

CHAPTER 8. ZONING REGULATIONS

Article 1.	Definitions
Article 2.	Zoning Regulations
Article 3.	Non-Conforming Uses
Article 4.	Variances and Exceptions
Article 5.	Planning Commission
Article 6.	Board of Zoning Appeals

ARTICLE 1. DEFINITIONS

8-101. DEFINITIONS. For the purpose of this Chapter, certain terms or words used herein shall be interpreted or defined as follows:

Words used in the present tense include the future tense. The singular includes the plural. The word "person" includes a corporation or other legal entity as well as an individual. The word "lot" includes the word "plot" or "parcel". The term "shall" is always mandatory. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied".

a. ACCESSORY BUILDING: A building the use of which is customarily incidental and subordinate to the principal use of the dwelling and located on the same lot with such dwelling.

b. ALTERATION: Any addition, removal, extension, or change of any exterior surface of a main building, dwelling, or accessory building.

c. APPURTENANCE: A subordinate or accessory building or structure or portion of main building, the use of which is incidental and customary to that of the main building.

d. BACK YARD: The land lying between the front building line and the rear property line on a lot.

e. BOARD: The Board of Zoning Appeals as established by Article 6 of this Chapter.

f. BUILDING: A structure having a roof, supported by columns or walls, whether or not completely enclosed.

g. COMMISSION: The City Planning Commission as established by Article 5 of this Chapter.

h. DUPLEX: A two-family dwelling unit on a single lot.

i. DWELLING: A building designated exclusively for residential occupancy.

j. FENCE: Any barrier or wall more than sixteen inches (16") high containing posts, wire, wood, mesh, rods, metal, plastic, masonry, concrete, rock, brick, earth, or other

solid non-living substances.

k. FRONT YARD: The land bordered by the residential structure, the side building lines, and the streets upon which said structure abuts. Corner Lots are deemed to have two front yards for the purposes of fences, hedges and landscaping walls.

l. GARAGE: Any accessory building or portion of a principal building that encloses space for parking or storage of one or more vehicles.

m. HEDGE: Any barrier or dividing row of bushes, shrubs, erect plants or vines, or low trees, more than one foot high.

n. PUBLIC BUILDING: A building designed exclusively for city purposes.

o. SINGLE 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) living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities.

ARTICLE 2. ZONING REGULATIONS

8-201. PURPOSE. Pursuant to K.S.A.12-755 the City Council may adopt zoning regulations which may include, but not be limited to, provisions which control the aesthetics of redevelopment or new development and provide for the issuance of special use or conditional use permits, all for the purpose of the regulation or restriction of the location and use of buildings and the uses of land.

8-202. USE DISTRICT AND AREA REGULATIONS. In order to regulate and restrict the uses of land and the location, uses, erection, alteration and repair of buildings and dwellings, the City Council of Westwood Hills has established two "use and area districts" designated as (a) residential district, and (b) retail district. The residential district consists of the entire City except that portion in the retail district which is comprised of Lot 2, excepting the west 10 feet thereof, and Lots 43, 44, 45 and 46, in Block 5, Westwood Hills, an addition in Johnson County, Kansas.

The City of Westwood Hills is divided into said districts, the boundaries of which are shown upon the official city map which is marked "Official copy of zoning district map incorporated into zoning regulations by adoption of an ordinance by the City Council of the City of Westwood Hills on the 9th day of October, 1950" and filed in the office of the City Clerk.

Except as hereinafter provided, no building, structure, fence or appurtenance shall be erected, altered, structurally or otherwise changed, repaired, restored or improved, nor shall any building, structure, appurtenance, lot, plot, tract or premises be used for any purpose, other than is permitted by this article in the use and area district in which said building, structure, appurtenance, lot, plot, tract or premise is located.

8-203. RESIDENTIAL DISTRICT.

a. USES PERMITTED. In a residential district the following uses are permitted: i) single family dwellings and appurtenances incident thereto, including attached and detached garages all built in accordance with the City's most recently adopted Building Codes, ii) public playground, parks and greenspace, iii) utility service necessary and expedient to these uses; and iv) home occupations as permitted under Chapter 6, Article 6 of the City's Ordinances.

b. SETBACKS REQUIRED.

1. No dwelling or appurtenance shall be erected, altered, structurally changed, repaired, restored or improved on a lot, tract or parcel of land closer than:

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, or 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, and

4 feet to the side property line, and

25 feet to the rear property line.

On 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.

