around all occurrences of the peeling, flaking

and chipped paint on any individual surface and calculating the area of that rectangle. All siding and masonry joints, as well as those joints between the building envelope and the perimeter of windows, doors, and skylights, shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement. Building debris and excess paint or other excess protective treatments shall be removed within thirty (30) days from initiating any construction or painting. Any Person requiring additional time to conclude construction or painting may make application to the Enforcement Officer for an extension of time.

d. Roofs and Drainage. The roof and flashing shall be sound, tight and have no defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water and water from intermittent sources such as discharges from sump pumps, foundation drains, or other similar sources, excluding lawn sprinklers, shall not be discharged at a point closer than five feet to any adjoining property line nor in a manner that creates a public nuisance.

e. Windows, Doors and Hatchways. Every window, screen, door and basement hatchway shall be kept in sound condition and repair. Every window shall be fully supplied with window panes which are without dangerous cracks or holes. Every window sash shall be in good condition and fit reasonably tight within its frame. Every door, door hinge and door latch on every door necessary for ingress and egress shall be in functional condition. Knobs and/or handles shall be properly installed on all doors. Every door, when closed, shall fit reasonably well within its frame. All sliding doors shall have guides to prevent the door from falling out of track. Every window, exterior door guide and frame shall be constructed and maintained in such relation to the adjacent wall construction so as completely to exclude rain and excessive dampness and substantially to exclude wind from entering the dwelling. Every basement hatchway and window shall be so constructed, screened or maintained as to prevent the entrance of rodents, insects, rain and surface drainage water into the building.

f. Exterior Appurtenances. Exterior appurtenances, including but not limited to awnings, trellises, television antennae, chimneys, fences, architectural details, and retaining walls, shall be installed in a safe and secure manner and shall be maintained in good repair and must meet the requirements of all other portions of the City's code.

g. Stairways and Porches. Every stairway outside of the Building or Dwelling and every porch shall be kept in safe condition and sound repair. Every flight of stairs and every porch floor shall be free of deterioration. Every stairwell and every flight of stairs which is five (5) or more risers high and every porch which is five (5) or more risers high shall have handrails or railings located on one (1) side of such flight of stairs or porch. Every rail and balustrade shall be firmly fastened and maintained in good condition. No flight of stairs shall have settled or have pulled away from supporting or adjacent structures so as to create a safety hazard. No flight of stairs shall have rotting, loose or deteriorating supports. The treads and risers of every flight of stairs shall be uniform in width and height. Every porch shall have a sound floor. No porch shall have rotting, loose or deteriorating supports.

h. Architectural Detail. Exterior architectural detail shall be installed in a safe and

secure manner and shall be maintained in good repair and must meet the requirements of all other portions of the City's code. Architectural details may not be removed or altered without the consent of the Planning Commission.

i. Driveways, Sidewalks and Patios. Driveways, sidewalks and patios shall be maintained in good repair and free of safety hazards. Cracks in concrete or asphalt surfaces causing a vertical offset in excess of one inch shall be repaired or replaced so as to prevent accident or injury. All driveways, sidewalks, and patios shall be made of concrete, asphalt, brick or other dust-free, hard surface.

j. Yards. All areas which are not covered by lawn or vegetation shall be treated to prevent dust or the blowing or scattering of dust particles into the air. All trees, bushes or vegetation located on private property which trees, bushes or vegetation overhang a public thoroughfare shall be properly trimmed to a minimum under-clearance of eight (8) feet over sidewalks or twelve (12) feet over streets to avoid obstruction of the view and movements of vehicles and pedestrians. Trees and shrubs which do not meet the standards in this subparagraph are hazards and shall be promptly removed or trimmed. All dead and diseased trees and shrubs shall be promptly removed. As part of the removal of any growth or vegetation, all stumps shall be removed or ground to at least six (6) inches below grade. All vegetation shall be maintained to acceptable community standards, including: grass no higher than six (6) inches, except for ornamental grasses, and vegetation in front yards to allow for reasonable view of the Dwelling from the street for public security. Weeds (including brush and woody vines) and grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property and weeds and grasses and dense growths of wild shrubbery on or about residential property which, because of their height, have a blighting influence on the neighborhood must all be trimmed or removed to meet the standards of this subparagraph. Any rank weeds, any weeds and/or dense growths of wild shrubbery in excess of twelve (12) inches in height, and any grasses in excess of six (6) inches in height, except for ornamental grasses, shall be presumed to be blighting and may be abated as a public nuisance by the Enforcement Officer after notice to the Owner in accordance with Section 5-509.

k. Infestation. Each commercial or retail district Building and each Dwelling and all exterior appurtenances on the Dwelling shall be adequately protected against entrance of insects, rats, mice, bats, termites and other infestation. Building defects, which permit the entrance of insects, rats, mice, termites and other infestation, shall be corrected by the Owner.

l. Plantings. No tree, bush or shrub shall be planted or permitted to grow in such a fashion that it shall touch or come in contact with any Building or part thereof in such a manner which is likely to cause damage thereto nor shall any tree, bush or shrub be planted within one (1) foot of any Building foundation. Further, no unmaintained wild or volunteer tree or seedling shall be permitted to grow along a fence line.

m. Trash. All premises shall be kept free of garbage, rubbish and other trash, and any such garbage, rubbish or trash shall be disposed of in adequate storage containers for the deposit of garbage, rubbish or trash until the date of pickup. All such storage containers shall be constructed to repel animals. The type and location of such containers must conform to the Code of the City of Westwood Hills.

#### **5-506. MINIMUM STANDARDS FOR DWELLING UNITS AND COMMERCIAL OR**



## **RETAIL AREAS.**

a. Applicability.

It shall be unlawful for any Person to own, occupy, rent, lease, or hold out to another for occupancy for the purpose of living, sleeping, cooking or eating any Dwelling Unit which is not safe, sanitary and fit for human habitation and which does not comply with the particular requirements of this Article. Additionally, it shall be unlawful for any Person to own, occupy, rent or lease any other Building as a Commercial or Retail Area unless such Building is safe and sanitary and complies with the requirements of this Article.

b. Interior cellars, etc. to be maintained free from dampness.

Cellars, basements and crawl spaces shall be maintained reasonably free from dampness to prevent conditions conducive to decay or deterioration of the structure.

c. Interior structural members.

The supporting structural members shall be structurally sound, showing no evidence of deterioration which would render them incapable of carrying the imposed loads in accordance with the provisions of the Building Code.

d. Interior stairs.

All interior stairs shall be maintained in sound condition and good repair by replacing treads and risers that evidence excessive wear or that are broken, warped or loose. Every inside stair shall be so constructed and maintained so as to be safe to use and to be capable of supporting a load as required by the provisions of the Building Code.

e. Interior handrails.

Every inside staircase or stairway consisting of five (5) or more steps shall be equipped with a handrail which shall be kept in sound condition and good repair.

f. Bathroom and kitchen floors.

Every toilet, bathroom and kitchen floor surface shall be constructed and maintained with a material approved for the location and maintained so as to permit such floor to be easily kept in a clean and sanitary condition.

g. Interior sanitation.

The interior shall be maintained in a clean and sanitary condition free from any accumulation of rubbish or garbage as specified in this Article. Additionally, all interiors shall be kept free of any accumulation of materials which could inhibit ingress or egress from the Dwelling Unit or other Building which could endanger the safety of the occupants. Trash, Garbage and other refuse shall be properly kept inside temporary storage facilities until the evening prior to scheduled trash pick-up.

h. Interior insect and rodent harborage.

All Dwellings and other Buildings shall be kept free from insect and rodent infestation, and where insects or rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health, as specified in this Article. After extermination, proper precautions shall be taken to prevent re-infestation.

i. Interior walls, ceilings and floors.

Interior walls and ceilings shall be kept in sound condition and good repair and shall be constructed of a building material recognized for that purpose.

j. Interior sanitary facilities.

The following minimum sanitary facilities shall be supplied and maintained in sanitary, safe and working condition:

1. Toilet. Every Dwelling Unit shall contain a room, separate from the other habitable rooms of the Dwelling Unit, which affords privacy to a Person within such room, and which is equipped with a flush toilet and a lavatory basin, provided that such lavatory basin may be located outside such room if it is convenient to such room.

