

**ZONING ORDINANCE
FOR THE
CITY OF GARDNER,
KANSAS**

Ordinance 2273

May 19, 2008

(Including Amendments through December 24, 2014)

TABLE OF CONTENTS

Chapters:

| | |
|------------------------|--|
| 18.05 | General Provisions |
| 18.10 | Rules and Definitions |
| 18.15 | A – Agricultural District |
| 18.20 | RE – Residential Estates District |
| 18.25 | R-1 – Single-Family Residential District |
| 18.30 | R-2 – Two-Family District |
| 18.35 | R-3 – Garden Apartment District |
| 18.40 | R-4 – Condominium Dwelling House District |
| 18.45 | R-5 – Apartment House District |
| 18.50 | Planned Residential Districts |
| 18.55 | M-P – Mobile Home Park Residential District |
| 18.60 | M-S – Mobile Home Subdivision District |
| 18.65 | C-O – Office Building District |
| 18.70 | CO-A – Neighborhood Business District |
| 18.75 | C-1 – Central Business District |
| 18.80 | C-2 – General Business District |
| 18.85 | C-3 – Commercial District |
| 18.90 | Planned Commercial Districts |
| 18.95 | M-1 – Restricted Industrial District |
| 18.100 | M-2 – General Industrial District |
| 18.105 | Planned Industrial Districts |
| 18.110 | REC – Recreational District |
| 18.115 | PUD – Planned Unit Development District |
| 18.120 | UCD – Corridor Overlay District |
| 18.125 | <i>Repealed</i> |
| 18.130 | Industrial Airport Area Overlay District |
| 18.135 | Industrial Park Overlay District |
| 18.140 | Accessory Uses |
| 18.145 | Special Uses |
| 18.150 | Nonconforming Situations |
| 18.155 | Height and Area Exceptions |
| 18.160 | Parking and Loading Requirements |
| 18.165 | Landscaping and Screening |
| 18.170 | Signs |
| 18.175 | Land Use Permits |
| 18.180 | Certificate of Occupancy |
| 18.185 | Amendment and Rezoning Applications and Procedures |
| 18.190 | Board of Zoning Appeals |
| 18.195 | Penalty Provisions |

* Prior legislation: Ords. 1649, 1693, 1732, 1733, 1753, 1827, 1828, 1837, 1861, 1872, 1882, 1889, 1891 and 2035.

Chapter 18.05 GENERAL PROVISIONS

Sections:

| | |
|---------------------------|--|
| 18.05.010 | Title. |
| 18.05.020 | Purpose and intent. |
| 18.05.030 | Jurisdictional area. |
| 18.05.035 | Adoption by reference of Gardner Design Standards. |
| 18.05.040 | Establishment of districts. |
| 18.05.050 | Zoning district map. |
| 18.05.060 | Rules where uncertainty may arise. |
| 18.05.070 | Exemptions. |
| 18.05.080 | Application of regulations. |
| 18.05.090 | Annexed land. |
| 18.05.100 | Zoning procedure. |

18.05.010 Title.

These regulations, including the zoning district map made a part hereof, shall be known, and may be cited and referred to, as “The Gardner, Kansas, Zoning Ordinance.”

18.05.020 Purpose and intent.

This zoning ordinance, adopted pursuant to the provisions of K.S.A. 12-757, is intended to serve the following purposes:

- A. To promote the health, safety, morals, comfort and general welfare of the City; and
- B. To preserve and protect property values throughout the City; and
- C. To restrict and regulate the height, number of stories, and size of buildings; the percentage of lot coverage; the size of yards, courts and other open spaces; and the density of population; and
- D. To divide the City into zones and districts; and
- E. To regulate and restrict the location and use of buildings and land within each district or zone.

18.05.030 Jurisdictional area.

The provisions of these regulations shall apply to all structures and land in the incorporated area of Gardner, Kansas, as shown on the official zoning map.

- A. The jurisdictional area shall be shown on the official zoning district map and filed in the office of the City Clerk.

18.05.035 Adoption by reference of Gardner Design Standards.

- A. There is incorporated by reference, for the purpose of adopting Gardner Design Standards within the City, the Gardner Design Standards, Final Draft, dated November 18, 2014, as prepared by the City of Gardner, Kansas. Not less than one copy of said Gardner Design Standards shall be marked “Official Copy as Adopted by Ordinance No. 2469,” to which shall be attached a copy of the ordinance codified herein, and filed with the City Clerk to be open to inspection and available to the public at all reasonable business hours. The Municipal Court and all administrative departments of the City charged with the enforcement of the ordinance shall be supplied at the cost of the City such number of official copies of such ordinance as may be deemed expedient.
- B. Where provisions of this adopted code are identified as standards, they shall be considered ordinance requirements, and where they are specifically applicable they shall prevail over any conflicting provisions elsewhere in the Zoning Ordinance unless otherwise specified. Where provisions of this adopted code are identified as guidelines, those guidelines have been developed to identify quality elements that should be incorporated in new projects, and are to be used by applicants, architects, planners, developers, city staff, Planning Commission and

Governing Body members to assist them in, where appropriate, designing, reviewing, evaluating, recommending and approving plans for such projects.

18.05.040 Establishment of districts.

For the purpose of regulating and restricting the use of land and the erection, construction, reconstruction, alteration, moving or use of buildings, structures, or land, the corporate area of Gardner, Kansas, is hereby divided into the following Districts:

| | |
|---------|--|
| “A” | Agricultural District |
| “RE” | Residential Estates District |
| “R-1” | Single-Family Residential District |
| “R-1A” | Small-Lot Single-Family Residential District |
| “R-2” | Two-Family Residential District |
| “R-3” | Garden Apartment District |
| “R-4” | Condominium District |
| “R-5” | Apartment House District |
| “RP-1” | Planned Single-Family Residential District |
| “RP-2” | Planned Two-Family Residential District |
| “RP-3” | Planned Garden Apartment District |
| “RP-4” | Planned Condominium Dwelling District |
| “RP-5” | Planned Apartment House District |
| “M-P” | Mobile Home Park District |
| “M-S” | Mobile Home Subdivision District |
| “C-O” | Office Building District |
| “CO-A” | Neighborhood Business District |
| “C-1” | Central Business District |
| “C-2” | General Business District |
| “C-3” | Commercial District |
| “CP-O” | Planned Office Building District |
| “CPO-A” | Planned Office and Limited Sales District |
| “CP-1” | Planned Restricted Business District |
| “CP-2” | Planned General Business District |
| “CP-3” | Planned Commercial District |
| “M-1” | Restricted Industrial District |
| “M-2” | General Industrial District |
| “M-P-1” | Planned Restricted Industrial District |
| “M-P-2” | Planned General Industrial District |
| “REC” | Recreational District |
| “PUD” | Planned Unit Development District |
| “UCD” | Urban Corridor Special Overlay District |
| “F-P” | Flood Plain Overlay District |
| “I-A” | Industrial Airport Area Overlay District |

18.05.050 Zoning district map.

The boundaries of the districts as enumerated above are shown on the zoning district map of the City of Gardner, Kansas, which is filed in the office of the City Clerk. Said zoning map, with all notations, references and other information shown thereon, is as much a part of these zoning and regulations as if the same were set forth in full herein.

18.05.060 Rules where uncertainty may arise.

Where uncertainty exists with respect to the boundaries of the various districts as shown on the official zoning district map, incorporated herein, the following rules apply:

- A. The district boundaries are the centerlines of streets, alleys, and waterways, unless otherwise indicated; and where the designation of a boundary line on the zoning map coincides with the location of streets, alleys, or waterways, the centerline of such streets, alleys, or waterways shall be construed to be the boundary line of each district.
- B. Where the district boundaries do not coincide with the location of streets, alleys, or waterways, but do coincide with lot lines, such lot lines shall be construed to be the boundary of such district.
- C. Where the district boundaries do not coincide with the location of streets, alleys, waterways, or lot lines, the district boundaries shall be determined by ownership boundaries, legal descriptions used for past zonings or the use of the scale shown on the zoning map.

18.05.070 Exemptions.

The following structures and uses shall be exempt from the provisions of these regulations:

- A. Poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves, or other similar equipment for the distribution to consumers of telephone or other communications, electricity, gas, or water, or the collection of sewage or surface water operated or maintained by a public utility but not including substations located on or above the surface of the ground.
- B. Retaining walls.
- C. Public signs.

18.05.080 Application of regulations.

The following general requirements shall apply to all zoning districts except as hereinafter provided:

- A. No building or structure shall be erected, constructed, reconstructed, moved or altered, nor shall any building, structure or land be used for any purpose other than is permitted in the district in which such building, structure or land is situated.
- B. No building or structure shall be erected, constructed, reconstructed, moved or altered to exceed the height or area limit herein established for the district in which such building or structure is located.
- C. No lot area shall be reduced or diminished so that the yards or other open spaces shall be smaller than prescribed by these requirements, nor shall the density of population be increased in any manner, except in conformity with the area regulations established herein.

18.05.090 Annexed land.

All land which may hereafter be annexed to the City shall be classified the corresponding district most similar to the zoning classification which was in effect under the prior zoning jurisdiction until or unless otherwise changed in accordance with Chapter [18.185](#) GMC. For annexed land previously under the jurisdiction of Gardner Township Board or other townships within Johnson County, the corresponding districts shall be:

| | Township District | City District |
|--------|---------------------------|---------------------------------|
| "A" | Agricultural | "A" Agricultural |
| "RLD" | Rural Low-Density | "R-1" Single-Family Residential |
| "RR" | Rural Residential | "R-1" Single-Family Residential |
| "R-1A" | Single-Family Residential | "R-1" Single-Family Residential |
| "R-1B" | Single-Family Residential | "R-1" Single-Family Residential |
| "R-2" | Two-Family Residential | "R-2" Two-Family Residential |
| "R-3" | Townhouse | "R-4" Condominium |

| | | |
|--------|-------------------------------|--------------------------------|
| "R-4" | Apartment | "R-5" Apartment House |
| "MHP" | Mobile Home Park | "M-P" Mobile Home Park |
| "MHS" | Mobile Home Subdivision | "M-S" Mobile Home Subdivision |
| "PUD" | Planned Unit Development | "PUD" Planned Unit Development |
| "CP-0" | Planned Commercial Office | "C-O" Office Building |
| "CP-1" | Planned Neighborhood Business | "CO-A" Neighborhood Business |
| "CP-2" | Planned General Business | "C-2" General Business |
| "CP-3" | Planned Commercial | "C-3" Commercial |
| "IP-1" | Planned Light Industrial | "M-1" Restricted Industrial |
| "IP-2" | Planned Industrial | "M-2" General Industrial |
| "IP-3" | Planned Heavy Industrial | "M-2" General Industrial |

18.05.100 Zoning procedure.

The requirements of this zoning ordinance permit only those uses listed in each district under permitted uses and conditional uses. Any owner of property desiring to use his/her property for some use other than the listed uses may request the Planning Commission to consider amending the regulations.

Chapter 18.10 RULES AND DEFINITIONS

Sections:

| | |
|---------------------------|------------------|
| 18.10.010 | Rules. |
| 18.10.020 | Interpretation. |
| 18.10.030 | Separability. |
| 18.10.040 | Definitions. |
| 18.10.050 | Undefined words. |

18.10.010 Rules.

- A. In the application of these regulations, the provisions and rules of this section shall be preserved and applied, except when the context clearly requires otherwise:
1. Words used in the present tense shall include the future.
 2. Words in the singular number include the plural number, and words in the plural number include the singular number.
 3. The phrase “used for” shall include the phrases “arranged for,” “designed for,” “intended for,” “maintained for,” and “occupied for.”
 4. The word “shall” or “must” is mandatory.
 5. The word “may” is permissive.
 6. The word “person” includes individuals, firms, corporations, associations, governmental bodies and agencies, and all other legal entities.
 7. The word “Board” means the Board of Zoning Appeals.
 8. Unless otherwise specified, all distances shall be measured horizontally.
 9. The word “City” means City of Gardner, Kansas.
 10. The word “building” includes the word “structure.”
 11. The abbreviation “N/A” means not applicable.
- B. Any word or phrase which is defined in this chapter or elsewhere in these regulations shall have the meaning as so defined whenever the word or phrase is used in these regulations, unless such definition is expressly limited in its meaning or scope.

18.10.020 Interpretation.

- A. Minimum Requirements. In their interpretation and application, the provision of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, morals and welfare.
- B. Overlapping or Contradictory Regulations. Where the conditions imposed by any provision of these regulations upon the use of land or structures are either more restrictive or less restrictive than comparable conditions imposed by any other provision of these regulations or any provision of any other law, ordinance, resolution, rule or regulations of any kind, the regulations which are more restrictive shall govern.
- C. Private Agreements. These regulations are not intended to abrogate, annul or otherwise interfere with any easement, covenant or any other private agreement or legal relationship; provided, however, that where the provision of these regulations are more restrictive (or impose higher standards or requirements) than such easements, covenants or other private agreements or legal relationships, the provisions of these regulations shall govern.
- D. Unlawful Uses. Any structure or use which was not lawfully existing at the time of the adoption of these regulations shall not become or be made lawful solely by reason of the adoption of these

regulations; and to the extent that, and in any respect that, said unlawful structure or use is in conflict with the requirements of these regulations, said structure or use remains unlawful hereunder.

18.10.030 Separability.

It is hereby declared to be the intention of the City that the provisions of these regulations are separable, in accordance with the following rules:

- A. If any court of competent jurisdiction shall adjudge any provision of these regulations to be invalid, such judgment shall not affect any other provisions of these regulations.
- B. If any court of competent jurisdiction shall adjudge invalid the application of any provision of these regulations to a particular property or structure, such judgment shall not affect the application of said provisions to any other property or structure.

18.10.040 Definitions.

For the purpose of this zoning regulation, certain terms or words used herein shall be interpreted or defined as follows, unless the context clearly indicates otherwise:

1. "Accessory building" means a subordinate building having a use customarily incident to and located on the lot occupied by the main building; or a use customarily incident to the main use of the property. A building having an accessory use is considered an integral part of the main building when it has any part of a wall in common with the main building, or is under an extension of the main roof and designed as an integral part of the main building.
2. "Accessory use" means a use of building or land which is customarily incident to and located on the same lot or premises as the main use of the premises.
3. "Alley" means a minor way which is used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.
4. "Alteration" means any addition, removal, extension, or change in the location of any exterior wall of a main building or accessory building.
5. "Animal hospital or clinic" means an establishment where animals are admitted principally for examination, treatment, board or cure by a doctor of veterinary medicine.
6. "Apartment" means a room or a suite of rooms within an apartment house arranged, intended or designed for a place of residence of a single family or group of individuals living together as a single housekeeping unit.
7. "Apartment house" means a building arranged, intended, or designed for more than two families.
8. "Apartment hotel" means an apartment house which furnishes for the use of its tenants services ordinarily furnished by hotels, but the privileges of which are not primarily available to the public.
9. "Attention attracting device" means any flasher, blinker, animation, banner or other object designed or intended to attract the attention of the public to an establishment or to a sign.
10. "Basement" means that portion of a building having more than one-half of its height below grade. This portion is not a completed structure and serves as a sub-structure or foundation for the remainder of the building.
11. "Bed and breakfast" means a single-family residence in which temporary lodging is provided by the owner/operator, who resides at the facility, having no more than five guest quarters for compensation, with meals served to lodgers, for use by transient guests with a maximum stay of six consecutive nights.
12. "Berm" means an earthen mound used for decorative, screening, or buffering purposes.

13. "Block" means a piece or parcel of land entirely surrounded by public highways or streets, other than alleys. In cases where the platting is incomplete or disconnected, the Codes Administrator shall determine the outline of the block.
14. "Boarding house" or "lodging house" means a building other than a hotel, occupied as a single housekeeping unit, where lodging or meals are provided for five or more persons for compensation, pursuant to previous arrangements, but not for the public or transients.
15. "Board of Zoning Appeals" means that Board which has been created by the Governing Body to hear and determine appeals and variances to the zoning regulations.
16. "Buffer" means open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically and visually separate one use or property from another in order to mitigate the impacts of noise, light, or other nuisance.
17. "Building" means any structure constructed or intended for residence, business, industry or either public or private purposes, or accessory thereto.
18. "Building height" means the vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of ceiling of the top story in the case of a flat roof; to the deck line of a mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.
19. "Building, principal" means a building, including covered porches and paved patios, in which is conducted the principal use of the lot on which it is situated. In any residence district, any dwelling shall be deemed to be the principal building on the lot on which the same is situated.
20. "Caliper" means the diameter of a tree, measured at four and one-half feet above ground level unless otherwise specified.
21. "Cargo containers," also referred to as "storage containers," means an industrial, standardized reusable vessel that was:
 - a. Originally, specifically or formerly designed for or used in the packing, shipping, movement or transportation of freight, articles, goods or commodities; and/or
 - b. Designed for or capable of being mounted or moved on a rail car; and/or
 - c. Designed for or capable of being mounted on a chassis or bogie for movement by truck trailer, train or loaded on a ship.
22. "Cargo container facilities" means any site in which the principal or secondary use is the movement, storage on a permanent or nonpermanent basis, staging, redistribution, repair, or maintenance of more than two cargo containers and/or chassis, but not to include:
 - a. Normal delivery by truck of goods that are legally sold, stored, manufactured, harvested, or consumed on site, provided:
 - i. All deliveries occur in a loading or service area (if designated),
 - ii. No cargo container is removed from a truck, and
 - iii. No truck is present on the site for more than 48 hours;
 - b. Railroad operations that are subject to jurisdiction of the U. S. Department of Transportation Surface Transportation Board; and
 - c. Other uses of cargo containers specifically enumerated, permitted, and regulated by the Zoning Ordinance.
23. "Cargo container storage shed" means an individual cargo container that is used as a permanent storage building.
24. "Centerline" means the center of a street right-of-way as shown on the recorded plat or survey.

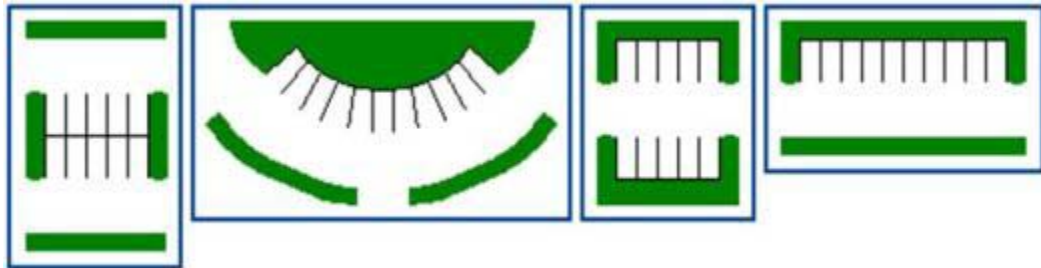
25. "Chassis" means that portion of a semi-trailer configuration that is the nonpowered portion that provides a way of transporting the cargo container.
26. "Club, private" means a building or premises used for social, recreational, dining or philanthropic purposes, the normal use of which is limited to specific members, patrons or otherwise listed as enumerated persons.
27. "Condominium dwelling house" means a building containing two or more dwelling units, which dwelling units are separated by a party wall and which dwelling units are designed and intended to be separately owned in fee under the condominium statutes of the State of Kansas.
28. "Contributing floor area" means a figure in square feet consisting of 85 percent of the total floor area in a business or office building, including basements, mezzanines, and upper floors, if any, whether finished or not, measured from the centerline of joining partitions and from the exterior surface of outside walls. Pedestrian malls and service corridors which are common to several tenants in shopping centers shall not be included in the total floor area before the 85 percent calculation is made.
29. "Court" means an open, unoccupied space, other than yard, bounded on three or more sides by exterior walls of a building, or by exterior walls of a building and lot lines on which walls are allowable.
30. "Curb level" means the mean level of the top of curb in front of the lot or, in case of a corner lot, along that abutting street where the mean curb level is the highest.
31. "Day-care center" means a building or place where care, supervision, custody or control is provided for more than four unrelated children or adults for any part of a 24-hour day up to 12 hours.
32. "Day-care nursery" means a residence or building in which care, supervision, custody or control is provided for four or less unrelated children or adults for any part of a 24-hour day up to 12 hours. Babysitting for four or less infants shall be considered a day-care nursery.
33. "Decision-making authority" means an individual or body vested with the authority to make recommendations or act on application requests. The final decision-making authority is the one which has the authority to act on a request by approving or denying it. This may include the Community Development Director or designee, the Planning Commission, or the Governing Body.
34. "District" or "zone" means a section or sections of the zoning area for which uniform regulations governing the use of land, the height use, area, size, and intensity of use of buildings, land and open space are herein established.
35. "Dog" means any canine species over 12 months of age.
36. "Drive-in establishments" means any restaurant, financial institution or product vending enterprise where the patron does not enter and remain within a building during the transaction of his/her business. Food vending establishments where the food is not normally consumed within a building or where facilities are provided for eating outside a building shall be included in this definition.
37. "Dwelling" means any building or portion thereof, including modular homes but not including mobile homes, which is designed and used exclusively for residential purposes.
38. "Dwelling, single-family" means a residential building having accommodations for and occupied exclusively by one family.
39. "Dwelling, single-family attached" means a portion of a residential building having accommodations for and occupied exclusively by one family, and which is located on a separate lot of record apart from the remaining portions of the building. Each such dwelling may be sold independently of other portions.