Except as provided in Section 8-203(d) hereof, the setbacks provided herein shall not apply to fences, landscaping walls and hedges.

2. No Garage shall be erected, altered, structurally changed, repaired, restored or improved on a lot, tract or parcel of land unless it conforms to the Architectural Standards of Chapter 5, Article 3 and is no closer than:

(a) Detached Garage: 30 feet to the front property line on those lots or parcels of land included as a part of the plat of Westwood Hills or 25 feet to the front property line on those lots or parcels of land included as a part of the plat of Westport Annex, provided that no garage located on a lot or parcel as part of Westport Annex shall be closer to the front property line than the majority of the buildings or structures facing the street upon which the lot is situated, and

4 feet to side property line, and

4 feet to the rear property line, and

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.

(b) Community Garage: one that shares a common firewall, serves adjoining properties in the residential district and is detached from the primary structures on adjoining lots. Said type of garage shall abide by the front, rear and side street setbacks as described in Section 8-203.b.2.(a) above except for the setback for the side yard(s) on which the community garage itself is located.

(c) Existing Garages: an existing garage may be replaced in kind in conformance with the Residential Code (See Chapter 5) without the setback requirements of Section 8-203.b.2.(a) hereof.

c. HEIGHT AND AREA RESTRICTIONS:

1. 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 grade level at the front elevation of such building structure or appurtenance.

2. The building lot coverage area, defined as the ground area occupied by all structures divided by the total area of the lot, for the primary structure, additions, and accessory structures may not exceed 25 percent exclusive of drives, decks and patios. However, the Planning Commission may grant an exception to this requirement and may allow an addition to a primary residence or an accessory structure if it determines that:

(a) The additional structure is compatible with the existing principal structure and with the lot coverage area of the surrounding properties;

(b) The additional structure will not adversely impact the openness of the neighborhood; and

(c) All other requirements of the City Code or ordinances of the City have been adhered to.

In no event shall the Planning Commission grant an exception where the lot coverage area for the primary structure and for the accessory buildings will exceed 35 percent.

3. The total lot coverage area, defined as the ground area occupied by all structures, including drives, decks and patios and any other impervious surfaces, divided by the total area of the lot shall not exceed 50 percent.

d. FENCES, LANDSCAPING WALLS & HEDGES. The type and design of all fences, hedges and landscaping walls must be suitable to and in conformity with the

improvements on the lot on which they are constructed and compatible with the surrounding neighborhood.

1. Pursuant to Chapter 5 of the City's Ordinances, the construction or alteration of all fences and free-standing landscaping walls requires a permit. No permit will be issued for construction of any fence or wall exceeding 4 feet in height, or to be constructed in any front or side yard, unless consent in writing to said construction shall be obtained from all owners and occupiers of land abutting the lot upon which said construction is proposed and unless good cause for the necessity of such construction be shown by the applicant. "Good cause" exists where the applicant for the permit can demonstrate special needs for privacy, security, or safety. Fences on side yards cannot extend beyond the front building façade or the front façade of any adjoining property whichever is less.

2. HEDGES. Any hedge which is, or which may grow to be, 48 inches in height at its highest point may not be planted or permitted to grow in any front or side yard without prior approval of the Planning Commission and a permit must be issued for the same.

e. ACCESSORY STRUCTURES OTHER THAN DETACHED GARAGES. The placement and construction of said Accessory Structures other than garages shall be subject to these requirements:

1. Accessory structures include any structure that is complimentary in use to the main structure but subordinate to the main structure in size. These structures include, but are not limited to, sheds, gazeboes, decks, play houses, tree houses, play gyms, and greenhouses.

2. All accessory structures are restricted to the rear yard.

3. No more than two (2) accessory structures are permitted on a single residential lot.

4. Accessory structures may not cover more than 25% of the rear yard and must comply with the total lot coverage restrictions as described in Section 8-203(C).

5. Accessory structures may not exceed one story in height.

6. Accessory structures must be setback from side and rear property lines by at least four (4) feet. However, side setbacks for accessory structures on corner lots must be no closer to the street than the primary structure.

7. All accessory structures must be constructed of a design and with materials that are compatible with and complimentary of the primary structure.

f. PARKING REQUIREMENT. On each lot upon which a dwelling unit is constructed, space shall be provided for two off street parking spaces.

g. STREETS, SIDEWALKS, CURBS AND DRIVEWAYS. No street, sidewalk, curb or driveway shall be removed or altered in any manner without the written approval of the City Planning Commission and the issuance of a building permit. This excludes repair in-kind. See Section 5-105b of the City's Ordinances.

h. RESIDENTIAL SIGNS. No signs are permitted in the area of the City zoned as residential district, except as permitted in this paragraph (h). Regulation of the location, size, placement and certain features of signs is necessary to prevent hazards to life and property, to avoid visual clutter, to assure the continued attractiveness of the community and to protect property values.