2. Bathtub or shower. Every Dwelling Unit shall contain a room, separate from the other habitable rooms of the Dwelling Unit, which affords privacy to a Person within such room and which is equipped with a bathtub or shower.

3. Kitchen sink. Every Dwelling Unit shall contain a kitchen sink in good working condition and properly connected to an approved water and sewer system.

4. Stove and refrigerator. Every Dwelling Unit shall contain proper and safe connections for the installation of a stove and refrigerator.

5. Shelf and storage place for food. Every room which is used partially or exclusively for cooking shall contain adequate shelf and storage space for the preparation and storage of food.

k. Interior water and sewer system.

Every kitchen sink, lavatory basin, bathtub or shower and toilet installed within any Building shall be properly connected to both a public water and sewer system and shall be maintained in clean, safe and working order. All sinks, lavatories, bathtubs and showers shall be supplied with hot and cold running water.

l. Interior water heating facilities.

Water heating facilities shall be installed in an approved manner, properly maintained, and properly connected with hot water lines to the fixtures required to be supplied with hot water under the provisions of this Article. Water heating facilities shall be capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink,

lavatory basin, bathtub, shower, and laundry facility or other similar units at a temperature of not less than one hundred thirty (130) degrees Fahrenheit at any time needed.

m. Interior heating facilities.

Heating facilities shall be installed in an approved manner, be maintained in safe and good working condition, and be capable of safely and adequately heating all habitable rooms, bathrooms, and toilet rooms located in the Dwelling Unit and all Commercial or Retail Areas to a temperature of at least seventy (70) degrees Fahrenheit at a distance of three (3) feet above floor level and under ordinary winter conditions.

n. Interior trash storage facilities.

Every Dwelling Unit and every Commercial or Retail Area shall have adequate trash storage facilities whose type and location are in accordance with the provisions of the Code of the City of Westwood Hills.

o. Interior functioning and maintenance of facilities and equipment.

Every supplied facility, piece of equipment, or utility which is required under this Article shall be so constructed and installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

p. Interior Plumbing systems and fixtures.

Water lines, plumbing fixtures, vents, drains, plumbing stack and waste and sewer lines shall be properly installed, connected and maintained in working order and shall be kept free from obstructions, leaks, and defects and shall be capable of performing the function for which they are designed. All repairs and installations shall be made in accordance with the provisions of the Building Code or plumbing code of the City.

q. Interior ceiling heights - minimum.

At least one-half of the floor area of each habitable room shall have a ceiling height of seven (7) feet or more, and the floor area of that part of any room where the ceiling height is five (5) feet or less shall not be deemed as part of the floor area in computing the total area of that room for the purposes of Section 5-506(s) hereof.

r. Interior ceiling heights - public halls and stairways.

Every public hall or stairway shall have a minimum vertical clearance of six (6) feet eight (8) inches at all places, provided that the Enforcement Officer may waive this requirement if the construction of the Dwelling is such as to make this requirement impractical. Where a waiver is granted for rented or leased Dwelling Units, the Owner or Landlord shall post a written warning of low clearance which shall be easily visible and which shall be approved by the Enforcement Officer.

s. Interior required space in Dwelling Units.

Every rented or leased Dwelling Unit shall contain one hundred fifty (150) square feet or more of floor space for the first Occupant thereof and at least one hundred (100) square feet of additional floor space for each additional Occupant thereof, provided that an infant under the age of twelve (12) months shall not be deemed an Occupant for the purposes of this section. The floor space shall be calculated on the basis of total habitable room area.

t. Interior occupancy of Dwelling Units below grade.

No Dwelling Unit partially below grade shall be used for living purposes unless floors and walls are watertight; unless total window area, total operable area and ceiling height are in accordance with this Article, provided that this provision can be waived by the Enforcement Officer; and unless required minimum window area of every habitable room is entirely above the grade of the ground adjoining such window area, provided this provision can be waived by the Enforcement Officer. No basement or cellar, or part thereof, shall be used or leased for human occupancy or habitation if subject to flooding. For the purposes of this Article, a basement or cellar shall be deemed to be subject to flooding if at any time there has been more than one inch of water over the floor and if the condition or conditions which caused the flooding to occur have not been subsequently corrected.

u. Interior natural light in habitable rooms in Dwelling Units.

1. Every habitable room shall have at least one window of approved size facing directly to the outdoors or to a courtyard or shall incorporate other methods and devices that will provide the equivalent minimum performance requirements.

2. The minimum total window area, measured between stops, for every habitable room shall be ten (10) percent of the floor area of such room. In a basement or cellar, a three (3) square foot window area shall be deemed sufficient. Whenever walls or other portions of a structure face a window of any room and such obstructions are located less than three (3) feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors nor to a courtyard and shall not be included as contributing to the required minimum total window area for the room.

3. In the application of this Article, the standard for light for all habitable rooms shall be based on two hundred fifty (250) foot candles of illumination on the vertical plane adjacent to the exterior of the light transmitting device and shall be adequate to provide an average illumination of six (6) foot candles over the area of the room at a height of thirty (30) inches above the floor level.

v. Interior light in halls and stairways.

Every hall and inside stairway in every Dwelling and every Commercial or Retail Area shall be capable of being lighted at any time with an illumination of at least five (5) candlepower per square foot in the darkest portion of the normally traveled stairs and passageways.

w. Interior electrical outlets and light fixtures required.

Every Dwelling and every Commercial or Retail Area shall be serviced by electricity. Further, every electrical outlet and fixture, and all electrical wiring required by this section, shall

be properly installed, maintained in good and safe working condition, and connected to the source of electricity in a safe manner and in accordance with the provisions of the Building Code or electrical code of the City. For the purposes of this section, a two (2) plug electric convenience outlet shall be deemed to be a single outlet. Unless otherwise specified in any other code or requirement of the City (in which case, the most stringent requirement shall apply) every Dwelling and every Commercial or Retail Area, shall be electrically equipped as follows:

1. Every habitable room shall contain two (2) or more wall-type electric convenience outlets or one (1) or more wall-type electric convenience outlets and one (1) electric ceiling or wall light fixture.

2. Every toilet room, bathroom laundry room, and furnace room shall contain one or more ceiling or wall-type electric light fixtures.

3. Every hall, stairway, basement and porch in a Dwelling or Commercial or Retail Area shall contain sufficient ceiling or wall-type electric light fixtures to comply with the Code of the City of Westwood Hills.

4. A separate electrical circuit shall be required as set forth in the Building and Electrical Codes and requirements of the City of Westwood Hills for every eight (8) electrical convenience outlets for alterations, repairs and additions.

5. In Dwellings or Commercial or Retail Areas utilizing electric heat and/or an electric cooling unit in which the source of heat is wholly or partially operated by a centrally located electrical unit, a separate electrical circuit will be required for each such device.

x. Correction of defective interior electric system.

Where the Enforcement Officer finds that the electrical system in a Dwelling or Commercial or Retail Area constitutes a hazard to the occupants of the building by reason of inadequate service, improper fusing, insufficient outlets, improper wiring or installation, deterioration or damage, the electrical system shall be corrected to eliminate the hazard.

y. Adequate interior ventilation.

Every room in every Dwelling or Commercial or Retail Area shall have at least one window which can be easily opened or such other device as will adequately ventilate the room, except that no operable window shall be required in bathrooms or toilet compartments equipped with an approved ventilation system. The total operable window area in every room shall be equal to at least forty-five (45) per cent of the minimum window area size required in the Code of the City of Westwood Hills.

z. Interior disposal of garbage.

Every Occupant of a Dwelling shall dispose of his or her garbage in a clean and sanitary manner by placing it in garbage disposal facilities or garbage storage containers; provided that, if garbage disposal facilities are not supplied, it shall be the responsibility of the Owner to supply proper garbage storage containers, for all Dwelling Units. Every Dwelling Unit offered for lease or rent shall have adequate storage facilities, which shall be constructed to repel animals, for the

deposit of garbage until the date of pickup. The type and location of these containers must conform to the Code of the City of Westwood Hills. It shall be the responsibility of the Owner and every Occupant of a rented or leased Dwelling Unit to see that garbage is deposited at curbside as required in said Code. For Commercial or Retail Areas, all garbage shall also be disposed of in garbage storage containers, designed to repel animals, until the date of pickup.

aa. Overcrowding not allowed. Overcrowding of a Dwelling shall be a violation of this Article. Overcrowding is defined as occupancy by more than two (2) persons of the same sex per bedroom or by more than either a married couple or a couple holding itself out as single housekeeping unit in one bedroom.

bb. Rental property license. A Rental property license is required for every rented or leased Dwelling Unit as provided in Chapter 6.