40. "Dwelling, two-family" means a residential building having accommodations for and occupied exclusively by two families, independently.
41. "Dwelling, multiple" means a residential building having accommodations for and occupied exclusively by more than two families, independently.
42. "Dwelling for the elderly and/or handicapped" means a two-family or multiple-family residential building having accommodations for and occupied exclusively by elderly or handicapped residents and necessary maintenance personnel. Elderly residents are those people who are at least 62 years of age. Handicapped persons are those people having an impairment which is expected to be of long, continuous and indefinite duration, and is a substantial limitation to their ability to live independently.
43. "Dwelling unit" means any building or portion thereof which is designed or intended to be occupied as a residence for one independent family, generally including facilities for sleeping, cooking, and sanitation.
44. "Earth-sheltered residence" means a residence designed as a complete structure below or partially below ground level, whose perimeter walls comply with the yard requirements of the district in which it is located, and which was not intended to serve as a substructure or foundation for a building.
45. "Easement" means an area of land reserved, conveyed, or dedicated for a specialized or limited purpose without the transfer of fee title, generally established in a real estate document or on a recorded plat. Examples of such purposes may include, but are not limited to, utilities, access, and storm water drainage.
46. "Evergreen" means a plant with needles or leaves that remain alive and on the tree through the winter and into the next growing season.
47. "Facade" means all visible exterior elements of a building that face a common direction, extending across the entire width and height of the building.
48. "Family" means one or more persons who are related by blood, marriage, or adoption, living together and occupying a single housekeeping unit with single kitchen facilities; or a group of not more than five (excluding servants) living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities on a nonprofit cost-sharing basis.
49. "Floor area" means the gross area of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings and shall include the following area:
 - a. The basement floor area;
 - b. The area of each floor of the structure;
 - c. The attic space having headroom of seven feet or more.
50. "Front" means the part or side of any building or structure facing the street or frontage road which is used as the basis for establishing the permanent address for that building or structure, as listed in the City Directory.
51. "Frontage" means all the property on one side of a street between two intersecting streets (crossing or terminating) measured along the line of the street. Where a street is dead-ended, the frontage shall be considered as all that property abutting on one side between an intersecting street and the dead end of the street.
52. "Garage, community" means a building or portion thereof, other than a repair garage, providing storage for motor vehicles but no other services, such garage to be in lieu of private garages within a block or portion of block.
53. "Garage, private" means an accessory building or portion of a main building used for storage only of motor and recreational vehicles.

54. "Garage, repair" means a building or portion thereof designed or used for the storage, sale, hiring, care or repair of motor vehicles and which is operated for commercial purposes.
55. "Garage, storage" means a building or portion thereof, except those defined as a private, a repair, or a community garage providing storage for motor vehicles, with facilities for washing but no other services.
56. "Garden apartment building" means an apartment building located on a lot either singly or together with other similar apartment buildings completely landscaped, the total ground floor area of which does not exceed 25 percent of the area of the lot.
57. Gasoline Service Station. A "gasoline service station" shall consist of a building or group of buildings and surfaced area where automotive vehicles may be refueled and serviced; self-service pumps without buildings shall also be included. Such service shall not include tire recapping, body repairs, or major overhaul.
58. "Ground cover" means a continuous vegetative cover no more than one foot tall that is comprised of living plants that spread across the ground to connect with other similar plants.
59. "Hedge" means a solid and unbroken visual screen of self-supporting living plant material, typically comprised of closely planted shrubs forming a linear boundary at least two and one-half feet tall.
60. "Home occupation" means a business, profession, service, or trade conducted for gain or support entirely within a residential building or its accessory structures.
61. "Hotel" or "motor hotel" means a building occupied or used as a more or less temporary abiding place of individuals who are lodged, with or without cooking facilities.
62. "Institution" means a building occupied by a nonprofit establishment for public use.
63. "Invasive" means a plant known to reproduce rapidly and quickly spread over a large area, usually spreading in an uncontrollable manner and/or overtaking more desirable plants.
64. "Kennel, boarding" means any place, area, building, or structure where dogs (including those under one year in age) are boarded, housed, cared for, fed, or trained by other than the owner.
65. "Kennel, breeding" means any place, area, building, or structure where more than four dogs are kept for purposes of breeding, raising or as pets.
66. "Landscape area" means an area that is designed and maintained for landscape plantings. Landscape areas may include nonplant landscape features and be surfaced with mulch or rock; however, areas without living plants shall not be considered landscape areas.
67. "Landscape feature" means any plant or decorative element of a landscape plan, including items such as trees, shrubs, flowers, fountains, statues, etc.
68. "Large deciduous tree" means a tree that sheds its leaves annually and typically grows to an overall mature height of 70 feet or more in this region.
69. "Large shrub" means a shrub that typically grows to an overall mature height of eight feet or more in this region.
70. "Lot" means a parcel of land occupied or to be occupied by one main building, or unit group of buildings, and the accessory buildings or uses customarily incident thereto, including such open spaces as are required under these regulations, and having its principal frontage upon a public street. A lot as used herein may consist of one or more platted lots, tracts, or tracts as conveyed, or parts thereof.
71. "Lot, corner" means a lot abutting upon two or more streets at their intersection. A corner lot shall be deemed to front on that street on which it has its least dimension, unless otherwise specified by the Codes Administrator, except that a lot as herein defined, when made up of more than one platted lot, shall be deemed to front on the street upon which said platted lots front.

72. "Lot, depth of" means the mean horizontal distance from the front street line to the rear line.
73. "Lot, double frontage" means an interior lot having frontage on two nonintersecting streets as distinguished from a corner lot.
74. Lot, Front. The front of a lot shall be that narrowest dimension abutting a street right-of-way. On corner lots which have two equal sides which abut on a street right-of-way, either side may be considered the front of the lot.
75. "Lot, interior" means a lot whose side lines do not abut upon any street.
76. "Lot lines" means the lines bounding a lot as defined herein.
77. "Lot line, front" means the boundary between a lot and the street on which it fronts.
78. "Lot line, rear" means the boundary line which is opposite and most distant from the front street line; except that in the case of uncertainty the Codes Administrator shall determine the rear line.
79. "Lot line, side" means any lot boundary line not a front or rear line thereof. A side line may be a party lot line, a line bordering on an alley or place, or a side street line.
80. "Lot of record" means a lot which is a part of a subdivision, the plat of which has been recorded in the office of the register of deeds or a lot described by metes and bounds, the description of which was recorded in the office of the register of deeds.
81. "Lot width" means the horizontal distance between side lines, measured at the front building line.
82. "Lot, zoning" means a parcel or tract of land used, developed, or built upon as a unit under single ownership or control. Said parcel or tract may consist of one or more lots of record, one or more portions of a lot or lots of record, or any combination thereof.
83. "Medium deciduous tree" means a tree that sheds its leaves annually and typically grows to an overall mature height between 30 and 70 feet in this region.
84. "Mobile home" means a movable or portable structure over 40 feet in length and over eight feet wide, constructed to be towed on its own chassis, and designed with or without a permanent foundation for year-round living, whether or not a permanent foundation is subsequently provided. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit. The term "mobile home" shall not include any trailer home, camp van, or any vehicle lawfully operated on fixed rails. A modular home which can meet local building codes shall not be considered a mobile home.
85. "Mobile home park" means any area, place, parcel, tract, or plot of ground equipped as required for support of mobile homes and offered for use by the owner or representative for mobile home park purposes and/or ground upon which two or more mobile homes are parked, whether for compensation or not, including all accessory uses thereof. The term "mobile home park" does not include sales lots on which unoccupied mobile homes are parked for the purpose of inspection and sale.
86. "Mobile home space" means a plot of ground within a mobile home park which can accommodate one mobile home and which provides the necessary utility services for water, sewerage, and electricity.
87. "Mobile home subdivision" means a subdivision where individual lots are sold for the placement of traditional homes or mobile homes where the lot and structure are intended to be owned by the same party.
88. "Modular home" means a manufactured housing unit that is designed to be located on a permanent foundation and is factory-certified that it conforms to local building, housing, electrical and plumbing codes.

89. "Nonconforming structure" means a structure which does not comply with the lot size requirements or bulk regulations applicable to new structures in the zoning district in which it is located.
90. "Nonconforming use" means an existing use of a structure or land which does not conform with the regulations of the district in which it is situated as established by this regulation or any amendments hereto.
91. "Open fence" means a fence that is less than 50 percent opaque when viewed perpendicularly to its planar surface.
92. "Parking block" means a grouping of parking spaces with edges that are defined by landscape areas. Parking blocks may include a variety of different configurations of parking spaces, as indicated in the example images below.



93. "Permanent" means a period of time of six months or longer, except where otherwise specified.
94. "Planting bed" means an area or grouping of plants, with defined edges and a surface that differs from surrounding surfaces.
95. "Private club, Class B" means an establishment in which the primary function is the sale and serving of alcoholic and cereal malt beverages for profit and in which said beverages are served only to members and their guests; provided, however, that such sale of alcoholic beverages is in compliance with applicable federal, state and local laws.
96. "Racking" means a method of storing a chassis on end in an upright position where the bed is perpendicular to the ground.
97. "Restaurant" means a building wherein food is prepared and served in ready-to-eat form to the public for human consumption. The term "restaurant" shall include cafe, cafeteria, grill, pizza parlor, diner, snack shop, hamburger shop and steak house.
98. "Restaurant, drive-in" means an establishment whose primary purpose is the sale, dispensing or service of food, refreshments or beverages in automobiles, including those establishments where customers may serve themselves, except that this shall not be construed as to include what is commonly called a cafeteria.
99. "Salvage or junk yard" means a building or premises where junk, waste, inoperable motor vehicles or discarded and salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled, crushed, handled or prepared for recycling which shall include auto wrecking yards, but shall not include retail secondhand furniture stores or the purchase and storage of used or salvaged materials as a part of a manufacturing operation.
100. "Semi-solid fence" means a fence that is at least 50 percent opaque and does not meet the definition of a solid fence.
101. "Service floor area" means the total floor area of a building exclusive of stairways, restrooms, storage rooms, hallways, or other areas which are not regularly used by visitors, clients, customers, patients or patrons in their normal everyday use of the building.
102. "Shrub" means any self-supporting, woody plant of a species which normally grows to an overall mature height of 15 feet or less in this region.

103. "Sign" means any device which shall display or include any letter, word, model, banner, flag, pennant, insignia, device, or representation used as, or which is in the nature of, an advertisement or announcement which directs attention to an object, product, place, activity, person, institution, organization, or business, but shall not include any display of official notice or official flag.
104. "Sight triangle" means an area at a street intersection in which nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two and one-half feet and 10 feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets, 90 feet in each direction along the centerline of the streets.

At the intersection of major or arterial streets, the 90-foot distance shall be increased to 120 feet for each arterial leg of the intersection.
105. "Small deciduous tree" means a tree that sheds its leaves annually and typically grows to an overall mature height of 30 feet or less in this region.
106. "Solid fence" means a fence or wall (including any gates in said fence or wall) that is at least 97 percent opaque, has a maximum ground clearance of four inches, and provides an effective visual barrier. Staggered fences and wire fences (including chain link) shall not be considered solid fences, even when materials such as slats or mesh are used to increase the degree of screening.
107. Special Use Permit. A "special use permit" is a use that would not be appropriate generally throughout a zoning district without restrictions, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.
108. "Stable, private" means an accessory building and premises for the keeping of horses, ponies, mules or cows, owned by occupants of the premises, and not kept for remuneration, hire or sale.
109. "Stable, public" means a stable other than a private or riding stable as defined herein.
110. "Stable, riding" means a structure and premises in which horses, ponies, or mules, used exclusively for pleasure riding or driving, are housed, boarded, or kept for remuneration, hire or sale.
111. "Stacking" means a method of storing cargo containers or a chassis in a vertical manner where the floor of the cargo container or bed of the chassis remains parallel to the ground.
112. "Staging/storage" means the outdoor locating and containing of cargo containers on and off a chassis, or the chassis by itself until a method of transportation is established and utilized.
113. "Storage" or "stored" means the keeping of items, equipment, vehicles, trailers or materials for a period of time longer than would be involved in the normal day-to-day use or consumption of the same, or the keeping of items, equipment, vehicles, trailers or materials on a regular basis when said items, equipment, vehicles, trailers or materials are not in use.
114. "Storage area, yard, or lot" (also "outdoor storage") means any off-street area designated and used for the placement, keeping, holding and storage of inoperable vehicles, vehicles awaiting repair, and parts thereof; building materials, supplies and equipment; trailers; heavy construction equipment and other motorized vehicles and equipment, but not for junkyard or salvage yard purposes. Such areas typically do not have a roof; however, a storage area covered by a roof but not enclosed by walls shall also be considered outdoor storage.
115. "Story" means that part of a building included between the surface of one floor and the surface of the floor next above, or if there be no floor above, that part of the building which is above the surface of a floor and the ceiling next above. A top story attic is a half story when the main line of the eaves is not above the middle of the interior height of such story. The first story is a half story when between 50 and 75 percent of the area of its exterior walls is exposed to outside

light and air entirely above grade and which exterior walls contain windows or doors permitting the entrance of daylight and outside air. When less than 50 percent of the area of the walls of the first story is exposed to outside light and air entirely above grade, that story shall be classed as a basement and in the case of multiple-family dwellings may not be occupied as a residence by other than a caretaker or manager.

116. "Street" means a public or private vehicular corridor which connects to other such vehicular corridors and/or affords principal means of vehicular access to property abutting thereon.
117. "Street line" means the dividing line between the street right-of-way and the abutting property.
118. "Structure" means anything constructed or erected, which requires location on the ground, or attached to something having a location on the ground, including, but not limited to, signs, and excepting customary utility poles, retaining walls and boundary fences.
119. "Structural alterations" means any change in the supporting members of a building, such as bearing walls, columns, beams or girders.
120. "Total floor area" means the square foot area of a building, including accessory building, measured from outside wall surfaces, and including garages, porches, utility rooms, stairways, recreation rooms, storage rooms, but excluding un-roofed balconies and patios.
121. "Tourist cabin or motel" means a building or buildings containing in the aggregate, on one undivided tract or parcel of land, a group of individual private units, each provided with a separate sleeping room or rooms, having both lavatory and toilet facilities, designed and to be used primarily for transient guests.
122. "Tree" means any self-supporting, woody plant of a species which normally grows to an overall mature height of 15 feet or more in this region.
123. Truck Trailer. See "Chassis."
124. "Turf grass" means grass of a species suitable for a permanent lawn in this region.
125. "Variance" means a variation from a specific requirement in this title, as applied to a specific piece of property, as distinct from rezoning.
126. "Yard" means an open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the least horizontal distance between the lot line and the building shall be used.
127. "Yard, front" means a yard across the full width of the lot extending from the front line of the main building to the front line of the lot.
128. "Yard, rear" means a yard between the rear lot line and the rear line of the main building and the side lot lines.
129. "Yard, side" means a yard between the main building and the adjacent side line of the lot, and extending entirely from a front yard to the rear yard.
130. "Zoning area" means the area that is zoned as set out on the official zoning map filed of record.
131. Zoning Regulation. The term "zoning regulation" or "this or these regulations" shall mean the requirements stipulated in the regulations herewith attached.

18.10.050 Undefined words.

Words or terms not herein defined shall have their ordinary meaning in relation to the context.

Chapter 18.15 A – AGRICULTURAL DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.15.010 | Intent. |
| 18.15.020 | Permitted uses. |
| 18.15.030 | Conditional uses. |
| 18.15.040 | Intensity of use regulations. |
| 18.15.050 | Height regulations. |
| 18.15.060 | Yard regulations. |
| 18.15.070 | Use limitations. |
| 18.15.080 | Parking regulations. |
| 18.15.090 | Sign regulations. |
| 18.15.100 | Landscaping. |
| 18.15.110 | Design standards. |

18.15.010 Intent.

It is the intent of this district to provide for agricultural and related uses in a manner which will be compatible with surrounding uses and will facilitate the eventual conversion of the land in this district to more intensive urban uses.

18.15.020 Permitted uses.

In District A, no building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered, except for one or more of the following uses:

- A. Farming, dairy farming, livestock, poultry raising, game birds, pasturing of livestock, and all uses commonly classed as agricultural, with no restrictions as to operation of such vehicles or machinery as are customarily incidental to such uses, and with no restrictions as to the sale or marketing of products raised on the premises; provided, that any building, structure or yard for the raising, feeding, pasturing, housing or sale of livestock or poultry shall be located at least 100 feet from a District R-1 to R-5 inclusive; and further provided, that there shall be no feeding or disposal of garbage, rubbish, or offal, other than regular removal, within 300 feet of a District R-1 to R-5 inclusive.
- B. Publicly owned or operated parks, playgrounds, golf courses and recreational uses.
- C. Single-family dwellings when in conjunction with an agricultural use.
- D. Churches or similar places of worship.
- E. Public or private schools.
- F. Greenhouses and nurseries.
- G. Stands for the sale, at retail, of agricultural products or commodities raised on the premises.
- H. Accessory uses, including repair shops, sheds, garages, barns, silos, irrigation wells and pumps, bunk houses, incidental dwellings, buildings and structures customarily required for any of the above uses. One sign not to exceed four square feet shall be considered an accessory use.
- I. Home occupations as set out in Chapter [18.140](#) GMC.

18.15.030 Conditional uses.

The following uses may be allowed by conditional use permit when submitted to and reviewed by the Planning Commission and approved by the City Council, under such conditions as to operation, site development, signs and time limit as may be deemed necessary:

- A. Fish hatcheries, apiaries, aviaries.
- B. Fishing lakes and picnic groves; provided, no concession or retail sales shall be permitted.

- C. Forests and wildlife reservations, or similar conservation projects.
- D. Fur farming for the raising of fur-bearing animals, excluding skunks and civet cats.
- E. Mushroom barns and caves.
- F. Nurseries, greenhouses and truck gardens.
- G. Cemeteries, including mausoleums; provided, mausoleums shall be at least 200 feet from every street line and adjoining lot lines; and provided further, that any new cemetery shall contain an area of 20 acres or more.
- H. Hospitals and institutions of an educational, religious, charitable, or philanthropic nature; provided, such buildings shall not be located upon sites containing an area of less than five acres.
- I. The extraction of minerals including oil and gas or raw minerals or raw materials and the processing, treating or storing of such minerals or materials.
- J. Drive-in theaters.
- K. Isolation homes, penal institutions, sanitariums or asylums for the insane or feeble-minded.
- L. Nursing and care homes subject to inspection and license requirements.
- M. Seasonal or temporary uses such as recreation camp or similar enterprises.
- N. Telephone exchanges, electric substations or similar public utility uses.
- O. Airports and airfields.
- P. Commercial transmitting towers over 60 feet in height.
 - 1. The purpose and intent of this subsection is to provide for the safe and effective installation and operation of wireless communication antennas, accessory equipment, and support structures. Each application for a conditional use permit for a communication tower shall be accompanied by the following information:
 - a. A site plan.
 - b. A report from a licensed professional structural engineer which describes the tower's capacity including the number and type of antennas it can accommodate.
 - c. A report indicating the justification of the site selected for the communication tower and comparing all potential sites within a one-half mile radius. The report shall indicate why any existing tower within the one-half mile radius cannot be utilized by the applicant.
 - d. A photo simulation of the proposed facility from affected properties and the public right-of-way may be required.
 - e. An explanation of the need for the facility to maintain the integrity of the communication system. A map showing the service area of the proposed tower shall be submitted.
 - f. A signed statement from the applicant indicating the intention to share space on the tower with other carriers.
 - g. A copy of the lease between the applicant and the landowner. The lease shall contain the following provisions:
 - i. The landowner and the applicant shall have the ability to enter into a lease with other carriers for co-location.
 - ii. The landowner shall be responsible for the removal of the communication tower or facility within six months in the event the lessee fails to remove it upon abandonment.
 - 2. Height. The maximum height which may be approved for a communication tower is 160 feet. A lightning rod, not to exceed 10 feet, shall not be included within the height limitation. All new towers in excess of 100 feet shall be designed to accommodate at least two additional

providers. The location of the additional antennas on a legally existing tower shall not require additional approval of the Planning Commission or City Council.