1. Temporary Sign. A Temporary Sign is a sign that is intended for a temporary period of posting on public or private property and is typically constructed from nondurable materials, including paper, cardboard, cloth, plastic and/or wall board, and does not constitute a structure subject to the City's Building Code and Zoning provisions. Such signs include, but are not limited to, For Sale signs, Open House signs, and political signs.

2. Purpose and Findings. The City is enacting this Ordinance to establish reasonable regulations for the posting of Temporary Signs on public and private property. Temporary Signs, left completely unregulated, can become a threat to public safety as a traffic hazard and a detriment to property values as an aesthetic nuisance. By implementing these regulations, the City intends to:

(a) balance the rights of individuals to convey their messages through Temporary Signs with the right of the public to be protected against the unrestricted proliferation of signs;

(b) protect the public health, safety and welfare;

(c) reduce traffic and pedestrian hazards;

(d) protect property values by minimizing the possible adverse effects and visual blight caused by signs;

(e) promote economic development; and

(f) ensure the fair and consistent enforcement of the temporary sign regulations specified herein.

3. General Regulations. Temporary Signs may be posted on property in the City, subject to the following requirements:

(a) The total square footage for temporary signs in the City on any one residential lot, in the aggregate, shall not exceed ten (10) square feet, with no individual sign exceeding six (6) square feet. The total square footage of a sign is measured to include all of the visible display area of only one side of the sign, and only the area of one side of a double sided sign is included in the aggregate calculation.

(b) Signs shall not exceed five (5) feet in height measured from the average grade at the base of the sign nor be located closer than eight (8) feet to the curb line of the street.

(c) No sign shall obstruct or impair access to a public sidewalk, public or private street or driveway, traffic control sign, bus stop, fire hydrant, or any other type of street furniture, or otherwise create a hazard, including a tripping hazard.

(d) No sign shall be illuminated or painted with light reflecting paint.

(e) A sign shall only be posted with the consent of the property owner or occupant. Signs posted in the public right-of-way may only be posted with the permission of the abutting property owner.

(f) A temporary sign may be posted for a period of up to ninety (90) days, at which time the sign shall be removed or replaced.

(g) Signs shall not be posted on trees, utility poles, and other similar structures within the rights-of-way.

(h) No sign shall be erected in a manner or at a location that would hinder or impede the unobstructed view of a driver stopped at or approaching the intersection of two streets.

4. Specific Regulations. Certain Temporary Signs may be posted on property in the City, also subject to the following requirements:

(a) During the period that a single-family residence is offered for sale or for lease, one temporary "For Sale" or "For Lease" sign shall be permitted on the premises being offered for sale or lease. The overall area of such sign shall not exceed six (6) square feet, and the sign shall not be more than four and one half (4.5) feet in height nor be closer than eight (8) feet to the curb-line of the street.

(b) During the period commencing thirty (30) minutes before and ending thirty (30) minutes after such time that the property is actually open to the public for inspection, three "Open House" signs shall be permitted for each residence that is open to the public for inspection. One such sign may be placed upon the property that is being offered for sale. The area of an "Open House" sign shall not exceed three hundred sixty (360) square inches per side. "Open House" signs shall not be placed upon any public property or right-of-way, but they may be placed on private property with the permission of the property owner upon whose property such sign is being placed.

(c) The language "Sold" may be placed on a "For Sale" sign in such a manner so as not to increase the height or the area of said sign in excess of the size limitations otherwise prescribed herein, for a total period not to exceed seven (7) consecutive calendar days following the date of the sale. The date of sale shall be the day that the contract between the buyer and the seller is executed by all parties.

(d) Yard and Garage Sale signs may only be posted on the day of the sale.

(e) During the period that a single family residence or duplex is undergoing rehabilitation, repair or alteration, one Temporary Sign naming the prime contractor or construction contractor shall be permitted on the premises. The overall area of such sign shall not exceed six (6) square feet, and the sign shall not be more than 4.5 feet in height nor be closer than eight (8) feet to the curb line of the street. When the permit is closed on the dwelling unit, the sign shall be removed.