**5-507. ACCESSORY STRUCTURES.** Accessory Structures shall not obstruct light and air of doors and windows of any Building or Dwelling Unit, obstruct a safe means of access to any Dwelling Unit, create fire and safety hazards, or provide rat or insect harborage. Accessory Structures shall be securely anchored.

**5-508. EGRESS.**

a. Egress. Every Building and Dwelling Unit shall have a safe and unobstructed means of egress leading to safe and open space outside at the ground level. Passage through such exit shall not lead through any other Building or Dwelling Unit.

b. Structures With Two and One-Half Stories. All Buildings or habitable Structures of two and one-half (2 ½) stories with Dwelling Units occupying the higher story shall be provided with two (2) separate, usable and unobstructed means of egress for each Dwelling Unit located above the second story.

**5-509. ENFORCEMENT.**

a. Enforcement Officer. It shall be the duty and responsibility of the Enforcement Officer and his delegated representatives to enforce the provisions of this Article. The exterior of all premises are subject to periodic inspection by the Enforcement Officer. The Enforcement Officer shall have the authority to render interpretations of this Article and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purposes of this Article. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this Article.

The Enforcement Officer shall determine if a property is in violation of this Article 5 or violation of any other law or regulation relating to the use of land and the use and occupancy of the buildings and improvements. Additionally, the Enforcement Officer shall investigate any property if the City Clerk has been notified of concerns about the condition of the a specific property, and in such case, the Enforcement Officer shall determine, in his reasonable judgment, whether any violations of this Article 5 exist with respect to such property.

b. Liability. The Enforcement Officer, member of the Board of Code Appeals or any

employee or agent of the City charged with enforcement of this Article, while acting for the City, in good faith and without malice in the discharge of the duties required by this Article or other pertinent ordinance, shall not thereby be rendered liable personally, and any such person is hereby relieved of all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any such officer, employee or agent in the lawful discharge of duties under the provisions of this Article shall be defended by the legal representative of the City until the final termination of the proceedings. Any such person shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this Article, provided that such person acted in good faith and without malice in the discharge of his or her duties.

c. Inspections. In addition to the Enforcement Officer's individual inspection as provided for in Section 5-509(a) hereof, exterior inspections may also be initiated by notification from the City Clerk acting on behalf of the City Council which has directed a systematic inspection block-wide or City-wide. All such inspections shall be exterior property inspections. Interior inspections shall be initiated only under the following circumstances:

1. When, on the basis of a complaint, personal observation or other information, the Enforcement Officer reasonably suspects that a building or dwelling, offered for lease or rent or leased or rented in whole or in part, has code violations and as such constitutes a health and/or safety hazard.

2. Where an inspection is a requirement of a specific building or dwelling improvement for which a building permit has been issued, if requested by the Building Official, the Enforcement Officer is authorized and directed to make inspections to determine whether buildings, dwellings or accessory structures and premises located within the City conform to the requirements of this Article. For the purpose of making such inspections, the Enforcement Officer is authorized, at reasonable times, with the consent of the Owner thereof, to enter, examine and survey all buildings, dwellings, accessory structures and premises.

3. Inspections may also take place by obtaining an appropriate warrant or other order as provided by law.

The Enforcement Officer shall issue a report to the City Council of all inspections conducted pursuant to this Section 5-509(c).

d. Access for purpose of inspections. The Enforcement Officer is authorized to conduct inspections to determine the conditions of all structures and premises governed by this ordinance in order to safeguard the safety, health and welfare of the public under the provisions of this Article and as limited by Section 5-509(c) above. The Enforcement Officer is authorized to enter any Building or premises at any reasonable time, with the consent of an Owner, Occupant, Landlord or person in charge thereof, for the purpose of performing the duties under this Article. The Owner, Occupant, Landlord or person in charge of each Building or premises governed by this ordinance shall give the Enforcement Officer reasonable access thereto and to all parts thereof and to the premises on which it is located at all reasonable times for the purpose of such inspection, examination and survey. In the event the Owner, Occupant, Landlord or person in charge of such Building or premises shall refuse access to any building or premises, the Enforcement Officer may make application to the District Court for a search warrant.

**5-510. VIOLATIONS: PROCESS, NOTICES AND ORDERS.**

a. Unlawful Acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this Article.

b. Process for Notice of Violations; Procedures.

1. Informal Discussion. Whenever the Enforcement Officer determines that there may be a violation of any provision of this Article 5, the Enforcement Officer will arrange with the alleged violator for an informal discussion of violations and shall then determine whether repair and correction is required. Further, should the Enforcement Officer order the maintenance or repair of an element of a structure, the property Owner shall not remove said element unless the Enforcement Officer has first determined that the removal of said element would not increase the rate of deterioration of said structure. Additionally, the property Owner shall not remove said element unless the Enforcement Officer, with the advice of the State Historic Preservation Office, determines that such removal would not have a negative impact on the architectural integrity or historic nature of the structure. No further process shall be required if the Owner repairs or corrects any violation noted by the Enforcement Officer within a reasonable amount of time allowed by the Enforcement Officer for such corrective action. The Enforcement Officer shall notify the City Clerk by letter or e-mail of all informal discussions. The City Clerk shall share this information with the City Council as the Council directs.

2. Formal Notice of Violation. If a satisfactory solution to the violations, either by correction, demolition or removal, is not forthcoming after informal discussions between the Owner and the Enforcement Officer or after the Enforcement Officer is unable to conduct informal discussions with the Owner, then a legal notice of a violation shall be issued according to the following procedures:

(a) Notice shall be in writing.

(b) The notice shall list the violations alleged to exist or to have been committed.

(c) The notice shall provide a reasonable time, but not less than 30 days in any event, for the correction of the violations particularized. Additionally, for good cause, the Enforcement Officer, in his reasonable discretion, may extend any time allowed for correction of violations.

(d) The notice shall be addressed to and be served upon the Owner of the property, the operator of the building, and the occupant of the building, if the occupant is or may be responsible for the violation.

(e) Delivery shall be by certified mail, return receipt requested, or by personal service. If service is made by certified mail, the Enforcement Officer shall include in the record a verified statement giving details regarding the mailing.

(f) If one or more Persons to whom the notice is addressed cannot be found or served after diligent effort to do so, service may be made upon such Person or Persons by posting a notice in a conspicuous place in or about the building affected by the notice, in which



event the Enforcement Officer shall include in the record a statement as to why such posting was necessary.

(g) Notice shall be deemed served on the date personally served, on the date three (3) days after deposit of the notice in the United States Mail, or on the date ten (10) days after posting.

3. Remedy of Defects. The Owner of any building shall remedy the condition specified in the notice of violation within the time designated therein; however, the Enforcement Officer may, at his discretion, extend the time for compliance with any such notice upon good cause shown. Nothing herein, however, shall require the Enforcement Officer to grant an additional notice or to undertake any administrative action prior to a complaint issuing in the Municipal Court of Westwood Hills, Kansas. It shall not be a defense to any such complaint that the Owner of any building has undertaken to remedy the condition specified.

4. Re-inspection. At the time when the defects have allegedly been brought into compliance, the Enforcement Officer shall re-inspect the building, dwelling, or accessory structure and its premises. At that time, he shall take particular notice of whether the violations previously noted have been brought into compliance and whether any hazardous conditions have come into existence during the time which has elapsed since the first inspection.

5. Non-compliance with Formal Notice of Violation. Any person failing to comply with the notice of violation served in accordance with this provision, after expiration of any cure period, shall be deemed in violation of these ordinances, and the violation shall be deemed a Strict Liability Offense.

#### **5-511. PROSECUTION OF VIOLATION.**

- a. Prosecution. In case any violation of this Article is not remedied within the prescribed time period designated by the Enforcement Officer, the Enforcement Officer may file a complaint in municipal court.
- b. Remedies Not Exclusive. The authority of the City and its rights and remedies herein shall be in addition to, and not to the exclusion of, all other authority, rights or remedies.