3. **Setbacks.** All towers and antennas shall meet the required setbacks of the zoning district. In addition to complying with the district regulations, the antenna shall be set back from the property lines a distance equal to the height of the communication tower. A lesser setback may be approved with the conditional use permit, upon demonstration by a licensed structural engineer registered in the State of Kansas that the fall zone of the communication tower is within the radius of the setback.

If the communication tower and antenna are set back less than the height of the tower or antenna, they shall be inspected and approved upon construction by a licensed structural engineer registered in the State of Kansas. Such towers shall be re-inspected every five years to ensure the structural integrity and safety of the antenna.

4. **Tower Design.** All communication towers shall be of a monopole design unless required by the Planning Commission or Governing Body to be architecturally compatible to surrounding development.
 5. **Tower Color.** All communication tower and antenna structures shall be galvanized metal, except otherwise required by the Planning Commission or City Council. Exceptions may be granted, based on FAA or FCC regulations.
 6. **Equipment Storage.** Mobile or immobile equipment not used in direct support of the tower facility shall not be stored or parked on the site of the communication tower unless repairs to the tower are being made.
 7. **Accessory Structures.** All ground equipment shall be stored with a structure, built of materials compatible with the location and types of surrounding land uses. Use of metal buildings is prohibited.
 8. **Landscaping.** All equipment buildings shall be screened with landscaping or fencing appropriate to the location and types of surrounding land uses. The site shall be landscaped per Chapter [18.165](#) GMC.
 9. **Access.** Access from a public or private roadway. The City Council may waive surfacing materials, curbing and storm water drainage requirements, if recommended by the City Engineer.
 10. **Security Fencing.** Sites shall be enclosed by security fencing to be indicated on the site plan.
 11. **Permitting.** A building permit with structural and electrical drawings, sealed by licensed structural engineer registered in the State of Kansas, is required.
- Q. Wind energy conversion systems (WECS) subject to the following conditions:
1. No tower or propeller shall be so located as to ever be within 100 feet of any structure, power line or antenna located on other than the property on which the system is located.
 2. The bottom tip of any propeller shall be at least 10 feet above any accessible pedestrian area.
 3. The system and component parts must be totally surrounded by a fence having a minimum height of six feet and a maximum height of eight feet unless otherwise physically inaccessible to the public.
 4. The system shall not cause interference to the radio and television reception on adjoining property.
 5. The system shall contain a breaking device for speeds above 40 miles per hour.
 6. The safety results of an approved testing laboratory shall be submitted.
 7. Proof that the system is covered by a homeowner's insurance policy shall be submitted.

8. The maximum height shall be determined by anemometer studies which find out where the proper wind strata is in specific areas.
9. No system shall interfere with the wind access of an existing system. Systems shall be a minimum of five rotor blade lengths apart based upon the largest rotor in the area.

R. Kennels, Breeding and Boarding.

1. All kennels shall be located at least 660 feet from a residential district.
2. The minimum lot size shall not be less than one acre.
3. No kennel buildings or runs shall be located nearer than 75 feet to any property lines.
4. All kennel runs or open areas shall be screened around such areas or at the property lines to prevent the distraction or excitement of the dogs. Such screening may be mature, dense deciduous foliage (double row), solid masonry, brick, or stone wall, louvered wood, stockade, or chainlink fence with aluminum strip intertwined or other equivalent fencing, providing a sight barrier to the dogs.

S. Riding stables and academies.

T. Other publicly owned buildings and uses not specifically listed elsewhere in this district.

U. Earth-sheltered residences providing the following conditions are met:

1. The living area shall be provided with exterior windows or skylights which have a glassed area of not less than 10 percent of the floor area and give direct visual access to natural light and open space.
2. Lot areas, lot widths and setbacks for underground dwellings shall conform to those established by the zoning district.
3. An outdoor space of no less than 500 square feet shall be provided immediately outside one wall of the dwelling. The minimum width of the space shall be 20 feet and the average grade elevation shall be no more than two feet above or below the grade elevation of the floor of the dwelling.
4. All earth-covered structures shall be designed by a structural engineer and plans shall be submitted, signed and sealed by a licensed structural engineer.
5. A site plan, elevations and other necessary drawings shall be submitted to ensure that the proposed structure is compatible with the adjacent residents and the topography of the area.

V. Amusement parks.

W. Demolition landfills on property previously used as a quarry.

18.15.040 Intensity of use regulations.

- A. Minimum Lot Width. The minimum width of a lot shall be 100 feet; provided, that where a lot has less width than herein required in separate ownership on the effective date of the ordinance codified in this title, this regulation shall not prohibit the erection of a one-family residence.
- B. Minimum Lot Area. Every dwelling hereafter erected, constructed, reconstructed, moved or altered shall provide a lot area of not less than 15,000 square feet per family; provided, that where a lot has less than herein required in separate ownership on the effective date of the ordinance codified in this title, this regulation shall not prohibit the erection of a one-family dwelling.

18.15.050 Height regulations.

Maximum structure height: 35 feet.

18.15.060 Yard regulations.

- A. Front Yard. The front yard shall be a minimum of 25 feet in depth measured from the front lot line if the street right-of-way is 60 feet. When the street right-of-way is 50 feet, or for lots fronting a cul-de-sac, the minimum front yard shall be 30 feet. On collector streets, the minimum front yard shall be 65 feet measured from the centerline of the street right-of-way; and on arterial streets, the minimum front yard shall be 85 feet measured from the centerline of the street.
- B. Side Yard. There shall be a side yard on each side of a dwelling; no side yard shall be less than 20 feet.
- C. Rear Yard. The depth of the rear yard shall be at least 50 feet.

18.15.070 Use limitations.

None.

18.15.080 Parking regulations.

Two off-street parking spaces shall be provided for each single-family dwelling, at least one of which shall be in a garage or carport.

18.15.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.15.100 Landscaping.

None required.

18.15.110 Design standards.

See Gardner Design Standards.

Chapter 18.20 RE – RESIDENTIAL ESTATES DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.20.010 | Intent. |
| 18.20.020 | Permitted uses. |
| 18.20.030 | Intensity of use regulations. |
| 18.20.040 | Height regulations. |
| 18.20.050 | Yard regulations. |
| 18.20.060 | Parking regulations. |
| 18.20.070 | Sign regulations. |
| 18.20.080 | Landscaping. |
| 18.20.090 | Design standards. |

18.20.010 Intent.

The zoning of property as RE, Residential Estates District, is intended to provide for single-family detached dwellings at a density not to exceed one dwelling unit per acre and other selected uses which are compatible with the large-lot/low-density residential character of this district. Property zoned RE should include only those tracts which abut or are in close proximity to existing large-lot single-family development and which have an established neighborhood character of single-family dwellings on large lots containing a minimum of one acre. Land considered for the RE District should also include only that land which, due to its location or the conditions resulting from adjacent large-lot residential development, will not be provided public sanitary sewers within a reasonable period of time.

18.20.020 Permitted uses.

No building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered except for one or more of the following uses:

- A. Agricultural uses;
- B. Dwellings, one-family;
- C. Churches and publicly owned and operated community buildings, public museums, and public libraries;
- D. Public parks and playgrounds, including public recreation and service buildings and publicly owned swimming pools;
- E. Private parks, playgrounds, swimming pools, tennis courts, clubhouses and other recreation facilities within a subdivision for the use of subdivision residents;
- F. Public schools, and private schools with a curriculum equivalent to that of a public school, and institutions of higher learning, including stadiums and dormitories in conjunction therewith, if located on the campus;
- G. Golf courses and clubhouses appurtenant thereto (except miniature golf courses, driving ranges, and other similar activities operated as a business).

18.20.030 Intensity of use regulations.

- A. Minimum lot area: one acre (43,560 square feet).
- B. Minimum lot width: 125 feet.

18.20.040 Height regulations.

- A. Maximum structure height: 35 feet.

18.20.050 Yard regulations.

- A. Front yards: minimum of 50 feet.
- B. Side yards: minimum of 25 feet.

C. Rear yards: minimum of 75 feet.

18.20.060 Parking regulations.

Four off-street parking spaces shall be provided for each single-family dwelling at least one of which shall be in a garage. All driveways shall be a minimum of 18 feet in width.

18.20.070 Sign regulations.

See Chapter [18.170](#) GMC.

18.20.080 Landscaping.

None required.

18.20.090 Design standards.

See Gardner Design Standards.

Chapter 18.25 R-1 – SINGLE-FAMILY RESIDENTIAL DISTRICT

Sections:

| | |
|---------------------------|---------------------------------|
| 18.25.010 | Intent. |
| 18.25.020 | Permitted uses. |
| 18.25.030 | Conditional uses. |
| 18.25.040 | Intensity of use regulations. |
| 18.25.050 | Height regulations. |
| 18.25.060 | Yard regulations. |
| 18.25.070 | Use limitations. |
| 18.25.080 | Parking regulations. |
| 18.25.090 | Sign regulations. |
| 18.25.100 | Landscaping. |
| 18.25.110 | Architectural design standards. |

18.25.010 Intent.

The intent of this district is to provide for low-density residential development including those uses such as schools, churches, parks and other public facilities which reinforce residential neighborhoods.

18.25.020 Permitted uses.

In District R-1, no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, moved, or altered, except for one or more of the following uses:

- A. Dwellings, one-family.
- B. Churches and schools and publicly owned and operated community buildings, public museums, public libraries, provided preliminary development plans and final plans shall be approved by the Planning Commission prior to the issuance of building permits. Preliminary plans submitted shall include a site plan, building floor plan and elevation sketches. Final plans submitted shall include complete working drawings. Approval or disapproval by the Planning Commission shall be based upon the following:
 1. The capability of the site to accommodate the building, parking and drives with reasonable open space and safe and easy ingress and egress.
 2. A reasonable degree of harmony will prevail between the architectural quality of the proposed public building or church and the surrounding neighborhood.
 3. In the case of a church, the site shall be of not less than two acres in area, and shall have reasonable direct access to a thoroughfare or collector street.
- C. Public parks and playgrounds, including public recreation or service buildings and municipally owned swimming pools.
- D. Public schools, elementary and high, and private schools with curriculum equivalent to that of a public elementary or high school and institutions of higher learning, including stadiums and dormitories in conjunction, if located on the campus.
- E. Golf courses and clubhouses appurtenant thereto (except miniature golf courses, driving ranges and other similar activities operated as a business).
- F. Accessory buildings and uses customarily incidental to the above uses.
- G. Group care homes with fewer than eight residents.
- H. Home occupations as set out in Chapter [18.140](#) GMC.

18.25.030 Conditional uses.

The following uses may be allowed by conditional use permit when submitted to and reviewed by the Planning Commission and approved by the City Council, under such conditions as to operation, site development, signs and time limit as may be deemed necessary:

- A. Zero Lot Line Dwellings. Single-family detached dwellings with one sideyard equal to one foot or less are subject to the following conditions:
 - 1. Zero lot line dwellings shall meet all front and rear yard requirements.
 - 2. For any zero lot line dwelling, the lot line wall (defined as that wall of the dwelling on the side lot line) shall have no windows, doors, vents or other openings nor shall any window on any wall face that side lot line.
 - 3. The side yard requirement for a zero lot line dwelling on the side opposite the lot line wall shall be twice the normal side yard requirement of the zone.
 - 4. No two zero lot line dwellings shall have their lot line wall along the same side lot line, nor shall any zero lot line dwelling have its lot line wall adjacent to any lot or tract of land not developed for zero lot line dwellings.
 - 5. No lot line wall shall be located on a side lot line adjacent to any public right-of-way.
 - 6. The required yard setbacks for each zero lot line lot shall be either shown on the subdivision plat or recorded as a restrictive covenant on the property deed.
- B. Earth-sheltered residences, providing the following conditions are met:
 - 1. The living area shall be provided with exterior windows or skylights which have a glassed area of not less than 10 percent of the floor area and give direct visual access to natural light and open space.
 - 2. Lot areas, lot widths and setbacks for underground dwellings shall conform to those established by the zoning district.
 - 3. An outdoor space of no less than 500 square feet shall be provided immediately outside one wall of the dwelling. The minimum width of the space shall be 20 feet and the average grade elevation shall be no more than two feet above or below the grade elevation of the floor of the dwelling.
 - 4. All earth-covered structures shall be designed by a structural engineer and plans shall be submitted signed and sealed by a Kansas-licensed structural engineer.
 - 5. A site plan, elevations and other necessary drawings shall be submitted to ensure that the proposed structure is compatible with the adjacent residents and the topography of the area.
- C. Any public building or land used by any department of the City, County, state or federal government.
- D. Telephone exchanges, electric substations or other similar public utilities.
- E. Day-care centers.
- F. Bed and breakfast, subject to the following conditions:
 - 1. The use must be located on or in close proximity to a designated collector or arterial street designated in the Comprehensive Plan.
 - 2. One parking space per guest room shall be provided in addition to the required parking for the residence.
 - 3. All parking and vehicle access areas shall be paved with asphalt or concrete.
 - 4. All parking areas shall be screened with landscaping or fencing from adjacent properties.
 - 5. The owner(s) or manager(s) of the facility shall reside in the residence.
 - 6. No accessory structures shall be utilized as the facility.
 - 7. A site plan shall be submitted for approval by the Planning Commission indicating the site layout, access, parking, and screening.

8. The Planning Commission may attach such conditions as deemed necessary to provide for compatible development.

18.25.040 Intensity of use regulations.

- A. Minimum lot area: single-family – 8,000 square feet.
- B. Minimum lot width: 70 feet.

18.25.050 Height regulations.

Maximum structure height: 35 feet.

18.25.060 Yard regulations.

- A. Front Yards. The front yard shall be a minimum of 25 feet in depth measured from the front lot line if the street right-of-way is 60 feet. When the street right-of-way is 50 feet, or for lots fronting a cul-de-sac, the minimum front yard shall be 30 feet. On collector streets, the minimum front yard shall be 65 feet measured from the centerline of the street right-of-way; and on arterial streets, the minimum front yard shall be 85 feet measured from the centerline of the street.
- B. Side Yards. No side yard shall be less than nine feet, except as provided for zero lot line development. The total side yard shall equal or exceed 20 percent of the lot width at the front building line.

Buildings on corner lots shall provide a side yard on the street side of not less than 20 feet.
- C. Rear Yards. No rear yard shall be less than 20 percent of the depth of the lot, or with a minimum of 25 feet.

18.25.070 Use limitations.

None.

18.25.080 Parking regulations.

Four off-street parking spaces shall be provided for each single-family dwelling, at least one of which shall be in a garage. All driveways shall be a minimum of 18 feet in width.

18.25.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.25.100 Landscaping.

See Chapter [18.165](#) GMC.

18.25.110 Architectural design standards.

- A. Purpose. The intent of these design criteria is to assist in the review and evaluation of building design during preliminary and final plan. The design of a development proposal should seek to integrate the following design characteristics into those plans submitted for site plan approval.
- B. Single-Family Residential Districts. In a single-family residential district, no dwelling shall be erected that does not meet the following minimum standards:
 1. Permanent Foundations. The dwelling unit shall be erected on a permanent foundation.
 2. Minimum Dimension. The smaller dimension of a rectangular dwelling unit shall be at least 24 feet. If a dwelling unit is not rectangular, then the minimum dimension of a rectangle superimposed over and enclosing the entire footprint of the dwelling unit shall be at least 24 feet.
 3. Roof Design. The pitch of the roof shall be at least three in 12 and the roof eaves shall extend at least 15 inches beyond the wall of the dwelling on the two longer sides. A roof with lesser pitch and without eaves may be approved by the Planning Commission if the proposed dwelling will have a parapet around the entire roof.

4. Exterior Surfaces. The nonglass exterior surfaces of the dwelling shall not be made of shiny metal and shall in general not reflect light to a greater extent than would a coat of semi-gloss enamel applied to wood. Exterior surfaces shall be kept in good repair including the replacement of damaged materials and repainting when peeling becomes excessive.
 5. Porch and Garage. A single-family dwelling shall include a garage or carport, constructed with the same materials as the dwelling. In addition, a single-family dwelling shall include a covered entrance, alcove, or porch. The Planning Commission may grant exceptions to this standard where it finds that the proposed residential design is compatible with the neighborhood character and predominant architecture.
- C. Design Standards. See Gardner Design Standards.

Chapter 18.30 R-2 – TWO-FAMILY DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.30.010 | Intent. |
| 18.30.020 | Permitted uses. |
| 18.30.030 | Conditional uses. |
| 18.30.040 | Intensity of use regulations. |
| 18.30.050 | Height regulations. |
| 18.30.060 | Yard regulations. |
| 18.30.070 | Use limitations. |
| 18.30.080 | Parking regulations. |
| 18.30.090 | Sign regulations. |
| 18.30.100 | Landscaping. |
| 18.30.110 | Design standards. |

18.30.010 Intent.

The intent of this district is to provide for moderate-density residential development, including two-family high-density single-family dwellings, in a manner which will encourage a strong residential neighborhood.

18.30.020 Permitted uses.

In District R-2, no building, structure, land or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

- A. Dwellings, two-family, commonly referred to as duplexes.
- B. Accessory uses as provided in District R-1.
- C. Public parks, playgrounds and schools.
- D. Golf courses, except miniature golf courses and driving ranges operated for commercial purposes.
- E. Churches or other similar places of worship.
- F. Group care homes with fewer than eight residents.
- G. Home occupations as set out in Chapter [18.140](#) GMC.
- H. Accessory buildings and uses customarily incidental to the above uses.
- I. Dwellings, one-family.

18.30.030 Conditional uses.

The following uses may be allowed by conditional use permit when submitted to and reviewed by the Planning Commission and approved by the City Council, under such conditions as to operation, site development, signs and time limit as may be deemed necessary:

- A. All conditional uses in the R-1 District.
- B. Single-family attached subject to the following conditions:
 - 1. The common wall between attached units shall be on the side lot line separating the two lots and shall not be subject to side yard requirements providing there are no doors, windows, vents or other openings in the common wall.
 - 2. Not more than two dwelling units shall be attached together in this district.
 - 3. No dwelling unit shall have a depth greater than three times its width.
 - 4. Any exterior wall which is not a common wall must meet all yard requirements.
 - 5. Each lot must have direct access to a public street.

6. The deed to each lot must include covenants requiring the proper and timely reconstruction of any damaged or destroyed dwellings.
7. The application for such conditional use must include a plot plan with the general location of buildings, parking areas, driveways, fences and other structures, the location of easements and utility lines, the number and type of all dwelling units, and the property lines within the proposed development.

18.30.040 Intensity of use regulations.

- A. Minimum Lot Area.
 1. Two-family: 5,000 square feet per dwelling unit.
 2. Other uses: 7,500 square feet.
- B. Minimum lot width: 70 feet measured at the building line.

18.30.050 Height regulations.

Maximum structure height: 35 feet.

18.30.060 Yard regulations.

- A. Front Yards. The front yard shall be a minimum of 25 feet in depth measured from the front lot line if the street right-of-way is 60 feet. When the street right-of-way is 50 feet, or for lots fronting a cul-de-sac, the minimum front yard shall be 30 feet. On collector streets, the minimum front yard shall be 65 feet measured from the centerline of the street right-of-way; and on arterial streets, the minimum front yard shall be 85 feet measured from the centerline of the street.
- B. Side Yards. There shall be a side yard on each side of the dwelling. No side yard shall be less than seven feet. The total side yard shall equal or exceed 20 percent of the lot width at the front building line. Buildings on corner lots shall provide a side yard on the street side of not less than 20 feet.
- C. Rear Yards. No rear yard shall be less than 20 percent of the depth of the lot, with a minimum of 25 feet.