5. Removal or Replacement of Temporary Signs:

(a) The person who has posted or directed the posting of the sign is responsible for the removal or replacement of that sign.

(b) If that person does not remove or replace the sign in accordance with these regulations, then the property owner or occupant of the building or lot where the sign is posted is responsible for the sign's removal or replacement.

(c) If any official of the City, including the Building Official, finds that any sign is posted in violation of these regulations on public property, such official is authorized to remove any such signs. If the Building Official finds any sign posted in violation of these regulations on private property, he or she shall give written notice to the person who has posted or directed the posting of the sign. If that person fails to remove or replace the sign so as to comply with the standards herein set forth within seventy-two (72) hours after such notice, such sign may be removed by the Building Official.

i. SATELLITE DISH ANTENNAS.

1. Satellite dish antennas one (1) meter in diameter or less may be installed without city review as long as they conform to the following requirements:

(a) A ground mounted antenna must be located in the rear yard.

(b) A ground mounted antenna must be no higher than twelve (12) feet from the surrounding grade.

(c) A ground mounted antenna must be at least twelve (12) feet from any property line.

(d) A building mounted antenna cannot be mounted on the front of the building.

(e) A building mounted antenna cannot extend more than five (5) feet from the side of the building or above the roof.

2. Satellite dish antennas more than one (1) meter in diameter are prohibited unless approved by the Planning Commission under Article 2 of Chapter 5 of the City Code. Such antenna must be sited and constructed in such a manner as to be as unobtrusive as possible, and the applicant must provide documentation why an antenna larger than one (1) meter in diameter is required.

8-204. RETAIL DISTRICT. In a retail district, no building, structure, appurtenance, lot, plot, tract or premise shall be used and no building, structure or appurtenance shall be hereafter erected or altered unless otherwise provided in this article, except as follows, to wit:

a. Stores and Professional Offices. Retail stores, stores for custom work, offices and banks.

b. Shops. Baker, barber, beauty, confectionery, dress-making, florist, tailor, shoe repair, coffee shop, interior design, custom framing, and fine dining restaurant.

c. Other Businesses. Advertising agencies, art galleries, fire and police stations and municipal buildings.

d. Height and Architectural Design Requirements. Buildings, structures and appurtenances to be used for any of the purposes enumerated in sub-section (a), (b) and (c) of this section shall not exceed one story in height and shall conform to the basic architectural design and construction of permanent buildings, structures and appurtenances presently existing in the said retail district.

e. Off-Street Parking and Loading Requirements. For all buildings or structures not now constructed on and existing in the said retail district, off-street parking in the said retail district in the form of garages or areas made available exclusively for parking purposes shall be provided within the said retail district as follows:

1. One off-street parking space of at least 8.5 x 20.0 feet in size for each Two Hundred (200) square feet floor area of said building or structure.

2. Said required off-street parking space shall not include any parking or loading area presently used or dedicated for said use within said retail district.

3. Said off-street parking space shall be located immediately adjacent to the said building or structure.

4. No presently existing street or curbing within said retail district shall be altered in any manner to provide the required off-street parking space or area without the written approval of the City Planning Commission.

f. RETAIL DISTRICT SIGNS. No signs are permitted in the area of the City zoned as retail district, except as permitted in this paragraph (f).

1. The number of signs is limited to two non-illuminated flat wall signs or nameplates per storefront giving the name of the business, the occupant's name and the name of the principal product or service provided.

2. The size of signs is limited to no more than sixteen (16) square feet in area, and such signs shall be permanently attached to the building, parallel to its surface, and extending no more than six inches therefrom. However, with specific review and approval of the Planning Commission, one such sign may be attached which extends up to three feet from the surface of the building and is perpendicular to the surface of the building so long as the sign is no more than 2 inches thick and no less than 8 feet above the plane of the sidewalk in front of such building surface.

3. Signs shall not be moveable or portable.

4. Any signs which on the date of passage of this ordinance are non-conforming shall be registered with the City Clerk and shall be deemed to have a remaining useful life of no greater than 10 years.

g. SATELLITE DISH ANTENNAS. The provisions of Section 8-203(l) hereof apply to the retail district also.