#### **5-512. BUILDINGS UNFIT FOR HUMAN HABITATION.**

a. Placard on Building. The designation of buildings or dwellings as unfit for human habitation and the procedure for such declaration and placarding of such unfit buildings or dwellings shall be carried out in compliance with the following requirements. Any buildings or dwellings, which shall be declared unfit for human habitation, shall be so designated and placarded by the Enforcement Officer when the Person responsible has failed to correct the condition set forth in a notice issued in accordance with this ordinance. Buildings which are unfit for human habitation are ones which are so damaged, decayed, dilapidated, unsanitary, unsafe, insect infested or rodent infested or so filled with combustible materials that they create a serious hazard to the health or safety of the occupants or the public.

b. Building to be Vacated. Any building or dwelling condemned as unfit for human habitation and so designated and placarded by the Enforcement Officer shall be vacated within a reasonable time as ordered by the Enforcement Officer.

c. Reoccupation of Building. No building or dwelling which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from and such placard removed by the Enforcement Officer. The Enforcement Officer shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.

d. Unlawful to Remove Placard. No Person shall deface or remove the placard from any building or dwelling which has been condemned as unfit for human habitation and placarded as such, except as provided in Section 5-509(c).

e. Vacated Buildings to Be Made Secure. The Owner of every building or dwelling which is condemned as unfit for human habitation or for continued occupancy shall make the dwelling or building safe and secure so that it shall not be dangerous to human life and shall not constitute a fire hazard or public nuisance. Any such vacant building or dwelling open at doors or windows, if unguarded, shall be deemed to be dangerous to human life as a fire hazard and public nuisance within the meaning of this provision.

#### **5-513. BROKEN GLASS AND BOARDING UP.**

a. Applicability. Every window, glazed exterior door, exterior transom, or exterior sidelight shall be provided with properly installed glass or other approved glazing material. In the event of breakage, the Owner shall cause the simultaneous removal of broken glass from the Premises and shall temporarily board up the affected openings with suitable material to provide protection from the elements, to prevent entry of birds or animals, and to provide security to Occupants or contents of the Building. Within ten (10) days after the boarding up, the Owner shall cause the boarding material to be removed, and all affected openings shall be immediately re-glazed by the Owner.

b. Enforcement. Whenever any exterior openings are found boarded up in an occupied Building or Dwelling, it shall be the duty of the Enforcement Officer to notify the Owner or the agent of the above requirement, giving him a period of not more than ten (10) working days in which properly to replace the broken glass or cause the Building or Dwelling to be vacated. If necessary materials are not available within this period, the Enforcement Officer may grant an extension of time at his discretion.

c. Specifications. All boarding up of exterior openings shall be accomplished in a neat, workmanlike manner. The Enforcement Officer is authorized to notify the Owner or agent of any boarded up Building or Dwelling not complying with the ten (10) day requirement of the necessity of immediate compliance and to order the Owner to replace the glazing within ten (10) working days.

#### **5-514. EMERGENCY MEASURES.**

a. When any Dwelling Unit has become so damaged by fire, wind or other causes, or has become so unsafe, unhealthful or unsanitary that, in the opinion of the Enforcement Officer,

life or health is immediately endangered by the occupancy of the Dwelling Unit, the Enforcement Officer is hereby authorized and empowered to revoke without notice any rental property license for such Dwelling Unit; to order and require the Occupants to vacate the same forthwith; and to order the Owner, Landlord or agent of either to proceed immediately with the corrective work and repairs required to make the Dwelling Unit safe and fit for human habitation. The Enforcement Officer may take any and all of these measures whether a notice of violation has or has not been given as described in this Article and whether legal procedures described by City ordinances have or have not been instituted.

b. In the event the Enforcement Officer determines that there is an immediate danger to the health, safety or welfare of any Person, the Enforcement Officer may take emergency measures to vacate and repair the structure or otherwise remove the immediate danger.

c. Written notice shall be given to the Owner, Landlord, Occupant, lessee, mortgagee, agent and all other Persons having an interest in such Building or Structure as promptly as possible. The cost of any such emergency work shall be collected as a tax lien in the same manner as herein above provided. Posting said notice on the door of the Building in question or in any other conspicuous fashion shall be sufficient in the event the Owner, Landlord, Occupant, lessee, mortgagee, agent or other Persons having an interest in such Building or Structure cannot be located.

#### **5-515. PENALTIES.**

a. Any Person convicted of a violation of this Article shall be punished for that violation by a fine of not more than five hundred dollars (\$500.00) or by imprisonment of not more than one hundred eighty (180) days or by both such fine and imprisonment.

b. Every day that a violation continues shall be considered a separate offense for which the violator may be arrested, tried and convicted without necessity of further notice.

### **ARTICLE 6. CLEARING AND CLEANING OF STREETS DURING AND FOLLOWING CONSTRUCTION**

**5-601. CLEARING AND CLEANING OF STREETS DURING CONSTRUCTION.** Every person, firm or legal entity obtaining a building permit shall keep the street, curb, gutter, sidewalk and alleys reasonably clean during construction, including hosing the same down at the end of each construction day, if necessary, and shall provide for erosion control during construction by laying hay or silting fences at locations as needed to prevent runoff of mud and silt from the site. No contractor or workman or property owner shall release construction-related effluent into the City streets or gutters unless such effluent consists of uncontaminated water.

**5-602. CLEARING AND CLEANING OF STREETS FOLLOWING CONSTRUCTION.** Every person, firm, or corporation obtaining a building permit shall, within ten (10) days after completion of the work cause that portion of the street, curb, gutter, sidewalk or alley occupied by him with building material to be thoroughly cleared and cleaned.

### **ARTICLE 7**

## USE AND EXCAVATION OF THE PUBLIC RIGHT-OF-WAY

### 5-701. GENERAL.

a. No person shall excavate the right-of-way nor construct or use the facilities within the right-of-way of the City except as provided herein.

### 5-702. PURPOSE.

The purposes of this Article are:

a. To recognize the City's primary role as chief steward of the right-of-way and its duty to its citizens to recover the costs of managing the right-of-way and incursions into it;

b. To clarify and regulate conditions of occupancy and construction for those ROW-users occupying space within the City's right-of-way given the anticipated increased use of the right-of-way by various ROW-users throughout the country;

c. To recognize the necessity for sound management practices in light of the increased use of the right-of-way and the fact that the right-of-way is a limited resource;

d. To treat each ROW-user equitably and in a competitively neutral and nondiscriminatory manner with considerations that may be unique to the technologies and situation of each particular ROW-user;

e. To minimize disruption, visual impact or inconvenience to the public and to preserve the public health, safety and welfare; and

f. To comply with state and federal legislation.

### 5-703. DEFINITIONS.

For purposes of this Article, the following words and phrases shall have the meaning given herein:

a. **“Abandoned Facilities”** means those facilities owned by the ROW-user that are not in use and will not be utilized by the ROW-user in the future.

b. **“Affiliate”** means any person controlling, controlled by or under the common control of a “service provider.”

c. **“Applicant”** means any person requesting permission to occupy, lease or operate facilities using the right-of-way or to excavate the right-of-way.

d. **“Area of Influence”** means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.

e. **“City”** means the City of Westwood Hills, Kansas, a municipal corporation, and any of its duly authorized representatives.

- f. **“Construct”** means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.
- g. **“Day”** means calendar day unless otherwise specified.
- h. **“Emergency”** means a condition that (a) poses a clear and immediate danger to life or health or of a significant loss of property; or (b) requires immediate repair or replacement in order to restore service to a user.
- i. **“Excavate”** means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.
- j. **“Excavation Fee”** means the fee charged by the City for each street or pavement cut which fee is intended to recover the costs associated with construction and repair activities of the ROW-user and its contractors and/or subcontractors.
- k. **“FCC”** means Federal Communications Commission.
- l. **“Facility”** means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, appurtenances, or other equipment.
- m. **“Governing Body”** means the Mayor and the City Council of the City of Westwood Hills, Kansas.
- n. **“Governmental Entity”** means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States or of the United States.
- o. **“KCC”** means the Kansas Corporation Commission.
- p. **“Parkway”** means the area between a property line and the street curb. The Parkway is sometimes called boulevard, tree-shelf or snow-shelf.
- q. **“Pavement”** means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.
- r. **“Permit and Inspection Fee”** means the fee charged by the City to recover its cost incurred for right-of-way management including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; and revoking right-of-way permits as well as any other costs the City may incur in managing the provisions of this Article.
- s. **“Permittee”** means any person to whom a right-of-way permit is issued to

excavate a right-of-way.