18.30.070 Use limitations.

None.

18.30.080 Parking regulations.

Two side-by-side off-street parking spaces shall be provided for each dwelling unit and one additional parking space shall be provided in a garage or carport. If a one-car garage or carport is constructed, one of the side-by-side parking spaces shall be offset from the front of the garage or carport.

18.30.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.30.100 Landscaping.

See Chapter [18.165](#) GMC.

18.30.110 Design standards.

See Gardner Design Standards.

Chapter 18.35 R-3 – GARDEN APARTMENT DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.35.010 | Intent. |
| 18.35.020 | Permitted uses. |
| 18.35.030 | Conditional uses. |
| 18.35.040 | Intensity of use regulations. |
| 18.35.050 | Height regulations. |
| 18.35.060 | Yard regulations. |
| 18.35.070 | Use limitations. |
| 18.35.080 | Parking regulations. |
| 18.35.090 | Signs. |
| 18.35.100 | Landscaping. |
| 18.35.110 | Design standards. |

18.35.010 Intent.

The intent of this district is to provide for high-density residential development, with the commingling of single-family, two-family and multifamily residences and low-density garden apartment buildings.

18.35.020 Permitted uses.

In District R-3, no building, structure, land, or premises shall be used, and no buildings or structure shall be hereafter erected, constructed, reconstructed, moved or altered, except for one or more of the following uses:

- A. Multifamily dwellings.
- B. Garden apartment buildings.
- C. Boarding and lodging houses.
- D. Group care homes with fewer than 10 residents.
- E. Home occupations as set out in Chapter [18.140](#) GMC.

18.35.030 Conditional uses.

The following uses may be allowed by conditional use permit when submitted to and reviewed by the Planning Commission and approved by the City Council, under such conditions as to operation, site development, signs and time limit as may be deemed necessary:

- A. All conditional uses permitted in District R-2.
- B. Nonprofit institutions of an educational, philanthropic or charitable nature except penal or mental institutions.

18.35.040 Intensity of use regulations.

- A. Minimum Lot Area.
 1. Garden apartments: 2,500 square feet per dwelling unit.
 2. Multifamily: 1,500 square feet per dwelling unit but not less than 6,000 square feet of lot area.
 3. Dwellings for the elderly: 1,000 square feet per dwelling unit but not less than 6,000 square feet of lot area.
 4. Other uses: 7,500 square feet.
- B. Minimum lot width: 70 feet.
- C. Maximum lot coverage: 50 percent.

18.35.050 Height regulations.

Maximum structure height: 35 feet.

18.35.060 Yard regulations.

- A. Front Yard. The front yard shall be a minimum of 25 feet if the street right-of-way is 60 feet. When the street right-of-way is 50 feet, or for lots fronting a cul-de-sac, the minimum front yard shall be 30 feet. On collector streets, the minimum front yard shall be 65 feet measured from the centerline of the street right-of-way; and on arterial streets, the minimum front yard shall be 85 feet measured from the centerline of the street.
- B. Minimum Side Yard.
 - 1. Minimum seven feet on each side of a zoning lot or 20 percent total side yards.
 - 2. Twenty feet shall be provided on the street side of a corner lot.
- C. Minimum Rear Yard. No rear yard shall be less than 20 percent of the depth of the lot, or a minimum 25 feet.

18.35.070 Use limitations.

None.

18.35.080 Parking regulations.

The following number of off-street parking spaces are required:

- A. One and one-half spaces for each studio or one-bedroom apartment.
- B. Two spaces for each two-bedroom apartment.
- C. Two and one-half spaces for each three-bedroom or larger apartment.

18.35.090 Signs.

See Chapter [18.170](#) GMC.

18.35.100 Landscaping.

See Chapter [18.165](#) GMC.

18.35.110 Design standards.

See Gardner Design Standards.

Chapter 18.40 R-4 – CONDOMINIUM DWELLING HOUSE DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.40.010 | Intent. |
| 18.40.020 | Permitted uses. |
| 18.40.030 | Conditional uses. |
| 18.40.040 | Intensity of use regulations. |
| 18.40.050 | Height regulations. |
| 18.40.060 | Yard regulations. |
| 18.40.070 | Use limitations. |
| 18.40.080 | Parking regulations. |
| 18.40.090 | Signs. |
| 18.40.100 | Landscaping. |
| 18.40.110 | Design standards. |

18.40.010 Intent.

It is the intent of this district to provide for the construction of condominium dwelling houses under the provisions of K.S.A. 58-3101, et seq. Condominiums shall contain not less than two nor more than 12 dwelling units per building.

18.40.020 Permitted uses.

In District R-4, no building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

- A. Condominium dwelling houses.

18.40.030 Conditional uses.

The following use may be allowed by conditional use permit when submitted to and reviewed by the Planning Commission and approved by the City Council, under such conditions as to operation, site development, signs and time limit as may be deemed necessary:

- A. Group care homes with more than eight but fewer than 15 residents.
- B. Nursing or convalescent homes.
- C. Churches or other similar places of worship.
- D. Day-care centers.

18.40.040 Intensity of use regulations.

- A. Minimum Lot Area.
 - 1. Condominium dwellings: 2,500 square feet per dwelling unit.
 - 2. Other uses: 7,500 square feet.
- B. Minimum lot width: 150 feet.
- C. Maximum lot coverage: 25 percent.

18.40.050 Height regulations.

Maximum structure height: 45 feet.

18.40.060 Yard regulations.

- A. Front Yard. The front yard shall be a minimum of 25 feet if the street right-of-way is 60 feet. When the street right-of-way is 50 feet, or for lots fronting a cul-de-sac, the minimum front yard shall be 30 feet in depth measured from the front lot line. On collector streets, the minimum front yard

shall be 65 feet measured from the centerline of the street right-of-way; and on arterial streets, the minimum front yard shall be 85 feet measured from the centerline of the street.

- B. Minimum Side Yard. Same as District R-3 except that multifamily uses shall have a side yard of not less than eight feet when the building height is in excess of 35 feet, whichever is smaller. The total side yard shall equal or exceed 20 percent of the lot width.
- C. Minimum Rear Yard. No rear yard shall be less than 20 percent of the depth of the lot, or a minimum of 25 feet.

18.40.070 Use limitations.

None.

18.40.080 Parking regulations.

The following number of off-street parking spaces are required:

- A. One and one-half spaces for each studio or one-bedroom apartment.
- B. Two spaces for each two-bedroom apartment.
- C. Two and one-half spaces for each three-bedroom or larger apartment.

18.40.090 Signs.

See Chapter [18.170](#) GMC.

18.40.100 Landscaping.

See Chapter [18.165](#) GMC.

18.40.110 Design standards.

See Gardner Design Standards.

Chapter 18.45 R-5 – APARTMENT HOUSE DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.45.010 | Intent. |
| 18.45.020 | Permitted uses. |
| 18.45.030 | Conditional uses. |
| 18.45.040 | Intensity of use regulations. |
| 18.45.050 | Height regulations. |
| 18.45.060 | Yard regulations. |
| 18.45.070 | Use limitations. |
| 18.45.080 | Parking regulations. |
| 18.45.090 | Signs. |
| 18.45.100 | Landscaping. |
| 18.45.110 | Design standards. |

18.45.010 Intent.

The intent of this district is to provide for higher density residential development not commonly found in the other residential districts but still maintaining a basic residential quality.

18.45.020 Permitted uses.

In District R-5, no building, structure, land or premises shall be used and no structure shall be hereafter erected, constructed, reconstructed, or altered except for one or more of the following uses:

- A. All uses permitted in District R-3.
- B. Medium rise apartment buildings.
- C. Boarding and lodging houses.
- D. Day-care centers.
- E. Dormitories.
- F. Fraternity and sorority houses.
- G. Group care homes with fewer than 15 residents.
- H. Hospitals and nursing homes.
- I. Home occupations as set out in Chapter [18.140](#) GMC.

18.45.030 Conditional uses.

The following uses may be allowed by conditional use permit when submitted to and reviewed by the Planning Commission and approved by the City Council, under such conditions as to operation, site development, signs and time limit as may be deemed necessary:

- A. All conditional uses in the R-3 District.

18.45.040 Intensity of use regulations.

- A. Minimum Lot Area.
 1. Medium rise apartments: 1,500 square feet per dwelling unit.
 2. Garden apartments: 2,500 square feet per dwelling unit.
 3. Dwellings for the elderly: 1,000 square feet per dwelling unit.
 4. Other uses: 7,500 square feet.
- B. Minimum lot width: 80 feet.
- C. Maximum lot coverage: 40 percent.

18.45.050 Height regulations.

Maximum structure height: four stories or 45 feet, whichever is greater.

18.45.060 Yard regulations.

- A. Front Yard. The front yard shall be a minimum of 25 feet if the street right-of-way is 60 feet. When the street right-of-way is 50 feet, or for lots fronting a cul-de-sac, the minimum front yard shall be 30 feet. On collector streets, the minimum front yard shall be 65 feet measured from the centerline of the street right-of-way; and on arterial streets, the minimum front yard shall be 85 feet measured from the centerline of the street.
- B. Minimum Side Yard. Same as District R-4, except that 20 feet shall be provided on the street side of a corner lot. The total side yard shall equal or exceed 20 percent of the lot width.
- C. Minimum Rear Yard. No rear yard shall be less than 20 percent of the depth of the lot, or 25 feet minimum.

18.45.070 Use limitations.

- A. All buildings exceeding two and one-half stories shall be equipped with elevators.
- B. For every story over two stories there shall be provided an additional 10 feet in lot width.

18.45.080 Parking regulations.

The following number of off-street parking spaces are required:

- A. One and one-half spaces for each studio or one-bedroom apartment.
- B. Two spaces for each two-bedroom apartment.
- C. Two and one-half spaces for each three-bedroom or larger apartment.

18.45.090 Signs.

See Chapter [18.170](#) GMC.

18.45.100 Landscaping.

See Chapter [18.165](#) GMC.

18.45.110 Design standards.

See Gardner Design Standards.

Chapter 18.50 PLANNED RESIDENTIAL DISTRICTS

Sections:

- [18.50.010](#) Intent.
- [18.50.020](#) Districts and permitted uses.
- [18.50.030](#) Regulations and allowed variations.
- [18.50.040](#) Procedure for rezoning property to a planned residential district.

18.50.010 Intent.

Each of the residential districts hereinbefore set forth shall have a separate and distinct counterpart known and herein referred to as a planned district. A planned district shall be for the purpose of permitting and regulating the uses heretofore permitted in the equivalent district and further provide for and encourage latitude flexibility in the location of buildings, structures, roads, drives, variations in yards and open spaces, etc., subsequent to approval of the plan by local officials. The purpose is to allow development of tracts of land to their fullest extent and at the same time observe the general intent and spirit of these regulations.

18.50.020 Districts and permitted uses.

The planned residential districts shall be as follows:

| Planned District | Equivalent District |
|------------------|---------------------|
| RP-1 | R-1 |
| RP-2 | R-2 |
| RP-3 | R-3 |
| RP-4 | R-4 |
| RP-5 | R-5 |

The uses permitted shall be the same as in the equivalent District R-1 to R-5 inclusive.

18.50.030 Regulations and allowed variations.

In general, the height and bulk of buildings, the amount of open space, light and air, the concentration of population, and the parking and loading requirements shall be equal to those in the corresponding District R-1 to R-5 inclusive.

Variations and departures from normal practice may, however, be permitted. Each building need not face on a public street and more than one main building may be located on a lot. Buildings may be constructed on platted tracts which are smaller than the minimum lot size requirements where other adjacent permanent open space is provided. Buildings may be grouped in clusters or around courts and may be served by private drives in lieu of public streets. Buildings may be located closer to lot lines than otherwise permitted provided such buildings are architecturally suitable for such a relationship to adjoining buildings or property, due consideration being given to future development of adjoining property under separate ownership. Any building or portion thereof may be owned in condominium under K.S.A. 58-3101.

18.50.040 Procedure for rezoning property to a planned residential district.

A tract of land may be zoned RP-1 through RP-5 inclusive, only upon application by the owner or his/her agent, and only upon approval of a development plan. The proponents of a planned district shall prepare and submit to the Planning Commission a development plan containing the following elements:

- A. A development plan showing the property to be included in the proposed development, plus the area within 200 feet thereof.

Name of the developer and firm responsible for preparation, north scale, preparation date and revision dates, space for endorsement by Planning Commission and Governing Body, the proposed use and proposed zoning.

- B. The following items shall be included on the property to be developed:
1. Existing topography with contours at two-foot intervals.
 2. Proposed location of buildings and other structures, parking areas, drives, walks, screening, drainage patterns, public streets, and any existing easements.
 3. Sufficient dimensions to indicate relationship between buildings, property lines, parking areas, and other elements of the plan.
 4. General extent and character of proposed landscaping.
- C. The following items shall be shown on the same drawing within the 200-foot adjacent area:
1. Any public streets which are of record, and sidewalks.
 2. Any drives which exist or which are proposed to the degree that they appear on plans on file with the City of Gardner, except those serving single-family houses.
 3. Any buildings which exist or are proposed to the degree that their location and size are shown on plans on file with the City of Gardner. Single- and two-family residential buildings shall be shown in approximate location and general size and shape.
 4. The location and size of any drainage structure, such as culverts, paved or earthen ditches or storm water sewers and inlets, sanitary, water, transmission, gas or electric.
- D. Preliminary sketches depicting the general style, size and exterior construction materials of the buildings proposed. In the event of several buildings, a typical sketch may be submitted. In case several building types, such as apartments and business buildings, are proposed on the plan, a separate sketch shall be prepared for each type. Such sketches shall include elevation drawings and a floor plan, but detailed drawings and perspectives are not required.
- E. Any required covenants or restrictions shall be approved by the Planning Commission.

The Planning Commission shall advertise and hold a public hearing on the plan as provided by law. At such time as the development as planned meets with the approval of the Commission, the same shall be duly approved, properly endorsed and identified and sent on to the Council for action.

Upon final approval of the plan and the rezoning of the tract as required by law, construction may proceed and conformance with the plan and all supporting documentation is mandatory.

All final plans shall be submitted to the Planning Commission and approved as to compliance with the development plan prior to the issuance of a building permit. The final plans submitted shall include landscape plan showing species and size of all plant materials, areas to be seeded, sodded, etc., all to be in keeping with the development plan as approved. If, in the judgment of the Commission, the concept of development, as depicted on the final plans, deviates substantially from the concept of the development plan submitted for zoning, the Commission may deny the request for final plan approval. The applicant, in this case, may apply for a new hearing, with publication and posting as required in Chapter [18.185](#) GMC, and the Commission and Council may approve or deny the final plans after said hearing. All decisions of the Planning Commission may be appealed to the City Council who may reverse or affirm the same.

Chapter 18.55 M-P – MOBILE HOME PARK RESIDENTIAL DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.55.010 | Intent. |
| 18.55.020 | Permitted uses. |
| 18.55.030 | Exceptions. |
| 18.55.040 | Intensity of use regulations. |
| 18.55.050 | Height regulations. |
| 18.55.060 | Yard regulations. |
| 18.55.070 | Use limitations. |
| 18.55.080 | Parking regulations. |
| 18.55.090 | Sign regulations. |
| 18.55.100 | Landscaping. |
| 18.55.110 | Water supply. |
| 18.55.120 | Sewage disposal. |
| 18.55.130 | Tie downs and ground anchors. |
| 18.55.140 | Utilities. |
| 18.55.150 | Gas. |
| 18.55.160 | Refuse and garbage handling. |
| 18.55.170 | Blocking. |
| 18.55.180 | Skirting. |
| 18.55.190 | Pad requirements. |
| 18.55.200 | Application requirements. |
| 18.55.210 | Design standards. |

18.55.010 Intent.

It is the intent of this district to provide low-density mobile home park developments which are compatible with the character of the surrounding neighborhood in which they are located. Mobile home parks are considered as a residential use and should be located in areas where services and amenities are available such as those found in conventional residential areas.

18.55.020 Permitted uses.

In District M-P, no building, structure, land, or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

- A. Churches or other similar places of worship.
- B. Mobile homes.
- C. Public parks and recreation areas.
- D. Accessory buildings and uses incidental to those listed above.

18.55.030 Exceptions.

None.

18.55.040 Intensity of use regulations.

- A. Minimum park size: mobile home park, 15 acres.
- B. Minimum lot width: 300 feet.

18.55.050 Height regulations.

Maximum structure height: 35 feet.

18.55.060 Yard regulations.

As provided in GMC [18.30.060](#).

18.55.070 Use limitations.

Each mobile home park shall be designed in accordance with the following minimum design standards:

- A. The park shall be located on a well-drained site properly graded to ensure rapid drainage and freedom from stagnant pools of water.
- B. Mobile home parks hereafter approved shall have a maximum density of six mobile homes per gross acre, and a minimum area of 4,000 square feet shall be provided for each mobile home space.
- C. Each mobile home space shall be at least 45 feet wide at the front setback line and be clearly defined, and at least 90 feet in depth.
- D. Mobile homes shall be located on each space so as to maintain a setback of not less than 25 feet if the street right-of-way is 60 feet. When the street right-of-way is 50 feet, or for lots fronting a cul-de-sac, the minimum front yard shall be 30 feet; 65-foot center line for collector streets, 85-foot center line for arterial streets from any public street, highway right-of-way, or Residential District boundary; as to maintain a setback of not less than 10 feet from the edge of a park roadway, sidewalk, or rear boundary line of a mobile home space when such boundary line is not common to any public street, highway right-of-way, or Residential District boundary; and as to maintain a setback of not less than five feet from any side boundary line of a mobile home space.
- E. All mobile homes shall be so located to maintain a clearance of not less than 20 feet from another mobile home and as to maintain a clearance of not less than 20 feet between any mobile home and any appurtenance to a mobile home. No mobile home shall be located closer than 30 feet from any building within the park except a private storage shed or garage.
- F. All mobile home spaces shall front upon a private roadway of not less than 28 feet in width, including concrete curbs on each side; provided, however, that no on-street parking is permitted. If parallel parking is permitted on one side of the street, the width shall be increased to 30 feet; and if parallel parking is permitted on both sides of the street, the width shall be increased to 36 feet. All roadways shall have unobstructed access to a public street. All public streets within the park shall be improved to City standards for residential streets.
- G. Common walks shall be provided in locations where pedestrian traffic is concentrated; for example, to the entrance and to the office and other important facilities. Common walks should preferably be through interior areas removed from the vicinity of streets.
- H. All roadways and sidewalks within the mobile home park shall be paved and shall be adequately lighted at night. Sidewalks shall be four-inch thick concrete, four feet wide. Streets shall conform to existing City street standards.
- I. A storm shelter shall be required which may include recreation facilities, laundry facilities, storm shelter, and other similar uses.
- J. Each mobile home park shall devote a minimum of 200 square feet per mobile home space for recreational area. Individual recreational areas shall not be less than 5,000 square feet and required setbacks, roadways, and off-street parking spaces shall not be considered as recreation space. A minimum of 50 percent of the recreational facilities shall be constructed by the time one-half of the project is developed and all recreational facilities shall be constructed by the time the project is 75 percent developed.
- K. Each mobile home space shall be provided with a paved patio or equivalent, other than parking space, of not less than 200 square feet. No open storage of any unsightly material shall be permitted within the mobile home park and the space beneath the mobile home shall be considered open storage.
- L. Common Storage. Common storage areas may be provided, but must be screened from public view.

18.55.080 Parking regulations.

At least two parking spaces for each mobile home shall be provided within 60 feet of the mobile home. When such parking is provided off the public street or private street, each stall shall be not less than nine feet by 18 feet in size, and shall be surfaced to at least the standards set out above for private streets;

provided, however, concrete curbs shall not be required when located upon the mobile home lot. Should the private driveway be provided on the mobile home lot, it shall be paved with a minimum of four inches of concrete.

18.55.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.55.100 Landscaping.

See Chapter [18.165](#) GMC.

18.55.110 Water supply.

- A. All mobile home parks shall be connected to a public water supply.
- B. The individual water service connections shall be provided at each mobile home space and the size, location and installation of water lines shall be in accordance with the requirements of the City Plumbing Code.