8-205. USES PROHIBITED

a. No dwelling shall be constructed or converted or used for occupancy by more than a single family; provided that any existing duplex located in the 4800 block of Rainbow Boulevard may be occupied by two families: one in each unit.

b. No business or other building shall be erected or any dwelling converted to or used for any business purpose nor business of any nature conducted within the City of Westwood Hills except in conformity with the use and area district in which located, as herein above set forth.

c. No temporary or incomplete building or structure shall be erected, maintained or used for residential or business purposes, temporarily or permanently, nor shall any automotive equipment, trailer, garage or accessory building be used as a residence or business.

d. No building, structure or appurtenance damaged by fire or windstorm or other hazard shall be permitted to remain in such damaged condition for a period longer than three months without obtaining a permit under Chapter 8 of the City's Ordinances.

e. No uncompleted building, structure or appurtenance shall be maintained or permitted for a period longer than six (6) months.

f. No building material, construction equipment, machinery or refuse shall be maintained or kept in the open upon any lot, plot, tract or premises within a residential district other than during actual construction operations upon said premises or related premises.

g. No building, structure or appurtenance or any lot, block, tract or premises shall be used or occupied for any of the following purposes: (1) multiple family residence, apartment house, lodging house, boarding house or rooming house, hotel, nursing home or hospital; (2) tavern, saloon, liquor store, night club; (3) manufacturing plant of any type or nature; (4) gas station, vehicle repair garage, or auto sales, whether new or used; (5) small animal hospital or kennels; (6) massage parlor or juice bar.

h. No dams, bridges, obstructions or buildings of any kind may be built in or over the existing creek or stream which runs through the City, nor shall any person divert the flow or course of said creek or stream, except after making written application to and receiving written authorization from the City Council. The granting of such an authorization shall be in the discretion of the City Council and may be conditioned upon the applicant meeting certain requirements to protect the health, safety and welfare of the residents of the City.

i. No automobile or truck incapable of present operation, no motor home, no camper, no boat, and no trailer, or commercial vehicle, including all trucks weighing more than one ton, shall be parked or stored on the streets of the City or on private property outside of a garage for more than 24 hours.

j. No swimming pool extending above grade as determined at the lowest level on which said pool may be situated shall be constructed or erected; provided, however, one

wading pool or one polyurethane or plastic pool of the type commonly used by small children, which pool shall not exceed 60 square feet in surface area and not more than 24 inches in depth, shall be allowed.

8-206. PENALTY. Any person violating the provisions of this Article 2 shall be deemed guilty of maintaining a public nuisance or of permitting a public nuisance as said sections shall apply and shall be punished as therefor provided. Each day that a violation continues shall be deemed to be a separate offense.

ARTICLE 3. NON-CONFORMING USES

8-301. NON-CONFORMING USES. No provisions of this Article of this chapter shall apply to existing buildings, structures, or appurtenances, nor to the existing use of any building, appurtenance, or structure or land prior to March 3, 1975 but the provisions of this Article of this chapter shall apply to any alteration, change, structural or otherwise, repair or restoration of a building, structure or appurtenance to provide for a purpose or a use in a manner different from the use or purpose to which it was put before such alteration, change, structural or otherwise, repair or restoration; provided, that nothing in this Article of this chapter shall prevent the restoration or repair of a building, structure, or appurtenance damaged not more than 50% of its value by fire, explosion, act of God or public enemy, or prevent the continuance of the use of such building, structure or appurtenance, or part thereof, as such use existed at the time of such damage. A non-conforming use changed to a conforming use may not thereafter be changed back to a non-conforming use. When a non-conforming use has been discontinued for a period of ninety (90) days, it shall not be re-established, and future use shall be in conformity with the provisions of this Article of this chapter, notwithstanding the purposes for which the premises were erected or used.

ARTICLE 4. VARIANCES AND EXCEPTIONS

8-401. VARIANCES AND EXCEPTIONS. Whenever by reason of unusual and peculiar conditions appertaining to a particular building, structure, lot or tract, as relating to the existing or appropriate development within the immediate vicinity, the strict application of a provision or provisions in this ordinance to work an unnecessary hardship, the Board of Zoning Appeals shall have the power to grant a variance or exception from such provision or provisions, provided that such variance shall be in harmony with the spirit and intent of this Article and further provided that such variance or exception does not change the classification of the property nor make any changes in the zoning ordinances nor is a mere convenience to the applicant.

ARTICLE 5. PLANNING AND ZONING

8-501. CREATION OF COMMISSION. There is hereby created a City Planning Commission.

8-502. CITY PLANNING COMMISSION; MEMBERSHIP; TERMS; VACANCIES. The City Planning Commission shall consist of five (5) members who shall be residents of the City and may consist of an additional two (2) members who shall be nonresidents, all to be

appointed by the mayor by and with the consent of the City Council. The members of the Planning Commission first appointed shall serve respectively for terms of one year, two years, and three years, divided equally or as nearly equally as possible between these terms. Thereafter members shall be appointed for terms of three years each. Vacancies shall be filled by appointment for the unexpired term only. Members of the Planning Commission shall serve without compensation for their service.