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

u. **“Public Improvement”** means any project undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure, including, without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, street lights, public facilities, public buildings or public lands.

v. **“Public Lands”** means any real property of the City that is not right-of-way.

w. **“Public Works Director”** means the Public Works Director of the City of Westwood Hills, Kansas, or his or her authorized representative.

x. **“Registration”** means the application process of a service provider, the approval of the application by the City, and the authorization of the service provider to use any portion of the right-of-way within the City to provide service both within and beyond the City limits.

y. **“Repair”** means the temporary construction work necessary to make the right-of-way useable.

z. **“Repair and Restoration Costs”** means those costs associated with repairing and restoring the public right-of-way because of damage caused by the ROW-user and its contractors and/or subcontractors in the right-of-way.

aa. **“Restoration”** means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, that existed before the commencement of the work.

bb. **“Right-of-way”** means the area on, below, or above public streets, alleys, bridges, and parkways, and also the areas immediately adjacent thereto dedicated to public use, including, but not limited to, any sidewalk, any public easement, any area extending beyond the margins of the paved surface of any street which is also used for or dedicated to public purposes or uses or roadway purposes or uses, or any dedicated roadway area.”

cc. **“Right-of-way Permit”** means the authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.

dd. **“Routine Service Operation”** means a work activity that makes no material change to the facilities and does not disrupt traffic.

ee. **“ROW-user”** means any person, including, but not limited to, landowners and service providers, their successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or installation, construction, maintenance, or repair of facilities thereon. A ROW-user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an agreement pursuant to K.S.A. 12-2901 et seq. with

the City regarding the use and occupancy of the City's right-of-way.

ff. **“Service”** means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, Open Video Systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.

gg. **“Service Provider”** means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee, provided that this definition shall also include persons owning, possessing or having an interest in facilities in the right-of-way which facilities are used by, may be used by or are intended for use by another person, in whole or in part, to provide a service for or without a fee, regardless of whether the actual facility owner provides any service as defined herein.

hh. **“Street”** means the pavement and sub-grade of a City residential, collector or arterial roadway.

#### **5-704. POLICY.**

a. It is the policy of the City to authorize any ROW-user to utilize the right-of-way in a competitively neutral, non-discriminatory manner that maximizes the efficient use of and conserves the right-of-way and minimizes the burden on the right-of-way, physically and aesthetically. Any use of the right-of-way by a ROW-user shall be subject to the terms and conditions hereof, in addition to other applicable federal, state or local requirements.

b. The right granted to the ROW-user to use the right-of-way is limited to the use that the ROW-user has filed with the City in accordance with this Article. These rights are for the exclusive use of the ROW-user except where otherwise provided herein or when authorized by the City.

c. This Article also is designed to regulate occupancy and excavations in the right-of-way by providing, among other things, for the issuance of permits which grant the authority to utilize and occupy the right-of-way within the City.

d. All ROW-users shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and are subject to all applicable laws, orders, rules and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the ROW-users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the right-of-way.

#### **5-705. ADMINISTRATION.**

a. The Public Works Director is the principal city official for administration of right-of-way permits for work and excavations made in the right-of-way. The Public Works Director may

delegate any or all of the duties hereunder.

b. The Public Works Director is the principal City Official responsible for administration of the registering of a service provider. The Public Works Director may delegate any or all of the duties hereunder.

**5-706. REQUIREMENTS OF SERVICE PROVIDER.**

a. Any existing service provider must register with the City within thirty (30) days of the effective date of this Article.

b. Any person who is not an existing service provider prior to the effective date of this Article and who wishes to become a service provider must first register with the City.

c. The service provider shall report any changes in its registration information within thirty (30) days of any change.

d. No service provider shall be authorized to utilize the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the City.

e. The information required for registration includes the following:

1. Identity and legal status of service provider, including related affiliates.
2. Name, address, telephone number, fax number and email address of officer, agent or employee responsible for the accuracy of the registration statement.
3. Name, address, telephone number, fax number and email address of the local representative of the service provider who shall be available at all times to act on behalf of the service provider in the event of an emergency.
4. Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC.
5. Description of the service provider's intended use of the right-of-way.
6. Information sufficient to determine whether the service provider is subject to franchising by Kansas law.
7. Information sufficient to determine whether the service provider has applied for and received any certificate of authority required by the Kansas Corporation Commission.
8. Information sufficient to determine that the service provider has applied for and received any permit or other approvals required by the Federal Communications Commission.
9. Such other information as may be reasonably required by the City to complete the registration statement.



f. Each service provider shall designate a local person familiar with the facilities who will act as a local agent for the service provider and will be responsible for satisfying information requirements of this Article. The service provider shall present to the City the agent's name, address, telephone number, fax number and email address. The agent shall be the person to whom relocation notices and other such notices shall be sent and with whom rests the responsibility to facilitate all necessary communications. The service provider shall be responsible for all costs incurred by the City due to the failure to provide such information to the City.

g. Prior to construction, reconstruction, repair, maintenance, or relocation of facilities owned by the service provider in the right-of-way, the service provider shall first obtain the necessary right-of-way permit as provided hereafter.

h. Prior to providing service to the City and its residents, the service provider shall first obtain the necessary franchise agreement, if any, from the City.

i. The service provider shall participate in any joint planning, construction and advance notification of right-of-way work, including coordination and consolidation of street cut work as directed by the Public Works Director. In addition, the service provider shall cooperate with other service providers and the City for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with safety, and for the purpose of minimizing traffic and other disruptions, including street cuts.

j. The service provider shall furnish maps showing the location of facilities of the service provider within the City as provided hereafter.

k. The City shall not exercise its authority under this provision to in any way deter competition or discriminate against any service provider.

#### **5-707. MAPPING REQUIREMENTS OF SERVICE PROVIDER.**

a. The service provider shall keep and maintain accurate records and as-built drawings depicting accurate location of all its facilities constructed, reconstructed or relocated in the right-of-way.

b. Within ten (10) days of a request by the City, the service provider will provide to the City information concerning such facilities as may be reasonably requested.

c. When available to the service provider, such information will be submitted electronically in an AutoCad format to the extent compatible with the City's Geographical Information Systems (GIS) and Johnson County Automated Integrated Mapping Systems (AIMS) provided, however, that nothing herein shall be construed to require the service provider to acquire or modify any electronic mapping system.

d. Underground facilities shall be differentiated from overhead facilities.

e. Such mapping and identification shall be at the sole expense of the service provider.

**5-708. SERVICE PROVIDER'S RIGHT TO SELL, TRANSFER, LEASE, ASSIGN, SUBLET OR DISPOSE.** Except as provided hereafter, the service provider shall not sell, transfer, lease, assign, sublet or dispose of its facilities, or any portion thereof, that are located in City right-of-way, or any right, title or interest in the same, or transfer any rights granted by the City to any person either by forced or involuntary sale or by ordinary sale, consolidation or otherwise, without notice to the City. This provision shall not apply to the sale of property or equipment in the normal course of business or to the sale or lease of facilities to reseller service providers. No notice to the City shall be required for a transfer in trust, mortgage, or other similar instrument, in whole or in part, to secure an indebtedness or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by or under common control with the service provider.