18.55.120 Sewage disposal.

Individual sewer connections shall be provided for each mobile home space and shall be installed in accordance with the City Plumbing Code. All mobile home parks shall be connected to a public sewer system.

18.55.130 Tie downs and ground anchors.

All mobile homes shall be secured to the ground by tie downs and ground anchors in accordance with the Mobile Home and Recreational Vehicle Code, K.S.A. 75-1211 to 75-1234.

18.55.140 Utilities.

Electric, telephone and cable television service lines shall be installed underground and shall be in accordance with City codes and utility company specifications.

18.55.150 Gas.

At no time is LP gas permitted to be the source of utility for a mobile home. Only public natural gas and electricity are permitted sources of heat and hot water within mobile home parks. Containers for ancillary uses such as outdoor grills are permitted as long as they are used and stored as per the manufacturer's requirements and the International Fuel Gas Code.

18.55.160 Refuse and garbage handling.

- A. Storage, collection and disposal of refuse in a park shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accidents, fire hazards, or air pollution.
- B. All refuse shall be stored in fly-tight, water-tight, rodent-proof containers. Containers shall be provided in sufficient number and capacity to properly store all refuse.
- C. Refuse racks shall be provided for all refuse containers. Such racks shall be designed to prevent the containers from being tipped, to minimize spillage and container deterioration, and to facilitate cleaning around them.
- D. Refuse and garbage shall be removed from the park at least once each week. All refuse shall be collected and transported in covered vehicles or covered containers.
- E. The park owner shall ensure that containers at all stands are emptied regularly and maintained in a usable sanitary condition.

18.55.170 Blocking.

All mobile homes shall be blocked at a maximum of 10-foot centers around the perimeter of each mobile home, and this blocking shall provide 16 inches bearing upon the stand.

18.55.180 Skirting.

Each mobile home shall be skirted within 30 days after placement in the park by enclosing the open area under the unit with a material that is compatible with the exterior finish of the mobile home and is consistent with the quality of development of the park.

18.55.190 Pad requirements.

Pads shall be a hard surface of a minimum of two 18-inch side concrete ribbons or slabs capable of carrying the weight and of sufficient length to support all blocking points of the mobile home with a proper surface between them for weed control.

18.55.200 Application requirements.

- A. An applicant for M-P Mobile Home Park District shall prepare or cause to be prepared a preliminary mobile home park plan, drawn to a scale of not less than one inch equals 100 feet, and 10 copies of said plan shall be submitted to the Planning Commission for its review and recommendations. Said plan shall have contours shown at two-foot intervals.
- B. Upon approval of the preliminary mobile home park plan by the Planning Commission, the applicant shall prepare and submit 10 copies of final plan which shall incorporate any changes or alterations requested. The final plan and the Planning Commission recommendation shall be forwarded to the Governing Body for their review and final action.
- C. Any substantial deviation from the approved plan shall constitute a violation of the plan. The owner of a mobile home park shall be responsible for such violations. Changes in plans shall be resubmitted for reconsideration and approval by the Planning Commission and Governing Body.

18.55.210 Design standards.

See Gardner Design Standards.

Chapter 18.60 M-S – MOBILE HOME SUBDIVISION DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.60.010 | Intent. |
| 18.60.020 | Permitted uses. |
| 18.60.030 | Exceptions. |
| 18.60.040 | Intensity of use regulations. |
| 18.60.050 | Height regulations. |
| 18.60.060 | Yard regulations. |
| 18.60.070 | Use limitations. |
| 18.60.080 | Parking regulations. |
| 18.60.090 | Sign regulations. |
| 18.60.100 | Landscaping. |
| 18.60.110 | Design standards. |

18.60.010 Intent.

The intent of this district is to provide low-density mobile home development which would be compatible with the character of the surrounding neighborhood. Individuals can purchase lots for the placement of mobile homes.

18.60.020 Permitted uses.

In District M-S, no building, structure, land, or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

- A. Single-family dwellings consisting of modular homes or mobile homes placed on a permanent foundation.
- B. Churches or other similar places of worship.
- C. Public parks and recreation areas.
- D. Accessory buildings and uses incidental to those listed above.

18.60.030 Exceptions.

None.

18.60.040 Intensity of use regulations.

- A. Minimum Subdivision Area.
 1. Mobile home subdivision, 15 acres.
 2. Mobile lot area, 6,000 square feet.
- B. Minimum lot width:
 1. Fifty feet.
 2. Minimum lot area, 6,000 square feet.

18.60.050 Height regulations.

Maximum structure height: 35 feet.

18.60.060 Yard regulations.

- A. Front Yards. The front yard shall be a minimum of 60 feet if the street right-of-way is 60 feet. When the street right-of-way is 50 feet, or for lots fronting a cul-de-sac, the minimum front yard shall be 30 feet. On collector streets, the minimum front yard shall be 65 feet measured from the centerline of the street right-of-way; and on arterial streets, the minimum front yard shall be 85 feet measured from the centerline of the street.

- B. Side Yards. No side yard shall be less than nine feet, except as provided for zero lot line development.

Buildings on corner lots shall provide a side yard on the street side of not less than 15 feet.

- C. Rear Yards. No rear yard shall be less than 20 percent of the depth of the lot, or 25 feet minimum.

18.60.070 Use limitations.

- A. All lots must be platted in accordance with the subdivision regulations except as provided above in GMC [18.60.040](#).
- B. All mobile homes must be attached to a permanent foundation which shall extend around the entire perimeter of the mobile home.
- C. All mobile homes shall be secured to the ground by the tie-downs and ground anchors in conformance with the requirements of the state statutes.
- D. Each lot shall be provided public water and sewer service in conformance with all City, County, and state requirements.

18.60.080 Parking regulations.

Two off-street parking spaces shall be provided for each single-family dwelling, at least one of which shall be in a garage or carport.

18.60.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.60.100 Landscaping.

See Chapter [18.165](#) GMC.

18.60.110 Design standards.

See Gardner Design Standards.

Chapter 18.65 C-O – OFFICE BUILDING DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.65.010 | Intent. |
| 18.65.020 | Permitted uses. |
| 18.65.030 | Exceptions. |
| 18.65.040 | Intensity of use regulations. |
| 18.65.050 | Height regulations. |
| 18.65.060 | Yard regulations. |
| 18.65.070 | Use limitations. |
| 18.65.080 | Parking regulations. |
| 18.65.090 | Sign regulations. |
| 18.65.100 | Landscaping. |
| 18.65.110 | Design standards. |

18.65.010 Intent.

The intent of the C-O Office Building District is to permit public, quasi-public, institutional and professional service uses. Density and intensity of use may be considered moderate. Uses in this district are intended to be compatible with adjoining residential districts.

18.65.020 Permitted uses.

In District C-O, no building, structure, land, or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

- A. Accessory uses customarily incidental to the uses permitted in C-O Office Building District.
- B. Churches and other similar places of worship.
- C. Child and elder day-care facilities.
- D. Service clubs and organizations, except those whose primary activity is a service that is customarily carried on as a business.
- E. Hospital, but not animal hospital.
- F. Medical, dental offices and health offices.
- G. Nonprofit institutions of a religious, educational, charitable or philanthropic nature.
- H. Office buildings for professional, commercial, industrial, religious, instructional, public and semi-public purposes, providing no goods, wares or merchandise shall be prepared for sale or sold on the premises.

A portion of the office building may be occupied and used as a drug store, barber shop, cosmetologist's shop, cigar stand or newsstand, snack shop or cafeteria when such uses are located entirely within the building with no entrance from the street or visible from any sidewalk, and have no sign or display visible from outside the building indicating the existence of such use.

- I. Banking and financial institutions.
- J. Parks, playgrounds and community buildings owned and operated by the City or County.
- K. Public buildings.
- L. Funeral homes and mortuaries.
- M. Nursing homes, hospice care, and assisted living facilities.

18.65.030 Exceptions.

None.

18.65.040 Intensity of use regulations.

- A. Minimum lot area: 6,000 square feet
- B. Minimum lot width: 50 feet.

18.65.050 Height regulations.

Maximum structure height: 45 feet.

18.65.060 Yard regulations.

- A. Minimum front yard: 25 feet.
- B. Minimum side yard: nine feet except that the setback shall be increased to 15 feet when the building is in excess of 35 feet in height.
- C. Minimum rear yard: 25 feet or 20 percent of the depth of the lot, whichever is smaller.

18.65.070 Use limitations.

- A. The location of the office and institutional district shall be on property which has an acceptable relationship to major streets.
- B. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light on any adjacent property and no glare is visible to any traffic on any public street.
- C. A solid or semi-solid fence, hedge or wall at least six feet, but not more than eight feet high and having a density of not less than 80 percent per square foot shall be provided adjacent to any adjoining residential district unless the adjacent residential district and the commercial development are separated by a street right-of-way. Said fence or wall shall be maintained in good condition by the owner and owners of the property in the C-O District.
- D. Buildings should be oriented so that the front or side of the building faces the public street frontage of the property. In unique situations due to the design of the lot with double or triple frontages where it is necessary to orient a rear elevation towards a public street, all loading and services areas shall be screened from public view with landscaping, berming, facade walls, or fencing.

18.65.080 Parking regulations.

One off-street parking space in the side or rear yard shall be provided for each 250 square feet of service floor area. (See Chapter [18.160](#) GMC for additional parking requirements.)

18.65.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.65.100 Landscaping.

See Chapter [18.165](#) GMC.

18.65.110 Design standards.

See Gardner Design Standards.

Chapter 18.70 CO-A – NEIGHBORHOOD BUSINESS DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.70.010 | Intent. |
| 18.70.020 | Permitted uses. |
| 18.70.030 | Exceptions. |
| 18.70.040 | Intensity of use regulations. |
| 18.70.050 | Height regulations. |
| 18.70.060 | Yard regulations. |
| 18.70.070 | Use limitations. |
| 18.70.080 | Parking regulations. |
| 18.70.090 | Sign regulations. |
| 18.70.100 | Landscaping. |
| 18.70.110 | Design standards. |

18.70.010 Intent.

The intent of this district is to provide commercial locations for small areas of convenience shopping facilities in and near residential neighborhoods. Such convenience shopping facilities will often occupy a small area, frequently at an intersection or on a major street, in an area that is otherwise wholly residential.

18.70.020 Permitted uses.

In District CO-A, no building, structure, land, or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following or similar uses:

- A. Accessory uses customarily incidental to the uses permitted in CO-A Office Building District.
- B. Barber and beauty services.
- C. Drug stores and prescription shops.
- D. Dry cleaning and laundry establishments.
- E. Convenience stores with or without gas pumps but not with carwashes.
- F. Self-service laundries and dry cleaning establishments.
- G. Child and elder day-care facilities.

18.70.030 Exceptions.

The following may be allowed by conditional use permit when submitted to and reviewed by the Planning Commission and approved by the City Council:

- A. Office buildings.
- B. Banking and financial services.

18.70.040 Intensity of use regulations.

- A. Minimum lot area: 10,000 square feet.
- B. Minimum lot width: 100 feet.

18.70.050 Height regulations.

Maximum structure height: 35 feet.

18.70.060 Yard regulations.

- A. Minimum front yard: 25 feet.
- B. Minimum side yard: nine feet when adjacent to a residential district, otherwise none.

- C. Minimum rear yard: 25 feet or 20 percent of the depth of the lot, whichever is less.

18.70.070 Use limitations.

- A. No outdoor storage shall be permitted.
- B. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any adjacent property and no glare is visible to any traffic on any public street.
- C. A solid or semi-solid fence, hedge or wall at least six feet, but not more than eight feet high, and having a density of not less than 80 percent per square foot shall be provided adjacent to an adjoining residential district unless the adjacent residential district and the commercial development are separated by a street right-of-way. Said fence or wall shall be maintained in good condition by the owner or owners of the property in the CO-A District.
- D. Buildings should be oriented so that the front or side of the building faces the public street frontage of the property. In unique situations due to the design of the lot with double or triple frontages where it is necessary to orient a rear elevation towards a public street, all loading and services areas shall be screened from public view with landscaping, berming, facade walls, or fencing.

18.70.080 Parking regulations.

One off-street parking space in the side or rear yard shall be provided for each 250 square feet of service floor area. (See Chapter [18.160](#) GMC for additional parking requirements.)

18.70.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.70.100 Landscaping.

See Chapter [18.165](#) GMC.

18.70.110 Design standards.

See Gardner Design Standards.

Chapter 18.75 C-1 – CENTRAL BUSINESS DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.75.010 | Intent. |
| 18.75.020 | Permitted uses. |
| 18.75.030 | Conditional uses. |
| 18.75.040 | Intensity of use regulations. |
| 18.75.050 | Height regulations. |
| 18.75.060 | Yard regulations. |
| 18.75.070 | Use limitations. |
| 18.75.080 | Parking regulations. |
| 18.75.090 | Sign regulations. |
| 18.75.100 | Landscaping. |
| 18.75.110 | Design standards. |

18.75.010 Intent.

The intent of this district is to provide a zone which will accommodate the broad range of retail shopping activities and service and office uses that are normally found in the core area of a city.

18.75.020 Permitted uses.

In District C-1, no building, structure, land, or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

- A. Retail sale of goods and services including or similar to the following, but excluding any use specifically listed in District C-2 or District C-3:
 1. Goods:
 - a. Apparel;
 - b. Antiques;
 - c. Appliances;
 - d. Automotive parts;
 - e. Bakeries (retail only);
 - f. Books and periodicals;
 - g. Cameras and photo equipment;
 - h. Carpet and floor coverings;
 - i. Consumer electronics;
 - j. Department stores;
 - k. Drugs and cosmetics;
 - l. Flowers and plants;
 - m. Food (including candy, meat and specialty items);
 - n. Furniture and home furnishings;
 - o. Greeting cards and stationery;
 - p. Hardware;
 - q. House wares and kitchenware;
 - r. Jewelry, watch and clock sales and repair;

- s. Music and musical instruments;
 - t. Office supplies and equipment;
 - u. Package sales of alcoholic liquor or cereal malt beverages;
 - v. Paint and wallpaper;
 - w. Pet stores;
 - x. Sporting goods and bicycles;
 - y. Toys and hobby supplies, crafts;
2. Service:
- a. Alterations and tailoring;
 - b. Appliance and electronics repair;
 - c. Art galleries and studios (including photo);
 - d. Barber shops and hair salons;
 - e. Banking and financial institutions;
 - f. Churches;
 - g. Dry cleaning and laundry pick-up or coin-operated laundry and dry cleaning operations classified as low hazard in applicable codes;
 - h. Health or fitness/martial arts clubs and dance studios;
 - i. Interior decorating;
 - j. Medical, dental and health offices;
 - k. Mortuaries and funeral parlors;
 - l. Nonprofit institutions of a religious, educational, charitable or philanthropic nature;
 - m. Office buildings for professional, commercial, industrial, religious, instructional, public and semi-public purposes, providing no goods, wares or merchandise shall be prepared for sale or sold on the premises. A portion of the office building may be occupied and used as a drug store, barber shop, cosmetologist's shop, cigar stand or newsstand, snack shop or cafeteria when such uses are located entirely within the building with no entrance from the street or visible from any sidewalk, and have no sign or display visible from outside the building indicating the existence of such use;
 - n. Optical shops;
 - o. Parks, playgrounds and community buildings owned and operated by the City or County;
 - p. Photocopying and retail printing;
 - q. Picture framing;
 - r. Public buildings;
 - s. Restaurants, taverns; microbreweries/brew pubs associated with a restaurant;
 - t. Service clubs and organizations, except those whose primary activity is a service that is customarily carried on as a business;
 - u. Shoe repairs;
 - v. Theater and stage;
 - w. Veterinarian (domesticated pets only);
 - x. Video rental.

- B. Apartments other than on the ground floor.
- C. Accessory uses customarily incidental to the uses permitted in C-1 Central Business District.

18.75.030 Conditional uses.

The following may be allowed by conditional use permit when submitted to and reviewed, and approved by the Planning Commission and City Council, under such conditions as to operation, site development, signs and time limit as may be deemed necessary:

- A. Hotels and motels, subject to the following conditions:
 - 1. The use must be located in close proximity to an arterial street as designated in the Community Development Plan.
 - 2. All driveways, parking, loading, and vehicular circulation areas shall be per City construction standards.
 - 3. A site plan indicating ingress/egress, off-street parking, loading areas, on-site traffic circulation, landscaping, and building elevations shall be submitted to the Planning Commission for considerations with the conditional use permit.
 - 4. The Planning Commission may attach such other conditions as deemed necessary to provide compatible development.
- B. Bed and breakfast, subject to the following conditions:
 - 1. The use must be located on or in close proximity to a designated collector or arterial street designated in the Comprehensive Plan.
 - 2. One parking space per guest room shall be provided in addition to the required parking for the residence.
 - 3. All parking and vehicle access areas shall be paved with asphalt or concrete.
 - 4. All parking areas shall be screened with landscaping or fencing from adjacent properties.
 - 5. The owner(s) or manager(s) of the facility shall reside in the residence.
 - 6. No accessory structures shall be utilized as the facility.
 - 7. A site plan shall be submitted for approval by the Planning Commission indicating the site layout, access, parking, and screening.
 - 8. The Planning Commission may attach such conditions as deemed necessary to provide for compatible development.

18.75.040 Intensity of use regulations.

- A. Minimum lot area: none.
- B. Minimum lot width: none.

18.75.050 Height regulations.

Maximum structure height: None.

18.75.060 Yard regulations.

- A. Minimum front yard: none.
- B. Minimum side yard: nine feet when adjacent to a residential district, otherwise none.
- C. Minimum rear yard: 25 feet when adjacent to a residential district, otherwise none.

18.75.070 Use limitations.

- A. No outdoor storage, except the display of merchandise for sale to the public, shall be permitted.

- B. No business establishment shall offer or sell food or beverages where consumption is primarily intended to occur in parked motor vehicles.
- C. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any adjacent property and no glare is visible to any traffic on any public street.
- D. A solid or semi-solid fence, hedge or wall at least six feet, but not more than eight feet high, and having a density of not less than 80 percent per square foot, shall be provided adjacent to an adjoining residential district unless the adjacent residential district and the commercial development are separated by a street right-of-way. Said fence or wall shall be maintained in good condition by the owner or owners of the property in the C-1 District.
- E. Buildings should be oriented so that the front or side of the building faces the public street frontage of the property. In unique situations due to the design of the lot with double or triple frontages where it is necessary to orient a rear elevation towards a public street, all loading and services areas shall be screened from public view with landscaping, berming, facade walls, or fencing.

18.75.080 Parking regulations.

One off-street parking space in the side or rear yard shall be provided for each 250 square feet of service floor area. (See Chapter [18.160](#) GMC for additional parking requirements.)

18.75.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.75.100 Landscaping.

See Chapter [18.165](#) GMC.

18.75.110 Design standards.

See Gardner Design Standards.

Chapter 18.80 C-2 – GENERAL BUSINESS DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.80.010 | Intent. |
| 18.80.020 | Permitted uses. |
| 18.80.030 | Conditional uses. |
| 18.80.040 | Intensity of use regulations. |
| 18.80.050 | Height regulations. |
| 18.80.060 | Yard regulations. |
| 18.80.070 | Use limitations. |
| 18.80.080 | Parking regulations. |
| 18.80.090 | Sign regulations. |
| 18.80.100 | Landscaping. |
| 18.80.110 | Design standards. |

18.80.010 Intent.

The C-2 General Business District is intended for the purpose of allowing basic retail, service and office uses in addition to those normally permitted in neighborhood centers. This district is also intended to provide locations for commercial activity that do not require a central location downtown but do require a location easily accessible to the downtown shoppers. Business uses needing large floor areas, particularly those of a service nature, not compatible with Central Business District uses are included in this district.

18.80.020 Permitted uses.

In District C-2, no building, structure, land, or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

- A. Any use permitted in District C-1.
- B. Retail sale of goods and services including or similar to the following, but excluding any use specifically listed in District C-3:
 1. Goods:
 - a. Building supplies;
 - b. Grocery and convenience store items;
 - c. Gasoline and other motor vehicle fuels (stations or wholesale);
 - d. Glass;
 - e. Medical equipment;
 - f. Motorcycles, jet skis (new or used);
 - g. Office equipment.
 2. Services:
 - a. Child and elder day-care;
 - b. Delivery services;
 - c. Newspaper publishing and printing;
 - d. Pawn shops and check cashing services;
 - e. Theaters, movie and stage.
- C. Rental or leasing of furniture and home furnishings.