8-503. MEETINGS; CHAIRMAN; RECORD. The members of the Planning Commission shall meet at such time and place as may be fixed in the commission's bylaws. The Planning Commission shall elect one member as chairperson and one member as vice-chairperson who shall serve one year and until their successors have been elected. A secretary also shall be elected who may or may not be a member of the Planning Commission. Special meetings may be called at any time by the chairperson or in the chairperson's absence by the vice-chairperson. The Planning Commission shall adopt bylaws for the transaction of business and hearing procedures. The bylaws may provide for and establish conditions and procedures under which subcommittees of the Planning Commission may authorize building permits, approve plats and make recommendations to the City Council on amendments to the zoning regulations affecting specific properties. Unless otherwise provided by this Chapter 8, Article 5, no action by the Planning Commission shall be taken except by a majority vote of the members present and voting. A majority of the commission shall constitute a quorum for the transaction of business. A record of all proceedings of the Planning Commission shall be kept. After consultation with the City Council, which must authorize appropriations, the Planning Commission may employ such persons deemed necessary and may contract for such services as the commission requires. The Planning Commission, from time to time, may establish subcommittees, advisory committees or technical committees to advise or assist in the activities of the commission. Members of such technical committees need not be Westwood Hills residents.

8-504. POWERS AND DUTIES OF COMMISSION.

a. General Powers. The City Council and Planning Commission shall have all the rights, powers and duties as authorized in K.S.A. 12-741 et seq., and any amendments thereto, which are hereby incorporated by reference as part of this Article 5 and shall be given full force and effect as if the same had been fully set forth herein. The City Council and the Planning Commission shall have such other powers as defined in the City's ordinances.

b. Applications for Building Permits. The Planning Commission is authorized to review applications for building permits pursuant to Article 2 of Chapter 5 of the City Code and to assess the conformity of such applications to the zoning regulations and standards as set out in this Chapter 8.

c. Amending the Zoning Code; Downzoning or Rezoning, Amendments and Revisions; Procedure; Notice and Hearing; Protest Petition; Signs to Notify of Proposed Rezoning.

1. The City Council, from time to time, may supplement, change or generally revise the boundaries or regulations contained in zoning regulations by amendment. A proposal for such amendment may be initiated by the City Council or the Planning Commission.

2. All such proposed amendments first shall be submitted to the Planning

Commission for recommendation. The Planning Commission shall hold a public hearing thereon, shall cause an accurate written summary to be made of the proceedings, and shall give notice by publishing such notice at least once in the official city newspaper at least twenty (20) days prior to the date of the hearing. Such notice shall fix the time and place for such hearing and contain a statement regarding the proposed changes in regulations or restrictions or in the boundary or classification of any zone or district. If such proposed amendment is not a general revision of the existing regulations and affects specific property, the property shall be designated by legal description or a general description sufficient to identify the property under consideration. In addition to such publication notice, written notice of such proposed amendment shall be mailed at least 20 days before the hearing to all owners of record of real property within the area to be altered and to all owners of record of real property located within at least 200 feet of the area proposed to be altered. All notices shall include a statement that a complete legal description is available for public inspection and shall indicate where such information is available. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Planning Commission or the City Council. Such notice is sufficient to permit the Planning Commission to recommend amendments to zoning regulations which affect only a portion of the land described in the notice or which give all or any part of the land described a zoning classification of lesser change than that set forth in the notice. A recommendation of a zoning classification of lesser change than that set forth in the notice shall not be valid without republication and, where necessary, re mailing, unless the Planning Commission has previously established a table or publication available to the public which designates what zoning classifications are lesser changes authorized within the published zoning classifications. At any public hearing held to consider a proposed rezoning, an opportunity shall be granted to interested parties to be heard.

3. A majority of the members of the Planning Commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the City Council. If the Planning Commission fails to make a recommendation on a rezoning request, the Planning Commission shall be deemed to have made a recommendation of disapproval. When the Planning Commission submits a recommendation of approval or disapproval of such amendment and the reasons therefor, the City Council may: (a) adopt such recommendation by ordinance; (b) override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the City Council; or (c) return such recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove. If the City Council returns the Planning Commission's recommendation, the Planning Commission, after considering the same, may resubmit its original recommendation giving the reasons therefor or submit new and amended recommendations. Upon the receipt of such recommendations, the City Council, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendations by ordinance, or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the City Council following the Planning Commission's next regular meeting after receipt of the City Council's report, the City Council shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly. The proposed rezoning shall become effective upon publication of the adopting ordinance.