**5-709. USE OF THE RIGHT-OF-WAY.**

a. The ROW-user's use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. The City may reserve sufficient space within the right-of-way for future public improvements. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.

b. The ROW-user shall coordinate the placement of facilities in a manner which minimizes adverse impact on any public improvement, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the City's Manual of Infrastructure Standards available in the office of the Public Works Director.

c. The ROW-user shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.

d. All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the right-of-way or other public lands of the City.

e. All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its Public Works Director, shall have the right to consult and review the location, design and nature of the facility prior to its being installed.

f. Whenever reasonably possible, all newly constructed facilities shall be located underground. The ROW-user shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the Public Works Director at his discretion for safety concerns, or some other good cause provided that such waiver does not cause discrimination among ROW-users. If this requirement is waived, the facilities shall be located as directed by the Public Works Director, including, but not limited to, directions concerning requirements regarding location and height.

g. The ROW-user shall not interfere with the facilities of the other ROW-users without

their permission. If and when the City requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time.

h. The Public Works Director may assign specific corridors within the right-of-way, or any particular segment thereof, as may be necessary for each type of facility that is currently, or, pursuant to current technology, the Public Works Director expects will someday be, located within the right-of-way. All right-of-way permits issued by Public Works Director shall indicate the proper corridor for the ROW-user's facilities. Any ROW-user whose facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, unless this requirement is waived by Public Works Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, user service needs and hardship to the ROW-user.

i. If, in the preparation and planning of a right-of-way project, the Public Works Director deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the Public Works Director shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate facilities along such right-of-way, the Public Works Director may require the ROW-user to use such conduit and to contribute to the expense of such conduit, provided, however, the ROW-user's use of the conduit is reasonable and appropriate under the circumstances.

j. All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the Public Works Director that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within twenty-four (24) hours of notice from the City, or the Public Works Director may direct the City to make such repair or replacement and bill the ROW-user for the City cost. The Public Works Director has the authority to inspect the repair or replacement of the damage and, if necessary, to require the ROW-user to do any necessary additional work.

k. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's facilities in the right-of-way shall be in accordance with applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. The standards established in this paragraph are minimum standards, and the requirements established or referenced in this Article may be in addition to or stricter than such minimum standards. A ROW-user shall not construct or reconstruct any of its facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvement to the Public Works Director and having received a permit for such improvement. The Public Works Director may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.

l. The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the right-of-way, both underground and overhead, when requested by the City or its authorized agent. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.

m. The City shall have the authority to prohibit the use or occupancy of a specific portion of the right-of-way by a ROW-user due to public health, safety or welfare considerations.

#### **5-710. FACILITY RELOCATION.**

a. The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety and welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with relocations with due diligence upon notice by the City to begin relocation.

b. The ROW-user shall promptly remove, relocate or adjust any facilities located in private easements, as directed by the City, for a public improvement, at City expense, by moving such facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. The ROW-user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the ROW-user to relocate its facilities again to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the City.

c. As soon as working drawings are available for public improvements which will require the ROW-user to relocate its facilities, the City shall provide the ROW-user with written notice of relocations and the anticipated bid letting date of said improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within thirty (30) days.

d. Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.

e. Any damages suffered by the City, its agents or its contractors, to the extent caused by ROW-user's failure timely to relocate or adjust its facilities or failure properly to relocate or adjust such facilities, shall be borne by the ROW-user.

f. In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.

g. It is the intent of this section for both the City and the ROW-user to cooperate with

one another so that the need for facility relocation is minimized and so that, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.

#### **5-711. PROTECTION OF THE PUBLIC.**

a. It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.

b. The City shall not be liable for any damage to or loss of any of the ROW-user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.

c. The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user timely to perform any of its obligations under this Article to the extent caused by the acts or omissions of the ROW-user.

d. The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.

e. Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way and who shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good, substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.

f. Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.

g. Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.

h. The Public Works Director, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW-user to trim trees upon and overhanging the right-of-way so as to prevent such trees from coming in contact with the facilities of the ROW-user.

i. In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be

required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, the Public Works Director, in his discretion, may require the ROW-user to bore directionally around any tree in the right-of-way.

j. Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW-user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than fifteen (15) days written notice from the person detailing the time and location of the moving operations and not less than twenty-four (24) hours advance notice from the person advising of the actual operation.

#### **5-712. RIGHT-OF-WAY VACATION.**

a. If the City vacates a right-of-way which contains the facilities of the service provider, and if the vacation does not require the relocation of the service provider's facilities, the City shall reserve, to and for itself and all service providers having facilities in the vacated right-of-way, an easement for the right to install, maintain and operate any facilities in the vacated right-of-way and to enter upon such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

b. If the vacation requires the relocation of facilities, and

1. If the vacation proceedings are initiated by the service provider, the service provider must pay the relocation costs.

2. If the vacation proceedings are initiated by the City, the service provider must pay the relocation costs unless otherwise agreed to by the City and the service provider.

3. If the vacation proceedings are initiated by a person other than the service provider or the City, such other person must pay the relocation costs.

#### **5-713. ABANDONMENT AND UNUSABLE FACILITIES.**

a. A ROW-user owning abandoned facilities in the right-of-way must either:

1. Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Public Works Director may allow underground facilities or portions thereof to remain in place if the Public Works Director determines that it is in the best interest of public safety to do so. At such time, the City may take ownership and responsibility of such vacated facilities left in place; or

2. Provide information satisfactory to the City that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or

3. Submit to the City a proposal and instruments for transferring ownership of

its facilities to the City. If the ROW-user proceeds under this section, the City may, at its option purchase the equipment, require the ROW-user, at ROW-user's own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities.

b. Facilities of a ROW-user who fails to comply with this section, and whose facilities remain unused for two (2) years, shall be deemed to be abandoned after the City has made a good faith effort to contact the ROW-user, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (i) abating the nuisance, (ii) taking possession and ownership of the facility and restoring it to a useable function, or (iii) requiring the removal of the facility by the ROW-user.

#### **5-714. PERMIT REQUIREMENT.**

a. Except as otherwise provided, no ROW-user may excavate any right-of-way or conduct any repair, construction, or reconstruction of facilities located within the right-of-way without first having obtained the appropriate right-of-way permit.

b. There are two exemptions to this provision:

1. Contractors working on the construction or reconstruction of public improvements.

2. ROW-users performing routine service operations which do not require excavation in the right-of-way and do not disrupt traffic for more than four (4) hours.

c. No person owning or occupying any land abutting on a public right-of-way shall construct, maintain, or permit in or on the portion of the public right-of-way to which such land is adjacent any fixed structure, material or object without having obtained the appropriate right-of-way permit.

d. A right-of-way permit is required for emergency situations. If due to an emergency it is necessary for the ROW-user to perform work immediately in the right-of-way and it is impractical for the ROW-user to first get the appropriate permit, the work may be performed, and the required permit shall be obtained as soon as possible during the next City working day.

e. No permittee may excavate the right-of-way beyond the date or dates specified in the right-of-way permit unless the permittee:

1. Makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and

2. A new right-of-way permit or permit extension is granted.

f. Right-of-way permits issued shall be conspicuously displayed by the permittee at all times at the indicated work site and shall be available for inspection by the Public Works Director, other City employees and the public.

g. Prior to the commencement of excavation, the permittee shall identify and locate any buried facilities by spraying painted according to the Uniform Color Code required by the Kansas One Call.

h. All excavations by the permittee shall have a metal marker inserted into the excavation of the restored pavement, which marker shall identify the ROW-user.

i. Before receiving a right-of-way permit, the applicant must show proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC.

j. Any ROW-user who is found to be working in the public right-of-way without a permit will be directed to stop work until a permit is acquired and properly posted at the work site. The only exception allowed is for emergency repair work.

k. Any permittee found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the current edition of the Manual on Uniform Traffic Control Devices.

#### **5-715. PERMIT APPLICATIONS.**

a. Application for a right-of-way permit shall be submitted to the Public Works Director by either the ROW-user or by the person who will do the work and/or excavation in the right-of-way.

b. Right-of-way applications shall contain and be considered complete only upon receipt of the following:

1. Compliance with verification of registration;
2. Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location;
3. A traffic control plan;
4. Payment of all money due to the City for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and has been timely appealed as provided hereafter.

#### **5-716. LIABILITY INSURANCE, PERFORMANCE AND MAINTENANCE BOND REQUIREMENT.**

a. The permittee shall file with the City evidence of commercial general liability and automobile liability insurance with an insurance company licensed to do business in Kansas. The general liability limit will be not less than one million dollars (\$1,000,000) per occurrence and two



million dollars (\$2,000,000) in aggregate. The automobile liability limit will not be less than one million dollars (\$1,000,000) combined single limit. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent acts or omissions of the permittee. If the permittee is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

b. The permittee shall at all times during the term of the permit, and for two (2) years thereafter, maintain a performance and maintenance bond in a form approved by the City Attorney. The amount of the bond will be \$2,000 or the value of the restoration, whichever is greater, for a term consistent with the term of the permit plus two (2) additional years, conditioned upon the permittee's faithful performance of the provisions, terms and conditions set forth in this Article. Alternatively, if the permittee anticipates requirements for multiple right-of-way permits, the permittee may choose to meet the bond requirements for the above prescribed term as follows:

1. 10 permits or less/year: \$15,000 annual bond
2. 25 permits or less/year: \$30,000 annual bond
3. Unlimited permits/year: \$50,000 annual bond

In the event the City shall exercise its right to revoke the permit as granted herein, then the City shall be entitled to recover under the terms of said bond the full amount of any loss occasioned.

c. A copy of the Liability Insurance Certificate and Performance and Maintenance Bond must be on file with the City Clerk.

d. No performance and maintenance bond will be required for permits issued for driveway replacement or landscaping work such as irrigation systems and tree planting. No performance and maintenance bond will be required of any governmental entity. No performance and maintenance bond or liability insurance will be required of any residential property owner working in the right-of-way adjacent to his/her residence, who does not utilize a contractor to perform the excavation.