- D. Automotive services limited to glass installation and replacement, brake and muffler repairs, window tinting, radio and stereo installation, tire and battery stores, and tune-up, quick lube and auto diagnostic centers that are typically same-day services with no overnight, outside storage.
- E. Services such as pest control, custom maintenance and small equipment repair.
- F. Classrooms and training facilities for business and trade schools.
- G. Entertainment or recreational uses including or similar to the following, but excluding any other use specifically requiring a conditional use permit:
 - 1. Bowling alleys;
 - 2. Pool or billiard parlors;
 - 3. Skating rinks;
 - 4. Indoor tennis and racquetball courts; or
 - 5. Indoor miniature golf.
- H. Plumbing, air conditioning/heating, and electrical supplies and services.
- I. Accessory uses customarily incidental to the uses permitted in C-2 Central Business District.

18.80.030 Conditional uses.

The following be allowed by conditional use permit when submitted to and reviewed by the Planning Commission and approved by the City Council:

- A. Motor vehicle repair service; provided, that all work shall be performed and all materials shall be stored within an enclosed building; and provided further, that all operable or inoperable motor vehicles determined by the Building Official to be a safety hazard or visual blight shall be screened from public view and access by a solid or semi-solid fence having a minimum height of six feet and a visual density of no less than 80 percent.
- B. Motor vehicle body shop; provided, that all work shall be performed and all materials shall be stored within an enclosed building; and provided further, that all operable or inoperable motor vehicles determined by the Building Official to be a safety hazard or visual blight shall be screened from public view and access by a solid or semi-solid fence having a minimum height of six feet and a visual density of no less than 80 percent.
- C. Storage and warehousing except for products of a highly explosive, combustible or volatile nature.
- D. Wholesale establishments except those which handle products of a highly explosive, combustible or volatile nature.
- E. Public utility, telephone exchanges, electric substations, water, sewer or storm sewer facilities, and natural, piped gas operating under government franchise and contract.
- F. Hotels and motels, subject to the following conditions:
 - 1. The use must be located in close proximity to an arterial street as designated in the Community Development Plan.
 - 2. All driveways, parking, loading, and vehicular circulation areas shall be per City construction standards.
 - 3. A site plan indicating ingress/egress, off-street parking, loading areas, on-site traffic circulation, landscaping, and building elevations shall be submitted to the Planning Commission for consideration with the conditional use permit.
 - 4. The Planning Commission may attach such other conditions as deemed necessary to provide compatible development.

- G. Retail or wholesale of new passenger cars. Used cars, and new or used recreational vehicles may be sold as an accessory use to the selling of new cars and only on the same lot as the new cars or on a lot separated only by the right-of-way.
- H. Rental or leasing of new and used passenger cars and single-axle rental trucks and trailers.

18.80.040 Intensity of use regulations.

- A. Minimum lot area: none for commercial uses. Fifteen hundred square feet for each apartment built above ground floor.
- B. Minimum lot width: none.

18.80.050 Height regulations.

Maximum structure height: 45 feet.

18.80.060 Yard regulations.

- A. Front Yard. The front yard shall be a minimum of 25 feet in depth measured from the front lot line. On collector streets, the minimum front yard shall be 65 feet measured from the centerline of the street right-of-way; and on arterial streets, the minimum front yard shall be 85 feet measured from the centerline of the street.
- B. Minimum side yard: nine feet when adjacent to a residential district, otherwise none.
- C. Minimum Rear Yard. No rear yard shall be less than 20 percent of the depth of the lot, or 25 feet, whichever is smaller.

18.80.070 Use limitations.

- A. No outdoor storage, except the display of merchandise for sale to the public, shall be permitted.
- B. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any adjacent property and no glare is visible to any traffic on any public street.
- C. A solid or semi-solid fence, hedge or wall at least six feet, but not more than eight feet high, and having a density of not less than 80 percent per square foot, shall be provided adjacent to an adjoining residential district unless the adjacent residential district and the commercial development are separated by a street right-of-way. Said fence or wall shall be maintained in good condition by the owner or owners of the property in the C-2 District.
- D. Gasoline pumps, air and water service and other fixtures used in connection with automobile service stations may be located within the front yard but not less than 12 feet from the front lot line and, in any event, not less than 40 feet from the centerline of any street or road on which the service station abuts.
- E. Buildings should be oriented so that the front or side of the building faces the public street frontage of the property. In unique situations due to the design of the lot with double or triple frontages where it is necessary to orient a rear elevation towards a public street, all loading and services areas shall be screened from public view with landscaping, berming, facade walls, or fencing.

18.80.080 Parking regulations.

One off-street parking space in the side or rear yard shall be provided for each 250 square feet of service floor area. (See Chapter [18.160](#) GMC for additional parking requirements.)

18.80.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.80.100 Landscaping.

See Chapter [18.165](#) GMC.

18.80.110 Design standards.
See Gardner Design Standards.

Chapter 18.85 C-3 – COMMERCIAL DISTRICT

Sections:

| | |
|---------------------------|-------------------------------|
| 18.85.010 | Intent. |
| 18.85.020 | Permitted uses. |
| 18.85.030 | Conditional uses. |
| 18.85.040 | Intensity of use regulations. |
| 18.85.050 | Height regulations. |
| 18.85.060 | Yard regulations. |
| 18.85.070 | Use limitations. |
| 18.85.080 | Parking regulations. |
| 18.85.090 | Sign regulations. |
| 18.85.100 | Landscaping. |
| 18.85.110 | Design standards. |

18.85.010 Intent.

The intent of this district is to provide commercial locations for uses which serve as a convenience to the traveler or require a location on a highway or arterial in order to have an efficient operation. It is further intended that the uses be of a single-purpose character and not be of a nature in which people walk from store-to-store as in a nucleated center. Screening and off-street parking are required in order to reduce possible adverse effects on surrounding residential areas.

18.85.020 Permitted uses.

In District C-3, no building, structure, land, or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered, except for one or more of the following uses:

- A. Any use permitted in District C-2.
- B. Rental, leasing or sale at retail or wholesale of new or used passenger cars, boats, trucks, trailers, recreational vehicles, construction equipment and farm machinery.
- C. Rental or leasing of lawn care equipment.
- D. Sales and servicing of swimming pools, patio furnishings and related equipment.
- E. Repair and servicing of motor vehicles, machinery and equipment of all types, including body shops, paint shops, transmission shops, and facilities for engine overhauls.
- F. Commercial or wholesale facilities for bakeries, printing and publishing, cold storage and ice, and nurseries and greenhouses.
- G. Car washes.
- H. Outdoor miniature golf.
- I. Contractor's yard and storage.
- J. Taxi and limousine dispatching centers.
- K. Manufacture or assembly of products to be sold only at retail on the premises.
- L. Hotels and motels.
- M. Accessory uses customarily incidental to the uses permitted in District C-3.

18.85.030 Conditional uses.

The following may be allowed by conditional use permit when submitted to and reviewed, and approved by the Planning Commission and City Council:

- A. Storage and warehousing except for products of a highly explosive, combustible or volatile nature.
- B. Wholesale establishments except those which handle products of a highly explosive, combustible or volatile nature.
- C. Public utility, telephone exchanges, electric substations, water, sewer or storm sewer facilities, and natural, piped gas operating under government franchise and contract.
- D. Mini-warehouses subject to the following conditions:
 - 1. The use must be located in close proximity to an arterial street as designated in the Comprehensive Plan.
 - 2. All storage shall be within enclosed buildings.
 - 3. Any side of the building providing doorways to storage areas shall be set back from the property line not less than 35 feet.
 - 4. All driveways, parking, loading and vehicle circulation areas shall be paved with concrete, asphalt or asphaltic concrete. All one-way driveways which provide direct access to cubicles shall provide for one 10-foot parking lane and one 15-foot travel lane. All two-way driveways which provide direct access to cubicles shall provide for one 10-foot parking lane and two 12-foot travel lanes. Adequate bumper guards or fences shall be provided to prevent the extension of vehicles beyond property lines.
 - 5. All lights shall be shielded to direct light away from adjacent properties.
 - 6. No activities such as miscellaneous or garage sales or the servicing or repair of motor vehicles, boats, trailers, lawn mowers, and other similar equipment shall be conducted on the premises. Also, no manufacturing, assembly or processing of any product shall be permitted. An on-site manager's residence is permissible.
 - 7. The area shall be properly policed by the owner or operator for removal of trash and debris.
 - 8. Two copies of a plot plan showing ingress and egress, widths of driveways, off-street parking, loading areas, and on-site traffic circulation shall be submitted to the Board of Zoning Appeals for their consideration with the conditional use permit application.
 - 9. The Planning Commission may attach such other conditions as deemed necessary to provide for compatible development.
- E. Motor vehicle tow lots (but not salvage yards).
- F. Communication transmission towers and antennas over 30 feet.
 - 1. The purpose and intent of this subsection is to provide for the safe and effective installation and operation of wireless communication antennas, accessory equipment, and support structures. Each application for a conditional use permit for a communication tower shall be accompanied by the following information:
 - a. A site plan.
 - b. A report from a licensed professional structural engineer which describes the tower's capacity including the number and type of antennas it can accommodate.
 - c. A report indicating the justification of the site selected for the communication tower and comparing all potential sites within a one-half mile radius. The report shall indicate why any existing tower within the one-half mile radius cannot be utilized by the applicant.
 - d. A photo simulation of the proposed facility from affected properties and the public right-of-way may be required.
 - e. An explanation of the need for the facility to maintain the integrity of the communication system. A map showing the service area of the proposed tower shall be submitted.

- f. A signed statement from the applicant indicating the intention to share space on the tower with other carriers.
- g. A copy of the lease between the applicant and the landowner. The lease shall contain the following provisions:
 - i. The landowner and the applicant shall have the ability to enter into a lease with other carriers for co-location.
 - ii. The landowner shall be responsible for the removal of the communication tower or facility within six months in the event the lessee fails to remove it upon abandonment.
2. Height. The maximum height which may be approved for a communication tower is 160 feet. A lightning rod, not to exceed 10 feet, shall not be included within the height limitation. All new towers in excess of 100 feet shall be designed to accommodate at least two additional providers. The location of the additional antennas on a legally existing tower shall not require additional approval of the Planning Commission or City Council.
3. Setbacks. All towers and antennas shall meet the required setbacks of the zoning district. In addition to complying with the district regulations, the antenna shall be set back from the property lines a distance equal to the height of the communication tower. A lesser setback may be approved with the conditional use permit, upon demonstration by a licensed structural engineer registered in the State of Kansas that the fall zone of the communication tower is within the radius of the setback.

If the communication tower and antenna are set back less than the height of the tower or antenna, they shall be inspected and approved upon construction by a licensed structural engineer, registered in the State of Kansas. Such towers shall be re-inspected every five years to ensure the structural integrity and safety of the antenna.
4. Tower Design. All communication towers shall be of a monopole design unless required by the Planning Commission or Governing Body to be architecturally compatible to surrounding development.
5. Tower Color. All communication tower and antenna structures shall be galvanized metal, except otherwise required by the Planning Commission or City Council. Exceptions may be granted, based on FAA or FCC regulations.
6. Equipment Storage. Mobile or immobile equipment not used in direct support of the tower facility shall not be stored or parked on the site of the communication tower unless repairs to the tower are being made.
7. Accessory Structures. All ground equipment shall be stored with a structure, built of materials compatible with the location and types of surrounding land uses. Use of metal buildings is prohibited.
8. Landscaping. All equipment buildings shall be screened with landscaping or fencing appropriate to the location and types of surrounding land uses. The site shall be landscaped per Chapter [18.165](#) GMC.
9. Access. Access from a public or private roadway. The City Council may waive surfacing materials, curbing and storm water drainage requirements, if recommended by the City Engineer.
10. Security Fencing. Sites shall be enclosed by security fencing to be indicated on the site plan.
11. Permitting. A building permit with structural and electrical drawings, sealed by licensed structural engineer registered in the State of Kansas, is required.

18.85.040 Intensity of use regulations.

- A. Minimum lot area: none for commercial uses. Fifteen hundred square feet for each apartment built above ground floor.

- B. Minimum lot width: none.

18.85.050 Height regulations.

Maximum structure height: 45 feet.

18.85.060 Yard regulations.

A. Front Yard.

1. The front yard shall be a minimum of 25 feet in depth measured from the front lot line. On collector streets, the minimum front yard shall be 65 feet measured from the centerline of the street right-of-way; and on arterial streets, the minimum front yard shall be 85 feet measured from the centerline of the street.
2. Where lots have a double frontage, the required front yard shall be provided on both streets.

B. Minimum side yard: nine feet when adjacent to a residential district, otherwise none.

C. Minimum rear yard: 25 feet or 20 percent of the depth of the lot, whichever is smaller.

18.85.070 Use limitations.

- A. No outdoor storage, except the display of merchandise for sale to the public, shall be permitted.
- B. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any adjacent property and no glare is visible to any traffic on any public street.
- C. A solid or semi-solid fence, hedge or wall at least six feet, but not more than eight feet high, and having a density of not less than 80 percent per square foot, shall be provided adjacent to an adjoining residential district unless the adjacent residential district and the commercial development are separated by a street right-of-way. Said fence or wall shall be maintained in good condition by the owner or owners of the property in the C-3 District.
- D. Gasoline pumps, air and water service and other fixtures used in connection with automobile service stations may be located within the front yard but not less than 12 feet from the front lot line and, in any event, not less than 40 feet from the centerline of any street or road on which the service station abuts.
- G. Buildings should be oriented so that the front or side of the building faces the public street frontage of the property. In unique situations due to the design of the lot with double or triple frontages where it is necessary to orient a rear elevation towards a public street, all loading and services areas shall be screened from public view with landscaping, berming, facade walls, or fencing.

18.85.080 Parking regulations.

One off-street parking space in the side or rear yard shall be provided for each 250 square feet of service floor area. (See Chapter [18.160](#) GMC for additional parking requirements.)

18.85.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.85.100 Landscaping.

See Chapter [18.165](#) GMC.

18.85.110 Design standards.

See Gardner Design Standards.

Chapter 18.90 PLANNED COMMERCIAL DISTRICTS

Sections:

- [18.90.010](#) Intent.
- [18.90.020](#) Districts and permitted uses.
- [18.90.030](#) Regulations and allowed variations.
- [18.90.040](#) Procedure for rezoning property to a planned commercial district.

18.90.010 Intent.

Each of the business districts (Districts C-O, CO-A, C-1, C-2, C-3) shall have a separate and distinct counterpart known and herein referred to as a planned commercial district. A planned district shall be for the purpose of permitting and regulating the uses hereinbefore permitted in the equivalent district and further provide for and encourage the grouping of business buildings into centers in keeping with modern concepts of office center, service center and shopping center design. The intent is to reduce the need for strips of commercial development along thoroughfares and to encourage integrated centers offering the equivalent goods and services.

18.90.020 Districts and permitted uses.

The planned commercial districts shall be as follows:

| Planned District | Equivalent District |
|------------------|---------------------|
| CP-O | C-O |
| CPO-A | CO-A |
| CP-1 | C-1 |
| CP-2 | C-2 |
| CP-3 | C-3 |

The uses permitted shall be the same as in the equivalent District C-O to C-3 inclusive.

18.90.030 Regulations and allowed variations.

In general, the height and bulk of buildings, the amount of open space, the parking and loading requirements shall be equal to those in the corresponding District C-O to C-3 inclusive.

Deviations and departure from normal development practice may be permitted. Jointly used parking facilities may be permitted and setback requirements may be varied in keeping with good planning principles. Any building or portion thereof may be owned in condominium under K.S.A. 58-3101. A portion of the parking area required under this chapter may remain unimproved until such time as the City Council deems it must be improved to serve the parking demand adequately.

18.90.040 Procedure for rezoning property to a planned commercial district.

The procedures for rezoning property to a planned commercial district shall be the same as for planned residential districts. In addition, in the case of a shopping center or other retail center to house more than one tenant, the applicant shall prepare a set of sign standards for all exterior signs that will apply to any and all leases or sales of portions of the center. Such sign standards shall clearly regulate the size, materials, type of illumination, style, color and location that will be permitted within the center. Said standards shall be within the standards permitted by this chapter and shall be submitted with the final development plans. In no case may final development plans be approved until the Planning Commission shall have approved the sign standards after having been assured that such standards will be enforced by the developer and owner and that the signs permitted will be in character with the center and the neighborhood.

Chapter 18.95 M-1 – RESTRICTED INDUSTRIAL DISTRICT

Sections:

| | |
|---------------------------|----------------------------------|
| 18.95.010 | Intent. |
| 18.95.020 | Permitted uses. |
| 18.95.030 | Conditional uses. |
| 18.95.040 | Intensity of use regulations. |
| 18.95.050 | Height regulations. |
| 18.95.060 | Yard regulations. |
| 18.95.070 | Use limitations. |
| 18.95.080 | Parking and loading regulations. |
| 18.95.090 | Sign regulations. |
| 18.95.100 | Landscaping. |
| 18.95.110 | Design standards. |

18.95.010 Intent.

The M-1 Light Industrial District is intended for the purpose of allowing certain industrial uses which do not:

- A. Require intensive land coverage.
- B. Generate large volumes of vehicular traffic.
- C. Create obnoxious sounds, glare, dust or odor.

Height and land coverage are controlled to ensure compatibility with adjoining uses.

18.95.020 Permitted uses.

In District M-1 no building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, moved, or altered, except for one or more of the following uses. Commercial development should be limited to those uses to serve the businesses, employees and visitors to the industrial area:

- A. Broadcasting studios and cable TV services.
- B. Business supply services.
- C. Catalog and mail order services.
- D. Commercial bakeries.
- E. Commercial pick-up or delivery services.
- F. Consumer repair services.
- G. Contractors' services, yards and storage.
- H. Dry cleaning and laundries warehouse facilities (no retail).
- I. Convenience stores with gas sales.
- J. Laboratories.
- K. Manufacturing, processing, fabricating or assembling of any commodity or product for sale at retail or wholesale except junk or salvage.
- L. Mini-warehouses.
- M. Motor vehicle tow lots, except salvage.
- N. Offices.
- O. Printing and publishing.

- P. Public and private utility facilities and governmental maintenance facilities, including the outdoor screened storage of and maintenance of motor vehicles and equipment.
- Q. Public parks.
- R. Public safety services.
- S. Public utility substations and communication facilities.
- T. Repair and servicing of motor vehicles, machinery, and equipment of all types, including body shops, paint shops, transmission shops, and facilities for engine overhauls.
- U. Research services.
- V. Retail nurseries, lawn and garden supplies.
- W. Retail sales of commodities manufactured, processed, fabricated, assembled, warehoused or stored on the premises.
- X. Sign painting and fabrication.
- Y. Taxi and limousine dispatching centers.
- Z. Warehousing, wholesaling or storage of any commodity except junk or salvage.
- AA. Wholesaling facilities.
- BB. Auction yard and auction houses (non-livestock).
- CC. Animal pounds and kennels within an enclosed building.
- DD. Taxi and limousine storage and maintenance facilities.

18.95.030 Conditional uses.

The following uses have characteristics that may not be compatible with many of the land uses that are permitted in the M-1 Zoning District, or may not be well-suited to industrial development standards, or may not be in harmony with the intent of the M-1 Zoning District and existing industrial uses. These characteristics include but are not limited to: traffic flow volumes and patterns, parking requirements, and various operational needs. To protect the health, safety and welfare of the general public, the following land uses may be allowed in this district by conditional use permit when submitted to and reviewed and approved by the Planning Commission and City Council:

- A. Health and fitness clubs, dance studios, martial arts clubs, and gymnasiums.
- B. Grain elevators.
- C. Livestock auction sales and/or sales of farm-related products including seed and feed.
- D. Child care centers.
- E. Churches and similar places of worship.
- F. Assembly halls and convention centers.
- G. Clubs or lodges.
- H. College or university.
- I. Vocational schools.
- J. Communication transmission towers and antennas over 60 feet.
 - 1. The purpose and intent of this subsection is to provide for the safe and effective installation and operation of wireless communication antennas, accessory equipment, and support structures. Each application for a conditional use permit for a communication tower shall be accompanied by the following information:
 - a. A site plan.