4. If such amendment affects the boundaries of any zone or district, the ordinance shall describe the boundaries as amended, or if provision is made for the fixing of the same upon an official map which has been incorporated by reference, the amending ordinance

shall define the change or the boundary as amended, shall order the official map to be changed to reflect such amendment, shall amend the section of the ordinance incorporating the same and shall reincorporate such map as amended.

5. (a) Whether or not the Planning Commission approves or disapproves a zoning amendment, if a protest petition against such amendment is filed in the office of the City Clerk within 14 days after the date of the conclusion of the public hearing pursuant to the publication notice, signed by the owners of record of 20% or more of any real property proposed to be rezoned or by the owners of record of 20% or more of the total real property within the area required by this ordinance to be notified of the proposed rezoning of a specific property, excluding streets and public ways and property excluded pursuant to paragraph (2) of this subsection, the ordinance adopting such amendment shall not be passed except by at least a 3/4 vote of all of the members of the City Council.

(b) For the purpose of determining the sufficiency of a protest petition, if the proposed rezoning was requested by the owner of the specific property subject to the rezoning or the owner of the specific property subject to the rezoning does not oppose in writing such rezoning, such property also shall be excluded when calculating the "total real property within the area required to be notified" as that phrase is used in paragraph (a) of this subsection.

6. The City Clerk shall provide additional notice of such proposed rezoning by providing for the posting of signs on land which is the subject of a proposed rezoning.

d. The Comprehensive Plan. The Planning Commission is authorized to make or cause to be made a comprehensive plan for the development of the city at the direction of the City Council and in conformance with K.S.A. 12-747.

8-505. CONSTRUCTION OF PUBLIC FACILITY OR UTILITY IN CONFORMANCE WITH COMPREHENSIVE PLAN; APPROVAL OR DISAPPROVAL OF PLANNING COMMISSION; EFFECT. Whenever the Planning Commission shall have adopted and certified the comprehensive plan of the community or of one or more major sections or districts thereof, then and henceforth no public improvement, public facility or public utility of a type embraced within the recommendations of the comprehensive plan or portions thereof shall be constructed without first being submitted to and being approved by the Planning Commission as being in conformity with the plan. If the Planning Commission does not make a report within sixty (60) days, the project shall be deemed to have been approved by the Planning Commission. In case the Planning Commission shall find that any such proposed public improvement, facility, or utility does not conform to the plan, then the Planning Commission shall submit to the City Council forthwith in writing the manner in which such proposed improvement, facility or utility does not conform. Such City Council may, by a recorded vote of three-fourths (3/4) majority of its membership, overrule the disapproval of the Planning Commission, and the plan for the area concerned shall be deemed to have been amended, and the Planning Commission shall make the necessary changes in the plan to reflect the same.

8-506. REGULATIONS GOVERNING SUBDIVISION OF LAND; ADOPTION AND AMENDMENT; NOTICE AND HEARING; APPROVAL BY CITY COUNCIL. The City Planning Commission may adopt and may amend regulations governing the subdivision of land located within an area within the City which shall be designated by resolution of the City Council for this purpose. Before the adoption of such regulations or any amendments thereto the Planning

Commission shall cause a notice of a hearing to be held thereon to be published in the official city newspaper. Such notice shall be published once in the official city newspaper at least twenty (20) days prior to the date of such hearing. No such regulations or changes or amendments thereto adopted by the Planning Commission shall become effective unless and until the same has been submitted to and approved by the City Council. Such regulations may provide for the harmonious development of the community, including the proper location and width of streets, and for building lines, open spaces, safety and recreational facilities, flood protection and floodplain regulations and for the avoidance of congestion of population, including minimum width, depth and area of lots and compatibility of design. Such regulations may also provide in residential subdivisions for the reservation or dedication of land for open space for either public recreational use or for the future use of the residents of the residential subdivisions in order to insure the proper balance of use, design or urban areas and to avoid the overcrowding of land. Such reservation or dedication shall be determined by the geometric design of the streets, lots, blocks or other natural features of the subdivision, but such reservation or dedication shall not exceed ten percent (10%) of the tract being subdivided, exclusive of streets, alleys, easements or other public ways. Such regulation may provide that in lieu of the completion of such work or improvements prior to the final approval of the plan, the City Council may accept a corporate surety bond, cashier's check, escrow account or other like security in an amount to be fixed by the City Council and conditioned upon the actual completion of such work or improvements within a specified period, in accordance with such regulations, and the City Council may enforce such bond by all equitable remedies.