#### **5-717. RIGHT-OF-WAY PERMIT FEES AND COSTS.**

a. The right-of-way permit fee shall be recommended by the Public Works Director, approved by the Governing Body and listed in the Schedule of Fees maintained in the City Clerk's office.

b. The right-of-way permit fee may include a permit and inspection fee and an excavation fee.

c. Fees paid for a right-of-way permit, which is subsequently revoked by the Public Works Director, are not refundable.

d. Except as provided for in an emergency situation, when a ROW-user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the

permit will be double the amount had the ROW-user obtained a permit prior to beginning work.

- e. The City may also charge and collect any necessary repair and restoration costs.

**5-718. ISSUANCE OF PERMIT.**

a. If the Public Works Director determines that the applicant has satisfied the requirements of this Article, the Public Works Director shall issue a right-of-way permit.

b. The Public Works Director may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the permittee in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

c. When a right-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bond for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance and maintenance bond for the additional facilities may be required.

- d. Issued permits are not transferable.

e. If work is being done for the ROW-user by another person, a subcontractor or otherwise, the person doing the work and the ROW-user shall be jointly and severally liable and responsible for all damages, obligations, and warranties herein described.

**5-719. PERMITTED WORK.**

a. The permittee shall not make any cut, excavation or grading of right-of-way other than excavations necessary for emergency repairs without first securing a right-of-way permit.

b. The permittee shall not at any one time open or encumber more of the right-of-way than shall be reasonably necessary to enable the permittee to complete the project in the most expeditious manner.

c. The permittee shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavations to those excavations that are necessary for efficient operation.

d. The permittee shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.

e. The permittee shall notify the City no less than three (3) working days in advance of any construction, reconstruction, repair, location or relocation of facilities which would require any street closure or which work would reduce traffic flow to less than two (2) lanes of moving traffic for more than four (4) hours. Except in the event of an emergency as reasonably determined by the permittee, no such closure shall take place without notice and prior authorization from the City.

f. Non-emergency work on arterial and collector streets may not be accomplished during the hours of 7:00 AM to 8:30 AM and 4:00 PM to 6:00 PM, in order to minimize disruption of traffic flow.

g. All work performed in the right-of-way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the permittee's expense. Such signage shall be in conformance with the latest edition of the Manual on Uniform Traffic Control Devices, unless otherwise agreed to by the City.

h. The permittee shall identify and locate any underground facilities in conformance with the Kansas Underground Utility Damage Prevention Act "Kansas One Call" system, and notice of the proposed excavation work shall be provided directly to Water District No. 1 and either to Kansas City Power and Light (KCPL) or to the Traffic Operations Section of the Public Works Department with respect to any municipal traffic signal and street light systems, as appropriate.

i. The permittee shall be liable for any damages to underground facilities due to excavation work prior to obtaining location of such facilities and for any damage to underground facilities that have been properly identified prior to excavation. The permittee shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed underground facilities without the approval of the owner of the facilities.

j. Whenever there is an excavation by the permittee, the permittee shall be responsible for providing adequate traffic control to the surrounding area as determined by the Public Works Director of the City. The permittee shall perform work on the right-of-way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood. In the event the excavation is not completed in a reasonable period of time, the permittee may be liable for actual damages to the City for delay caused by the permittee pursuant to this Article.

k. All facilities and other appurtenances laid, constructed and maintained by the permittee shall be laid, constructed and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, as well as the rules and regulations of the Kansas Corporation Commission or any other local, state or federal agency having jurisdiction over the parties.

l. Following completion of permitted work for new construction, the permittee shall keep, maintain and provide to the City accurate records and as-built drawings, drawn to scale and certified to the City as accurately depicting the location of all utility facilities constructed pursuant to the permit. When available to the permittee, maps and drawings provided will be submitted in AUTOCAD.DXF or AUTOCAD.DWG automated formats if available, or in hard copy otherwise. The Public Works Director may waive this requirement. Such information shall be subject in all respects and shall have the benefit of protection as set forth in the section entitled "Mapping Requirements of Service Provider" contained herein.

m. The City may use the as-built records of the service provider's facilities in connection with public improvements.

#### **5-720. RIGHT-OF-WAY REPAIR AND RESTORATION.**

a. The work to be done under the right-of-way permit and the repair and restoration of the right-of-way as required herein must be completed within the dates as specified in the permit. However, in the event of circumstances beyond the control of the permittee or when work was prohibited by unseasonable or unreasonable conditions, the Public Works Director may extend the date for completion of the project upon receipt of a supplementary application for a permit extension.

b. All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the permittee shall be fully repaired or replaced promptly by the permittee at its sole expense and to the reasonable satisfaction of the City. The Public Works Director has the authority to inspect the repair or replacement of the damage and, if necessary, to require the permittee to do the additional necessary work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee and a reasonable time not to exceed fifteen days will be provided to allow for the deficiencies to be corrected.

c. After any excavation, the permittee shall, at its expense, restore all portions of the right-of-way to the same condition or better condition than prior to the excavation thereof.

d. In addition to repairing its own street cuts, the permittee must restore any area within five (5) feet of the new street cut that has previously been excavated, including repairing the paving and its aggregate foundations.

e. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Public Works Director, or fails to satisfactorily and timely to complete all restoration, the City may, at its option, serve written notice upon the permittee and its surety that, unless within five (5) days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the right-of-way, and the surety shall have the right to take over and complete the work, provided, however, that if the surety does not commence performance thereof within ten (10) days from the date of notice, the City may take over the work and prosecute same to completion, by contract or otherwise, at the expense of the permittee, and the permittee and its surety shall be liable to the City for any and all excess cost assumed by the City by reason of such prosecution and completion.

f. The permittee responsible for the excavation who leaves any debris in the right-of-way shall be responsible for providing safety protection in accordance with the latest edition of the Manual on Uniform Traffic Control Devices and any applicable federal or state requirement.

g. If an excavation cannot be back-filled immediately and is to be left unattended, the permittee shall securely and adequately cover the unfilled excavation. The permittee has sole responsibility for maintaining proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

h. In restoring the right-of-way, the permittee guarantees its work and shall maintain the work for twenty-four (24) months following its completion. During the twenty-four (24) months the permittee shall, upon notification from the Public Works Director, correct all restoration work to the extent necessary, using any method as required by the Public Works Director. Said work shall be completed within a reasonable time, not to exceed thirty (30) calendar days of the receipt

of notice from the Public Works (not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable). In the event the permittee is required to perform new restoration pursuant to the foregoing guarantee, the Public Works Director shall have the authority to extend the guarantee period for such new restoration for up to an additional twenty-four (24) months from the date of the new restoration, if the Public Works Director determines that the permittee intentionally failed to comply with the conditions of the right-of-way permit and any restoration requirements.

i. The twenty-four (24) month guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

j. Payment of an excavation fee shall not relieve the permittee of the obligation to complete the necessary right-of-way restoration.

#### **5-721. JOINT APPLICATIONS.**

a. Applicants may apply jointly for permits to excavate the right-of-way at the same time and place.

b. Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay.

#### **5-722. SUPPLEMENTARY APPLICATIONS.**

a. A right-of-way permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that which is specified in the permit must be excavated must do the following prior to the commencement of work in that greater area: (i) make application for a permit extension and pay any additional fees required thereby; and (ii) receive a new right-of-way permit or permit extension.

b. A right-of-way permit shall be valid only for the dates specified in the permit. No permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date.