- b. A report from a licensed professional structural engineer which describes the tower's capacity including the number and type of antennas it can accommodate.
- c. A report indicating the justification of the site selected for the communication tower and comparing all potential sites with a one-half mile radius. The report shall indicate why any existing tower within the one-half mile radius cannot be utilized by the applicant.
- d. A photo simulation of the proposed facility from affected properties and the public right-of-way may be required.
- e. An explanation of the need for the facility to maintain the integrity of the communication system. A map showing the service area of the proposed tower shall be submitted.
- f. A signed statement from the applicant indicating the intention to share space on the tower with other carriers.
- g. A copy of the lease between the applicant and the landowner. The lease shall contain the following provisions:
 - i. The landowner and the applicant shall have the ability to enter into a lease with other carriers for co-location.
 - ii. The landowner shall be responsible for the removal of the communication tower or facility within six months in the event the lessee fails to remove it upon abandonment.

2. Height. The maximum height which may be approved for a communication tower is 160 feet. A lightning rod, not to exceed 10 feet, shall not be included within the height limitation. All new towers in excess of 100 feet shall be designed to accommodate at least two additional providers. The location of the additional antennas on a legally existing tower shall not require additional approval of the Planning Commission or City Council.

3. Setbacks. All towers and antennas shall meet the required setbacks of the zoning district. In addition to complying with the district regulations, the antenna shall be set back from the property lines a distance equal to the height of the communication tower. A lesser setback may be approved with the conditional use permit, upon demonstration by a licensed structural engineer registered in the State of Kansas that the fall zone of the communication tower is within the radius of the setback.

If the communication tower and antenna are set back less than the height of the tower or antenna, it shall be inspected and approved upon construction, by a licensed structural engineer, registered in the State of Kansas. Such towers shall be re-inspected every five years to ensure the structural integrity and safety of the antenna.

4. Tower Design. All communication towers shall be of a monopole design unless required by the Planning Commission or Governing Body to be architecturally compatible to surrounding development.

5. Tower Color. All communication tower and antenna structures shall be galvanized metal, except otherwise required by the Planning Commission or City Council. Exceptions may be granted, based on FAA or FCC regulations.

6. Equipment Storage. Mobile or immobile equipment not used in direct support of the tower facility shall not be stored or parked on the site of the communication tower unless repairs to the tower are being made.

7. Accessory Structures. All ground equipment shall be stored with a structure, built of materials compatible with the location and types of surrounding land uses. Use of metal buildings is prohibited.

8. Landscaping. All equipment buildings shall be screened with landscaping or fencing appropriate to the location and types of surrounding land uses. The site shall be landscaped per Chapter [18.165](#) GMC.

9. Access. Access from a public or private roadway. The City Council may waive surfacing materials, curbing and storm water drainage requirements, if recommended by the City Engineer.
10. Security Fencing. Sites shall be enclosed by security fencing to be indicated on the site plan.
11. Permitting. A building permit with structural and electrical drawings, sealed by licensed structural engineer registered in the State of Kansas, is required.

18.95.040 Intensity of use regulations.

- A. Minimum lot area: 10,000 square feet.
- B. Minimum lot width: 100 feet.

18.95.050 Height regulations.

Maximum height of structure: 50 feet within 150 feet of a residential district; 100 feet when more than 150 feet from a residential district.

18.95.060 Yard regulations.

- A. Front Yard. A front yard of not less than 50 feet shall be provided.
- B. Side Yard. No side yard shall be less than 10 feet, except when adjacent to residential district then 20 feet shall be required.
- C. Rear Yard. No rear yard shall be less than 15 feet or 20 percent of the depth of the lot, except when adjacent to residential district then 20 feet shall be required.

18.95.070 Use limitations.

- A. All operations and activities shall be conducted within a building or buildings. Storage may be maintained outside said buildings with approval of a site plan per Chapter [18.185](#) GMC, and provided it meets the following requirements:
 1. Location Criteria.
 - a. The storage area shall not be located within the required front yard building setback area.
 - b. The storage area shall be set back at least 100 feet from all residential zoning districts and 15 feet from all other nonindustrial zoning districts.
 - c. The storage area shall not be located closer than 15 feet to any street or right-of-way.
 - d. No portion of the storage area shall be allowed within any utility easements or floodplain.
 2. The storage area shall be paved per the requirements for parking lots (GMC 18.160.020).
 3. The storage area shall be enclosed on all sides by a solid fence or wall at least six feet but not more than eight feet high.
 - a. Trees and/or shrubs shall be planted adjacent to the outside of the fence per the recommendations of the Gardner Design Standards.
 - b. The Planning Commission may, at its discretion, approve a semi-solid fence for portions of the storage yard that are not visible from any rights-of-way or nonindustrial properties within 300 feet.
 4. Materials shall not be stacked or piled higher than the height of the fence. The Planning Commission may require additional screening (e.g., landscaping) for stored items that are large enough to exceed the height of the fence.
 5. Any deviation from these requirements shall require a special use permit (GMC 18.145.020).
- B. No building shall be used for residential purposes except that a watchman (single person) may reside on the premises for security purposes.

- C. All industries within this district shall comply fully with all applicable current Kansas statutes, federal regulations and municipal ordinances regarding environmental controls, including but not limited to the following:
 - 1. State of Kansas air pollution emission control regulations.
 - 2. Kansas State Department of Health and Environment minimum standards for design of water pollution control facilities.
 - 3. All applicable municipal ordinances and policies covering sewer use, effluent discharge and design and construction of facilities required for discharge of industrial wastes.
- D. Buildings should be oriented so that the front or side of the building faces the public street frontage of the property. In unique situations due to the design of the lot with double or triple frontages where it is necessary to orient a rear elevation towards a public street, all loading and services areas shall be screened from public view with landscaping, berming, facade walls, or fencing.

18.95.080 Parking and loading regulations.

Each establishment shall provide sufficient off-street parking space for all employees, customers, visitors and others who may spend time at said establishments during working hours. In no case shall less than five spaces be provided. Such parking area shall be surfaced with a permanent bituminous or portland cement concrete pavement meeting the standards of the specifications of the City of Gardner and no portion of the parking area shall be closer than 30 feet to a public street.

18.95.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.95.100 Landscaping.

See Chapter [18.165](#) GMC.

18.95.110 Design standards.

See Gardner Design Standards.

Chapter 18.100 M-2 – GENERAL INDUSTRIAL DISTRICT

Sections:

| | |
|----------------------------|----------------------------------|
| 18.100.010 | Intent. |
| 18.100.020 | Permitted uses. |
| 18.100.030 | Conditional uses. |
| 18.100.040 | Intensity of use regulations. |
| 18.100.050 | Height regulations. |
| 18.100.060 | Yard regulations. |
| 18.100.070 | Use limitations. |
| 18.100.080 | Parking and loading regulations. |
| 18.100.090 | Sign regulations. |
| 18.100.100 | Landscaping. |
| 18.100.110 | Design standards. |

18.100.010 Intent.

The M-2 General Industrial District is intended for the purpose of allowing basic or primary industries which are generally not compatible with residential and/or commercial activity. Certain extremely obnoxious or hazardous uses will require special permission to locate in this district.

18.100.020 Permitted uses.

In District M-2, no building, structure, land, or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

- A. Any use permitted in District M-1 subject to the applicable development and performance standards.
- B. Bottling works.
- C. Bus barns or lots.
- D. Carpentry, cabinet or pattern shops.
- E. Carpet cleaning establishments where the cleaning occurs on the premises.
- F. Chemical laboratories.
- G. Cleaning, pressing and dyeing plants.
- H. Cold storage plants.
- I. Electroplating works.
- J. Freight terminals (rail or truck).
- K. Lumber yards.
- L. Machine shops.
- M. Moving, transfer or storage plants.
- N. Railroad yards.
- O. Sign painting or fabrication facilities.

18.100.030 Conditional uses.

Only the following uses of land may be allowed in this district by conditional use permit when submitted to and reviewed and approved by the Planning Commission and City Council:

- A. Grain elevators.
- B. Livestock auction sales and/or sales of farm-related products including seed and feed.

- C. Auto wrecking yards, junk yards, salvage yards and scrap processing yards subject, however, to the following:
 - 1. Located on a tract of land at least 300 feet from a residential district zone.
 - 2. The operation shall be conducted wholly within a noncombustible building or within an area completely surrounded on all sides by a fence or wall at least eight feet high. The fence or wall shall be of uniform height, uniform texture and color, and have a density of not less than 80 percent and shall be so maintained by the proprietor as to ensure maximum safety to the public, obscure the junk from normal view of the public, and preserve the general welfare of the neighborhood. The fence or wall shall be installed in such a manner as to retain all scrap, junk or other material within the yard.
 - 3. No junk shall be loaded, unloaded or otherwise placed, either temporarily or permanently, outside the enclosing building, hedge, fence or wall, or within the public right-of-way.
 - 4. Burning of paper, trash, junk or other waste materials shall be permitted only after approval of the Fire Department except when prohibited by the State Board of Health. Said burning, when permitted, shall be done only during daylight hours.
 - 5. No junk, salvage, scrap or other materials shall be piled or stacked higher than the top of the required fence or wall.
 - 6. Said use shall not be located on or visible from an arterial or major street or highway.
- D. Manufacturing or storage of bulk oil, gas and explosives.
- E. Other uses which may be noxious or offensive by reason of the emission of odor, dust, smoke, gas, noise or vibration.
- F. Ready-mixed concrete and asphalt mix plants.
- G. Sanitary land fill.
- H. Stockyard and slaughterhouse.
- I. Storage and warehousing of products of a highly explosive, combustible or volatile nature.
- J. Wholesale and retail establishments which handle products of a highly explosive, combustible or volatile nature.
- K. Communication transmission towers and antennas over 60 feet.
 - 1. The purpose and intent of this subsection is to provide for the safe and effective installation and operation of wireless communication antennas, accessory equipment, and support structures. Each application for a conditional use permit for a communication tower shall be accompanied by the following information:
 - a. A site plan.
 - b. A report from a licensed professional structural engineer which describes the tower's capacity including the number and type of antennas it can accommodate.
 - c. A report indicating the justification of the site selected for the communication tower and comparing all potential sites within a one-half mile radius. The report shall indicate why any existing tower within the one-half mile radius cannot be utilized by the applicant.
 - d. A photo simulation of the proposed facility from affected properties and the public right-of-way may be required.
 - e. An explanation of the need for the facility to maintain the integrity of the communication system. A map showing the service area of the proposed tower shall be submitted.
 - f. A signed statement from the applicant indicating the intention to share space on the tower with other carriers.

18.100.050 Height regulations.

Maximum height of structure: 50 feet within 150 feet of a residential district; 100 feet when more than 150 feet from a residential district.

18.100.060 Yard regulations.

- A. Front Yard. A front yard of not less than 50 feet shall be provided.
- B. Side Yard. No side yard shall be less than 10 feet, except when adjacent to residential district then 20 feet shall be required.
- C. Rear Yard. No rear yard shall be less than 15 feet or 20 percent of the depth of the lot, except when adjacent to residential district then 20 feet shall be required.

18.100.070 Use limitations.

- A. All operations and activities shall be conducted within a building or buildings. Storage may be maintained outside said buildings with approval of a site plan per Chapter [18.185](#) GMC, and provided it meets the following requirements:
 - 1. Location Criteria.
 - a. The storage area shall not be located within the required front yard building setback area.
 - b. The storage area shall be set back at least 100 feet from all residential zoning districts and 15 feet from all other nonindustrial zoning districts.
 - c. The storage area shall not be located closer than 15 feet to any street or right-of-way.
 - d. No portion of the storage area shall be allowed within any utility easements or floodplain.
 - 2. The storage area shall be paved per the requirements for parking lots (GMC 18.160.020).
 - 3. The storage area shall be enclosed on all sides by a solid fence or wall at least six feet but not more than eight feet high.
 - a. Trees and/or shrubs shall be planted adjacent to the outside of the fence per the recommendations of the Gardner Design Standards.
 - b. The Planning Commission may, at its discretion, approve a semi-solid fence for portions of the storage yard that are not visible from any rights-of-way or nonindustrial properties within 300 feet.
 - 4. Materials shall not be stacked or piled higher than the height of the fence. The Planning Commission may require additional screening (e.g., landscaping) for stored items that are large enough to exceed the height of the fence.
 - 5. Any deviation from these requirements shall require a special use permit (GMC 18.145.020).
- B. No building shall be used for residential purposes except that a watchman (single person) may reside on the premises for security purposes.
- C. All industries within this district shall comply fully with all applicable current Kansas statutes, federal regulations and municipal ordinances regarding environmental controls, including but not limited to the following:
 - 1. State of Kansas air pollution emission control regulations.
 - 2. Kansas State Department of Health and Environment minimum standards for design of water pollution control facilities.
 - 3. All applicable municipal ordinances and policies covering sewer use, effluent discharge and design and construction of facilities required for discharge of industrial wastes.
- D. Buildings should be oriented so that the front or side of the building faces the public street frontage of the property. In unique situations due to the design of the lot with double or triple frontages where it is necessary to orient a rear elevation towards a public street, all loading and

services areas shall be screened from public view with landscaping, berming, facade walls, or fencing.

18.100.080 Parking and loading regulations.

Each establishment shall provide sufficient off-street parking space for all employees, customers, visitors and others who may spend time at said establishments during working hours.

In no case shall less than five spaces be provided. Such parking area shall be surfaced with a permanent bituminous or portland cement concrete pavement meeting the standards of the specifications of the City of Gardner and no portion of the parking area shall be closer than 30 feet to a public street.

18.100.090 Sign regulations.

See Chapter [18.170](#) GMC.

18.100.100 Landscaping.

See Chapter [18.165](#) GMC.

18.100.110 Design standards.

See Gardner Design Standards.

Chapter 18.105 PLANNED INDUSTRIAL DISTRICTS

Sections:

- [18.105.010](#) Intent.
- [18.105.020](#) Districts and permitted uses.
- [18.105.030](#) Regulations and allowed variations.
- [18.105.040](#) Procedure for rezoning property to planned industrial district.

18.105.010 Intent.

Each of the industrial districts hereinbefore set forth shall have a separate and distinct counterpart known and herein referred to as a planned industrial district. A planned district shall be for the purpose of permitting and regulating the uses heretofore permitted in the equivalent district and further provide for and encourage latitude and flexibility in the location of buildings and other industrial structures, roads and drives, variations in yard requirements and joint use parking and loading facilities, subsequent to approval of the plan by the Planning Commission and Governing Body.

The intent is to allow development of tracts of land to the fullest extent and at the same time observe the general intent and spirit of these regulations.

18.105.020 Districts and permitted uses.

The planned industrial districts shall be as follows:

| Planned District | Equivalent District |
|------------------|---------------------|
| M-P-1 | M-1 |
| M-P-2 | M-2 |

The uses permitted shall be the same as in the equivalent Districts M-1 or M-2.

18.105.030 Regulations and allowed variations.

In general, the height and bulk of buildings, the amount of open space, light and air, the concentration of population, and the parking and loading requirements shall be equal to those in the corresponding District M-1 or M-2.

Variations and departures from normal practice may, however, be permitted. Lots need not be platted prior to building permit issuance. Buildings need not face on or abut public streets but may be served by private roadways. Off-street parking and loading spaces as required in this title may be provided to jointly serve several tenants.

18.105.040 Procedure for rezoning property to planned industrial district.

A tract of land may be zoned M-P-1 or M-P-2 only upon application by the owner or his/her agent and only upon approval of a development plan for the tract. The proponents of a planned development shall prepare and submit to the Planning Commission a development plan containing the following elements:

Name of the developer and firm responsible for preparation, north scale, preparation date and revision dates, space for endorsement by Planning Commission and Governing Body, the proposed use and proposed zoning.

- A. The boundaries of the tract to be zoned and the area adjacent for a distance of not less than 200 feet. Such map shall show any existing buildings and other structures on the tract and any existing development on the land adjacent within 200 feet. Existing streets, alleys and easements on the tract and within 200 feet thereof shall be shown;
- B. The location of setback lines which will regulate the relationship of buildings, parking areas, outside storage, rail spurs and outside industrial activity to the property lines of the tract shall be shown on the development plan;
- C. Appropriate screening by walls or landscaping along the boundary of the tract shall be shown;

- D. The Planning Commission shall advertise and hold a public hearing on the plans as provided in Chapter [18.185](#) GMC. At such time as the development as planned meets with the approval of the Commission, the same shall be duly approved, properly endorsed and identified and sent on to the Governing Body for final rezoning action;
- E. Upon final approval of the plan and the rezoning of the tract as required by law, construction may proceed and conformance with the plan and all supporting documentation is mandatory. All final building and site plans shall be submitted to the Planning Commission and approved as to compliance with the development plan prior to the issuance of a building permit. All decisions of the Planning Commission may be appealed to the Governing Body who may reverse or affirm the same.

Chapter 18.110

REC – RECREATIONAL DISTRICT

Sections:

- [18.110.010](#) Intent.
- [18.110.020](#) Permitted uses.
- [18.110.030](#) Plan approval.

18.110.010 Intent.

The REC Recreation District is intended for the purpose of providing locations for public and private recreation activities for the citizens of Gardner which generally are conducted outdoors and require the use of large areas of land. Detailed preliminary and final plans of such projects shall be required prior to the issuance of permits to reduce possible adverse effects on surrounding residential or commercial areas.

18.110.020 Permitted uses.

In District REC, no building or structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved, or altered except for one or more of the following uses:

- A. Amusement parks.
- B. Arenas.
- C. Athletic fields.
- D. Coliseums.
- E. Golf courses including regulation, short par, driving ranges, pitch and putt miniature golf.
- F. Public parks and playgrounds.
- G. Racetracks including vehicles, dogs and horses.
- H. Skating rinks.
- I. Tennis courts.

18.110.030 Plan approval.

Preliminary and final plans of the project shall be approved by the Planning Commission and City Council prior to the issuance of permits. The procedure for rezoning and plan approval shall be as follows:

A tract of land may be zoned REC only upon application by the owner or his/her agent, and only upon approval of a development plan.

The Planning Commission shall advertise and hold a public hearing on the plan as provided by law. At such time as the development as planned meets with the approval of the Commission, the same shall be duly approved, properly endorsed and identified and sent on to the Council for action. Upon final approval of the plan and the rezoning of the tract as required by law, construction may proceed and conformance with the plan and all supporting documentation is mandatory. All final plans shall be submitted to the Planning Commission and approved as to compliance with the development plan prior to the issuance of a building permit. The final plans submitted shall include landscape plan showing species and size of all plant materials, areas to be seeded, sodded, etc., all to be in keeping with the development plan as approved. If, in the judgment of the Commission, the concept of development, as depicted on the final plans, deviates substantially from the concept of the development plan submitted for zoning, the Commission may deny the request for final plan approval. The applicant, in this case, may apply for a new hearing, with publication and posting as required in Chapter [18.185](#) GMC, and the Commission and Council may approve or deny the final plans after said hearing. All decisions of the Planning Commission may be appealed to the City Council who may reverse or affirm the same.

Chapter 18.115

PUD – PLANNED UNIT DEVELOPMENT DISTRICT

Sections:

| | |
|----------------------------|--|
| 18.115.010 | Intent. |
| 18.115.020 | Permitted uses. |
| 18.115.030 | General provisions. |
| 18.115.040 | Standards and conditions for the Planned Unit Development. |
| 18.115.050 | Application of preliminary plan. |
| 18.115.060 | Final plan approval. |
| 18.115.070 | Enforcement and modification of provisions of the plan. |
| 18.115.080 | Amendments. |
| 18.115.090 | Platting. |

18.115.010 Intent.

The intent of the Planned Unit Development District (PUD) is to encourage innovation in residential, commercial and industrial development by greater variety in type, design, and layout of buildings; to encourage a more efficient use of land reflecting changes in the technology of land development; to encourage the expansion of urban areas incorporating the best features of modern design while conserving the value of land; and to provide a procedure which relates the type, design, and layout of development to the particular site and the particular demand at the time of development in a manner consistent with the preservation of property values within established neighborhoods. The provisions of this district are in conformance with K.S.A. 12-725 to 12-733, as amended.

The PUD District in this title is a floating zone. Although the specific conditions within this district are predetermined, the location of a proposed district must be carefully reviewed to assure that these conditions can be met. A development plan shall be submitted by each applicant for PUD zoning in accordance with the provisions and conditions that follow.