8-507. EXCEPTIONS. Amendments to these zoning regulations shall not apply to the existing use of any building or land but shall apply to any alteration of a building to provide for a change in use or a change in the use of any building or land after the effective date of any amendments adopted. If a building is damaged by more than 50% of its fair market value, such building shall not be restored if the use of such building is not in conformance with the then current zoning and building code regulations.

8-508. GROUNDS FOR REZONING. Any request for rezoning shall be based upon evidence that the use of the adjacent properties has changed substantially thus making continued residential use undesirable, if the location of the property to be rezoned is in the residential district. If the property proposed for rezoning is in the retail district, the owner must produce evidence that no use allowed is economically viable.

ARTICLE 6. BOARD OF ZONING APPEALS

8-601. BOARD OF ZONING APPEALS; MEMBERSHIP; APPOINTMENT; TERMS, VACANCIES, OFFICERS; RULES, RECORDS, FEES. There is hereby created a Board of Zoning Appeals. Such board shall consist of three (3) members, all of whom shall be residents of the City, to be appointed by the mayor by and with the consent of the council. None of the members of the Board of Zoning Appeals shall hold any other public office of the City except that one member may be a member of the Planning Commission. The members first appointed shall serve respectively for terms of one, two and three years, divided equally or as nearly equally as possible between the members. Thereafter members shall be appointed for terms of three (3) years each. Vacancies shall be filled by appointment for the unexpired term. The members of such board shall serve without compensation. The board shall annually elect one (1) of its members as chairman and shall appoint a secretary who may be an officer or an employee of the City. The board shall adopt rules in accordance with the provisions of the

ordinance creating the board. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine.

The board shall keep minutes of its proceedings, showing evidence presented, findings of fact by the board, decisions of the board and the vote upon each question. Records of all official actions of the board shall be filed with the City Clerk and shall be a public record. The board shall adopt rules in accordance with the provisions of the ordinance creating the board.

8-602. POWERS AND DUTIES OF BOARD; HEARINGS; APPEALS; VARIANCES AND EXCEPTIONS. The Board of Zoning Appeals shall administer the details of appeals or other matters referred to it regarding the application of the zoning ordinance as hereinafter provided. The board shall fix a reasonable time for the hearing of an appeal or any other matter referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper at least twenty (20) days prior to the date fixed for hearing. A copy of said notice shall be mailed to each party to the appeal and to the City Planning Commission and the City Clerk.

Appeals to the board may be taken by any person aggrieved, or by any officer of the City or any governmental agency or body affected by any decision of the officer administering the provisions of the zoning ordinance. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing a notice of appeal specifying the grounds thereof and by paying the fee in the amount of One Hundred Dollars (\$100.00). The officer from whom the appeal is taken, when notified by the board or its agent, shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was based. The board shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. In exercising the foregoing powers, the board, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit. The board may also, when it shall deem the same necessary, grant variances and exceptions to the zoning ordinance on the basis and in the manner hereinafter provided:

a. Variances. To authorize in specific cases a variance from the specific terms of the ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in unnecessary hardship, and provided that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not permit any use not permitted by the zoning ordinance in such district. A request for a variance may be granted in such case, upon a finding by the board that all of the following conditions have been met:

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district and is not created by an action or actions of the property owner or the applicant;
2. that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
3. that the strict application of the provisions of the zoning ordinance from

which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;

4. that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and

5. that granting the variance desired will not be opposed to the general spirit and intent of the zoning ordinance.

b. Exceptions. To grant exceptions to the provisions of the zoning ordinance in those instances where the board is specifically authorized to grant such exceptions and only under the terms of this zoning ordinance. In no event shall exceptions to the provisions of the zoning ordinance be granted where the use or exception contemplated is not specifically listed as an exception in this zoning ordinance. Further, under no conditions shall the Board of Zoning Appeals have the power to grant an exception when conditions of this exception, as established in the zoning ordinance by the City Council, are not found to be present.

c. Appeals. Any person, official or governmental agency dissatisfied with any order or determination of said board may bring an action in the district court of Johnson County to determine the reasonableness of any such order or determination. Such appeal shall be filed within 30 days of the final decision of the board.