#### **5-723. OTHER OBLIGATIONS.**

a. Obtaining a right-of-way permit under this Article shall not relieve the permittee of its duty to obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC, and to pay any fees required by any other City, County, State, or Federal rules, laws, or regulations. A permittee shall perform all work in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas and the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties. A permittee

shall be responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the actual work.

b. Except in cases of an emergency or with approval of the Public Works Director, no right-of-way work may be done when conditions are unreasonable for such work.

c. A permittee shall not disrupt a right-of-way so as to interfere with the natural free and clear passage of water through the gutters or other waterways. Private vehicles may not be parked within or next to the permit area.

#### **5-724. DENIAL OF PERMIT.**

a. The Public Works Director may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or, when necessary, to protect the right-of-way and its users. The Public Works Director, at his discretion, may consider all relevant factors including but not limited to:

1. The extent to which the right-of-way space where the permit is sought is available;

2. The competing demands for the particular space in the right-of-way;

3. The availability of other locations in the right-of-way or in other right-of-way for the facilities of the applicant;

4. The applicability of any ordinance or other regulations that affect location of facilities in the right-of-way;

5. The degree of compliance of the applicant with the terms and conditions of its franchise, this Article, and other applicable ordinances and regulations;

6. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;

7. The balancing of costs of disruption to the public and damage to the right-of-way against the benefits to that part of the public served by the construction in the right-of-way;

8. Whether the applicant maintains a current registration with the City;

9. Whether the issuance of a right-of-way permit for the particular dates and/or times requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the Public Works Director shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.

b. Notwithstanding the above provisions, the Public Works Director may in his discretion issue a right-of-way permit in any case where the permit is necessary to:

1. Prevent substantial economic hardship to a user of the applicant's service;

2. Allow such user materially to improve the service provided by the applicant.

#### **5-725. REVOCATION OF PERMIT.**

a. Permittees hold right-of-way permits issued pursuant to this Article as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any right-of-way permit, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the right-of-way permit. A substantial breach shall include, but not be limited to, the following:

1. The violation of any material provision of the right-of-way permit;
2. An evasion or attempt to evade any material provision of the right-of-way permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
3. Any material misrepresentation of any fact in the permit application;
4. The failure to maintain the required bond or insurance;
5. The failure to complete the work in a timely manner;
6. The failure to correct a condition indicated on an order issued pursuant to this Article;
7. Repeated traffic control violations; or
8. Failure to repair facilities damaged in the right-of-way.

b. If the Public Works Director determines that the permittee has committed a substantial breach of any law or condition placed on the right-of-way permit, the Public Works Director shall make a written demand upon the permittee to remedy such violation. The demand shall state that the continued violation may be cause for revocation of the permit, or legal action if applicable. Further, a substantial breach, as stated above, will allow the Public Works Director, at his discretion, to place additional or revised conditions on the right-of-way permit, specifically related to the manner in which the breach is to be cured by the permittee. Within five (5) calendar days of receiving notification of the breach, the permittee shall contact the Public Works Director with a plan, acceptable to the Public Works Director, for correction of the breach. The Permittee's failure to contact the Public Works Director, the permittee's failure to submit an acceptable plan, or the permittee's failure reasonably to implement the approved plan shall be cause for immediate revocation of the right-of-way permit.

c. If a right-of-way permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

#### **5-726. WORK REQUIREMENTS AND INSPECTIONS.**

a. Any excavation, back filling, repair, restoration, and all other work performed in the right-of-way shall be done in conformance with the City's Manual of Infrastructure Standards as promulgated by the Public Works Director.

b. The permittee shall employ a testing laboratory as approved by the Public Works Director, which laboratory shall certify the proper back-filling on any street cut. The permittee shall pay all costs associated with such testing. This provision shall be waived when flowable fill is used as backfill or with the permission of the Public Works Director.

c. The permittee shall notify the office of the Public Works Director upon completion of the authorized work permit.

d. The permittee will notify the Public Works Director to schedule an inspection at the start of back filling. Upon completion of all right-of-way restoration activities, the permittee will schedule a closeout inspection.

e. When any corrective actions required have been completed and inspected to the Public Works Director's satisfaction, the two (2) year maintenance period will begin.

f. In addition to the required scheduled inspections, the Public Works Director may choose to inspect the ongoing permitted work in the right-of-way at any time to ensure that all requirements of the approved permit are being met by the permittee.

g. At the time of any inspection, the Public Works Director may order the immediate cessation of any work which poses a serious threat to the life, health, safety, or well being of the public. The Public Works Director may issue a citation to the permittee for any work which does not conform to the applicable standards, conditions, code or terms of the permit. The citation shall state that failure to correct the violation will be cause for revocation of the permit.

#### **5-727. APPEALS PROCESS.**

a. Whenever a person shall deem themselves aggrieved by any decision or action taken by the Public Works Director, the person may file an appeal to the Governing Body within ten (10) calendar days of the date of notice of such decision or action.

b. The persons shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal.

c. In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the Public Works Director.

d. In cases where compliance with such decision or action taken by the Public Works Director would cause undue hardship, the Governing Body may extend the time limit of such decision or action or may grant exceptions to, waive requirements of, or grant a variance from the specific provisions of rules. The Governing Body shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.



e. Pending a decision of the Governing Body or an appeal, the order of the Public Works Director shall be stayed, unless the Public Works Director determines that staying the order will pose a threat to public safety or the integrity of the public infrastructure.

f. If a person still deems themselves aggrieved after the appeal to the Governing Body, such person shall have thirty (30) days after the effective date of the Governing Body's final decision to institute an action in the District Court of Johnson County, Kansas.

**5-728. INDEMNIFICATION.**

a. A ROW-user shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the ROW-user, any agent, officer or director of the ROW-user, or their respective officers, agents, employees, directors or representatives, while installing repairing or maintaining facilities in a public right-of-way. Nothing herein shall be deemed to prevent the City, or any agent of the City from participating in the defense of any litigation by its own counsel at its own expense. Such participation shall not under any circumstances relieve the ROW-user from the duty to defend the City and its agents against liability or the duty to pay any judgment entered against the City or its agents.

b. If a ROW-user and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state or federal law. This section is solely for the benefit of the City and ROW-user and does not create or grant any rights, contractual or otherwise, to any other person or entity.

**5-729. FORCE MAJEURE.** Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other circumstances beyond the ROW-user's or the City's control.

**5-730. FEDERAL, STATE AND CITY JURISDICTION.** This Article shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this Article to the contrary, the construction, operation and maintenance of the ROW-user's facilities shall be in accordance with all laws and regulations of the United States, the state of Kansas and any political subdivision thereof or any administrative agency thereof having jurisdiction. In addition, the ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction. The ROW-user's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety, and welfare of the public. The ROW-user shall comply with all applicable laws and ordinances enacted pursuant to that power. Finally, failure of the ROW-user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this Article.

**5-731. SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Article is for any reason held invalid or unconstitutional by any court or administrative

agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**5-732. CITY'S FAILURE TO ENFORCE.** The City's failure to enforce or remedy any noncompliance of the terms and conditions of this Article or of any permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.

**5-733. PENALTIES.**

a. Any person or entity violating any provision of this Article is guilty of a public offense and, upon conviction thereof, shall be fined in a sum of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00). Every day that this Article is violated shall constitute a separate offense.

b. The violation of any provision of this Article is hereby deemed to be grounds for revocation of the permit and registration to operate with the City.

c. The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Article. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate action or proceeding to prevent violation of this Article.

**5-734. RESERVATION OF RIGHTS.**

a. In addition to any rights specifically reserved to the City by this Article, the City reserves unto itself every right and power which is required or allowed to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this Article. The City shall have the right to waive any provision of this Article or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the City determines as follows: (i) that it is in the public interest to do so; and (ii) that the enforcement of such provision will impose an undue hardship on the person. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

b. Notwithstanding anything to the contrary set forth herein, the provisions of this Article shall not infringe upon the rights of any person pursuant to any applicable state or federal statutes, including, but not limited to, the right to occupy the right-of-way.

**5-735. REPEAL OF OTHER ORDINANCES.** All other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms of this Article shall be canceled, annulled, repealed, and set aside.

**ARTICLE 8. PENALTY**

**5-801. PENALTY.** Any Person who shall violate any provision of this chapter and for

which violation a penalty is not otherwise provided shall pay upon conviction thereof a fine in an amount not to exceed \$500.00. Each day a violation continues to exist shall constitute a separate offense.