18.115.020 Permitted uses.

All uses are permitted in the Planned Unit Development District; however, each use included in a particular PUD must be specified on the Plan.

18.115.030 General provisions.

- A. The Planning Commission shall make a report to the Governing Body setting forth its reason for recommendation of approval or denial of the application, along with the specific evidence and facts showing that the proposed Planned Unit Development meets or does not meet the following conditions:
 1. Said Planned Unit Development shall be in general conformity with the provisions of the adopted Comprehensive Plan.
 2. Said Planned Unit Development shall not have a substantially adverse effect on the development of the neighboring area.
- B. The Planned Unit Development District may be established exclusively for residential, commercial or industrial development or any combination of those types of development.
- C. The minimum size allowed for Planned Unit Development shall be as follows:

| | |
|-------------|-------------|
| Residential | 40% Maximum |
| Commercial | 35% Maximum |
| Industrial | 35% Maximum |

Any PUD which has combined two or more types of use into a single plan shall have a minimum allowable size for the PUD equal to the sum of the minimum land areas required for each of the two or more types contained therein.

- D. Height, bulk and setback requirements may be varied so as to promote an efficient and creative PUD.

18.115.040 Standards and conditions for the Planned Unit Development.

- A. The Planning Commission may, from time to time, adopt general policies or specific rules and regulations for Planned Unit Developments and place said policies or rules and regulations on public record in the office of the Codes Administrator; provided said policies and/or rules and regulations are not inconsistent with the adopted standards and conditions; and provided, that no policies, rules or regulations shall be revised or added to, so as to be applicable to a specific proposal for a Planned Unit Development after an application for preliminary approval of a specific development plan has been filed.
- B. A Planned Unit Development shall be consistent with the general standards for use of land, and the use, type, bulk, design, and location of buildings, the density or intensity of use, open space, public facilities and the development by geographic division of the site as set out in these regulations.
- C. The applicant shall satisfy the Planning Commission that he/she has the ability to carry out the proposed plan and shall prepare and submit a schedule of construction. The proposed construction shall begin within a period of 18 months following approval of the final application by the Governing Body, and a minimum of 50 percent of the total planned construction shall be completed within a period of six years following such approval or the approval of the plan shall expire. The period of time established for the completion of the development may be modified from time to time by the Planning Commission upon the showing of good cause by the developer.
- D. The Planning Commission may designate divisible geographic sections of the entire parcel to be developed as a unit, and shall, in such case, specify reasonable periods within which developments of each such unit must be commenced. In the case of residential Planned Unit Development, the Planning Commission may permit in each unit deviations from the number of dwelling units per acre established for the entire planned development, provided such deviation shall be adjusted for in other sections of the development so that the number of dwelling units per acre authorized for the entire planned development is not affected.
- E. The developer shall provide and record easements and covenants, shall make such other arrangements, and shall furnish such performance bonds, escrow deposit, or other financial guarantees as may be determined by the Planning Commission to be reasonably required to assure performance in accordance with the development plan and to protect the public interest in the event of abandonment of said plan before completion.
- F. The site shall be accessible from public roads that are adequate to carry the traffic that will be imposed upon them by the proposed development. The streets and driveways on the site of the proposed development shall be adequate to serve the residents or occupants of the proposed development. If it is determined that traffic control signals are required to prevent traffic hazards or congestion in adjacent streets, the control signals shall be provided at the developer's expense.
- G. The development shall not impose an undue burden on public services and facilities such as fire and police protection.
- H. The entire tract or parcel of land to be occupied by the Planned Unit Development shall be held in single ownership or control, or if there are two or more owners, the application for such Planned Unit Development shall be filed jointly by all owners.
- I. The location and arrangement of structures, parking areas, walks, lighting, and appurtenant facilities shall be compatible with the surrounding land uses, and any part of a Planned Unit Development not used for structures, parking and loading areas, or access ways shall be landscaped or otherwise improved.
- J. Off-street parking and loading shall be provided in accordance with Chapter [18.160](#) GMC.

- K. When a commercial or industrial use within a Planned Unit Development district abuts a residential district, a solid or semi-solid fence or wall at least six feet high, but not more than eight feet high, and having a density of not less than 80 percent per square foot, shall be provided adjacent to any adjoining residential district; however, in the event the adjacent residential district and the commercial or industrial development are separated by a street right-of-way, a 10-foot wide landscape buffer which shall consist of trees, shrubs and evergreens shall be provided along the property line and maintained by the owner or owners of this property in the Planned Unit Development district.
- L. All commercial and industrial buildings shall set back not less than 45 feet from right-of-way of any street and 20 feet from any zoning district boundary line that does not abut a street right-of-way. Additional setback from a heavily traveled thoroughfare may be required, when found reasonable by the Planning Commission for protection of the health, safety, and general welfare.
- M. Building coverage shall not exceed the following percentages of the net developable area of each individual parcel and of the total development for each type of Planned Unit Development:
 - Residential 40% Maximum
 - Commercial 35% Maximum
 - Industrial 35% Maximum
- N. A minimum of 30 percent of the net area of that part of a Planned Unit Development reserved for residential development shall be provided for open space as defined by these regulations. At least one-half of this open space or 20 percent of the net area devoted to residential development shall be provided for common open space for the leisure and recreational use of all PUD residents and owned and maintained in common by the residents, generally through a homeowner's association. The common open space shall be developed for appropriate recreational facilities, and a minimum of 50 percent of the proposed recreational facilities shall be constructed prior to the development of one-half of the project, and all recreational facilities shall be constructed by the time the project is 75 percent developed.
- O. The PUD shall include such provisions for the ownership and maintenance of the common open spaces as are reasonably necessary to ensure its continuity, care, conservation and maintenance, and to ensure that remedial measures will be available to the Governing Body if the common open space is permitted to deteriorate, or is not maintained in a condition consistent with the best interests of the planned development or of the entire community.
- P. Any modifications of the zoning or other regulations that would otherwise be applicable to the site may be permitted, providing the design of the Planned Unit Development and the amenities incorporated in it are not inconsistent with the interest of the public generally.
- Q. No residential use shall have direct access onto an arterial street.
- R. All commercial or industrial areas must have access to a collector or arterial street; however, no individual, commercial or industrial use may have direct access onto collector or arterial streets.
- S. Sidewalks shall be built to City specifications along all public and private streets; however, an alternative pedestrian and sidewalk plan may be developed which provides pedestrian access between each use in the Planned Unit Development.
- T. Consideration should be given for the provision of bicycle traffic along collector and arterial streets or along the approved pedestrian-sidewalk system.
- U. All signs must conform to the City sign ordinance.

18.115.050 Application of preliminary plan.

- A. An application of a Planned Unit Development shall be handled in the same manner prescribed for amending the zoning ordinance. The same requirements for notice, advertisement of public hearing, protests and adoption shall be required as in conventional zoning.

- B. Prior to the issuance of any building permit or zoning certificate, the applicant shall prepare and submit 10 copies of the preliminary development plan for review and approval by the Planning Commission, which said plan shall include:
1. A site plan showing all the items required for Planned Residential Districts, in addition to the following:
 - a. General location, size and use of all proposed structures in conformance with the yard requirements except in industrial sections of a PUD where only the permitted buildable area and general types of permitted industrial uses need be shown or listed.
 - b. All points of ingress and egress, driveways, circulation aisles, parking lots, parking spaces, and service areas.
 - c. All streets adjoining subject property and the width of the existing right-of-way.
 - d. Areas set aside for public and private open space with the type of recreational facilities planned for each area indicated.
 - e. Designation of individual parcels if the proposed development is to be set up in separate construction phases.
 - f. Designation of individual lots if such lots are proposed to be sold to individual owners.
 - g. Location of required screening.
 - h. Location of natural features such as ponds, tree clusters and rock outcropping.
 - i. Existing development on adjacent properties within 200 feet.
 2. The above-described site plan shall also include a section designated as "General Provisions," and said section shall include the following items when said items are applicable:
 - a. Net area _____ square feet or _____ acres. (Note: Net area does not include land dedicated or necessary to be dedicated for public street right-of-way. If more than one parcel is proposed, designate net area by parcel as well as total net area.)
 - b. Density shall not exceed _____ dwelling units per acre or a total of _____ dwelling units for the entire plan. No parcel or unit of the plan shall exceed a density of _____ units per acre for the individual parcel by more than 20 percent.
 - c. Building coverage shall not exceed _____ of the net area of the Planned Unit Development by individual parcel or total development.
 - d. A minimum of _____ percent of the development plan shall be provided for common open space as defined by this regulation. (Note: Normally, this figure should be approximately 50 percent.)
 - e. A minimum of 50 percent of the recreational facilities shall be constructed prior to the development of one-half of the project, and all recreational facilities shall be constructed by the time the project is 75 percent developed.
 - f. If more than one parcel is proposed, a statement relating to the sequence of development shall be included.
 - g. Required number of off-street parking spaces: _____.
 - h. Gross floor area proposed: _____ square feet. (Commercial PUD only.)
 - i. All proposed land uses shall be listed by area or parcel.
 3. A statement or adequate drawings shall be included describing the manner for the disposition of sanitary waste and storm water.

4. The full legal description of the boundaries of the property or properties to be included in the Planned Unit Development.
 5. A vicinity map showing the general arrangement of streets within an area of 1,000 feet from the boundaries of the proposed Planned Unit Development.
 6. A description, rendering or drawing of the general characteristics of the proposed buildings may be submitted if the applicant desires.
 7. Evidence that the applicant has sufficient control over the tract to effectuate the proposed plan, including a statement of all the ownership and beneficial interests in the tract of land and the proposed development.
 8. When a Planned Unit Development includes provisions for a common space, or recreational facilities, a statement describing the provision that is to be made for the care and maintenance for such open space or recreational facilities. If it is proposed that such open space be owned and/or maintained by any entity other than a governmental authority, copies of the proposed articles of incorporation and bylaws of such entity shall be submitted.
 9. Copies of any restrictive covenants that are to be recorded with respect to property included in the Planned Development District.
 10. In the case where a Planned Unit Development calls for construction in units over a period of years, a schedule showing the proposed time and sequence within which the applications for final approval of all sections of the Planned Unit Development are intended to be filed shall be submitted.
 11. A written statement by the applicant shall be submitted setting forth the reasons why, in his/her opinion, a Planned Unit Development would be in the public interest and would be consistent with the intent of the Governing Body on Planned Unit Development.
- C. Action by Planning Commission. The Planning Commission shall, within 45 days after a preliminary Planned Unit Development is filed, hold public hearing on said development after giving notice as required by statute for hearings on amendments. Said public hearing may be adjourned from time to time and, within a reasonable period of time after the conclusion of said public hearing, the Planning Commission shall prepare and transmit to the Governing Body and the applicant specific findings of fact with respect to the extent which the preliminary plan complies with these regulations, together with its recommendations in respect to the action to be taken on the preliminary Planned Unit Development. The Planning Commission may recommend disapproval, approval, or approval with amendments, conditions, or restrictions.
- D. Action by Governing Body. The Governing Body shall or shall not approve the preliminary development plan and authorize the submitting of the final development plan.
- E. Substantial or significant changes in the preliminary Planned Unit Development shall only be made after rehearing and reapproval as required for the initial approval of the preliminary plan.

18.115.060 Final plan approval.

After approval of a preliminary development plan by the Governing Body, the landowner shall file with the register of deeds a statement that such a plan has been filed with the Governing Body and has been approved and that such Planned Unit Development is applicable to certain specified legally described land and that copies of said plan are on file in the offices of the Zoning Administrator. Such statement recorded with the register of deeds shall also specify the nature of the plan, the proposed density of intensity of land uses and other pertinent information sufficient to notify any prospective purchasers or users of land of the existence of such a plan. The recorded statement shall specify that the preliminary development plan shall become binding upon all successors and assigns unless amended in conformance with this act.

- A. After approval of a preliminary plan and prior to the issuance of any building permit or zoning certificate, the applicant shall submit an application for final approval. Said final application may

include the entire Planned Unit Development or may be for a unit or section thereof as set forth in the approval of the preliminary plan. The application shall include 10 copies at which time 10 additional copies are required for Council review of such drawings, specifications, covenants, easements, conditions and form of performance bond as set forth in the approval of the preliminary plan and in accordance with the conditions established in the zoning regulations for Planned Unit Development.

- B. A plan submitted for final approval shall be deemed to be in substantial compliance with the plan previously given tentative approval, provided any modification by the landowner of the plan as tentatively approved does not:
1. Vary the proposed gross residential density or intensity of use by more than five percent or involve a reduction in the area set aside for common open space, nor the substantial relocation of such area, nor
 2. Increase by more than 10 percent the floor area proposed for nonresidential use, nor
 3. Increase by more than five percent the total ground area covered by buildings nor involve a substantial change in the height of buildings, nor
 4. Substantially change the design of plan so as to significantly alter, as determined by the Planning Commission:
 - a. Pedestrian or vehicular traffic flow.
 - b. The juxtaposition of different land uses.
 - c. The relation of open space to residential development.
 - d. The proposed phasing of construction.
- C. A public hearing need not be held for the approval of a final plan if it is in substantial compliance with the approved preliminary plan, and a public hearing need not be held to consider modifications on location and design of streets or facilities for water, storm water, sanitary sewers, or other public facilities.
- In the event a public hearing is not required for final approval and the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof, the Planning Commission shall, within a reasonable period of time of such filing, recommend that such plan be given final approval and forward its recommendation to the Governing Body for its final approval.
- D. In the event that the final plan submitted contains substantial changes from the approved preliminary development plan, the applicant shall resubmit the original plan. This preliminary development plan shall be modified in the same manner prescribed in this title for original approval.
- E. In the event that the plan or section thereof is given final approval and thereafter the landowner shall abandon said plan or section, he/she shall so notify the City thereof in writing. In the event the landowner shall fail to commence the Planned Unit Development within 18 months after final approval has been granted, such final approval shall terminate and shall be deemed null and void unless such time period is extended by the Planning Commission upon written application by the landowner.

18.115.070 Enforcement and modification of provisions of the plan.

To further the mutual interest of the residents and owners of the Planned Unit Development and of the public in the preservation of the integrity of the plan, as finally approved, and to ensure that modifications, if any, in the plan shall not impair the reasonable reliance of the said residents and owners upon the provisions of the plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the plan as finally approved, whether recorded by plan, covenant, easement or otherwise, shall be subject to the following provisions:

- A. Enforcement by the Municipality. The provisions of the plan relating to:

1. The use of land and the use, bulk, and location of buildings and structures; and
 2. The quality and location of common space; and
 3. The intensity of use or the density of residential units shall run in favor of the municipality and shall be enforceable in law or in equity by the municipality, without limitation on any powers or regulation otherwise granted the municipality by law.
- B. Enforcement by the Residents and Owners. Except when in conflict with subsection (A) of this section, all provisions of the plan shall run in favor of the residents and owners of the planned development, but only to the extent expressly provided in the plan and in accordance with the terms of the plan, and to that extent said provisions, whether recorded by plat, covenant, easement, or otherwise, may be enforced at law or equity by said residents and owners, acting individually, jointly, or through an organization designated in the plan to act on their behalf; provided, however, that no provisions of the plan shall be implied to exist in favor of residents and owners of the Planned Unit Development except as to those portions of the plan which have been finally approved and have been recorded.
- C. Modification of the Plan by the Municipality. All those provisions of the plan authorized to be enforced by the municipality under subsection (A) of this section may be modified, removed or released by the municipality (except grants or easements relating to the service or equipment of a public utility unless expressly consented to by the public utility), subject to the following conditions:
1. No such modification, removal or release of the provisions of the plan by the municipality shall affect the rights of the residents and owners of the Planned Unit Development to maintain and enforce those provisions, at law or equity, as provided in subsection (B) of this section.
 2. No modification, removal or release of the provisions of the plan by the municipality shall be permitted except upon a finding by the municipal authority, following a public hearing called and held in accordance with the provisions of this section, that the same is consistent with the efficient development and preservation of the entire Planned Unit Development, does not adversely affect either the enjoyment of land abutting upon or across a street from the Planned Unit Development or the public interest, and is not granted solely to confer a special benefit upon any person.
- D. Modification by the Residents. Residents and owner of the Planned Unit Development may, to the extent and in the manner expressly authorized by the provision of the plan, modify, remove or release their rights to enforce the provisions of the plan, but no such action shall affect the right of the municipality to enforce the provisions of the plan in accordance with the provisions of subsection (A) of this section.

18.115.080 Amendments.

A Planned Unit Development District ordinance or an approved preliminary or final development plan may be amended in the same manner prescribed in this title for approval of a preliminary or final plan. Application for amendment may be made by the homeowner's association or 51 percent of the owners of property within the PUD.

18.115.090 Platting.

For unplatted tracts or tracts being replatted, the approval of the preliminary Planned Unit Development shall be considered as the approval of a preliminary plat. To complete the platting process, the applicant needs only submit a final plat. Said final plat shall be in accordance with the subdivision regulations and may be submitted with or incorporated with the final development plan. The final development plan and the final plat may be reviewed by the Planning Commission concurrently.

Chapter 18.120 UCD – CORRIDOR OVERLAY DISTRICT

Sections:

| | |
|----------------------------|-------------------------------|
| 18.120.010 | Purpose and intent. |
| 18.120.020 | District design objectives. |
| 18.120.030 | Use regulations. |
| 18.120.040 | Boundary of overlay district. |
| 18.120.050 | District regulations. |
| 18.120.060 | Performance standards. |
| 18.120.070 | Interpretations. |

18.120.010 Purpose and intent.

The UCD Corridor Overlay District is established to promote a desirable development pattern for two major roadway corridors, along with creating attractive community entrances and a public streetscape. The district is intended to enhance the visual image and civic identity of Gardner by placing greater emphasis on site design, the relationships of buildings to the street, and the aesthetic design of buildings.

18.120.020 District design objectives.

The UCD Corridor Overlay District is intended to ensure the development of land as a pedestrian-oriented corridor and encourage pedestrian movement within the corridor and from nearby residential neighborhoods. The design of a site and building shall also incorporate the historical form and general appearance of Main Street in Downtown. The design of new structures shall avoid traditional strip retail centers where parking lots dominate the front of a site and buildings are placed near the rear lot line. The UCD Corridor is characterized by the following design elements:

- A. Redesigning the public space between the curb and the public right-of-way to include an expanded sidewalk and uniform streetscape design.
- B. For new construction located within the boundaries of Center Street and Cedar Street: bringing buildings to the edge of the sidewalk to allow the building to define the public realm where people feel safe to walk.
- C. Promoting new two-story buildings near Downtown to include residential uses above the first floor.
- D. Encouraging compatibility of architecture as defined by building arrangement, scale, bulk, form, character, and landscaping to establish a harmonious corridor consistent with the Main Street character of Downtown.
- E. Enhancing the visual character and identity of the corridor by encouraging main parking in the rear of commercial buildings.
- F. Placing greater emphasis on the design of building storefronts to open up to the street with use of windows and street side entrances.

18.120.030 Use regulations.

Uses permitted in the underlying zoning district are permitted in the UCD Corridor Overlay District, along with uses permitted as conditional uses.

18.120.040 Boundary of overlay district.

The UCD Corridor Overlay District shall include all lots, tracts, or parcels of land that abut Main Street (56 Highway) or Center Street (Gardner Road) within the corporate City limits.

18.120.050 District regulations.

The requirements of both the UCD district and those of the underlying zoning district shall apply. When the base and overlay district regulations conflict, the most restrictive requirements shall take precedence, unless modified by the Planning Commission. In the UCD district, no building or land shall hereafter be

used, and no building or structure shall be erected, altered or enlarged other than in accordance with the regulations of this title.

18.120.060 Performance standards.

Upon submission of an application for a building permit, the applicant shall prepare a site plan and building elevations in sufficient detail as necessary for the Community Development Director to determine compliance with the district design objectives.

- A. Minimum Front Yard Setback. None. Commercial buildings can be built to the public right-of-way, subject to compliance with the intent and provisions of the UCD Corridor Overlay District. When parking in the front of a building is the only recourse to develop a site, a minimum front yard of 15 feet shall be provided.
- B. Parking Lots. Parking lots shall be located to the rear or side of a building. If located at the side, screening shall be provided by landscaping or decorative walls at the lot line.
- C. Landscaping and Screening. Landscaping shall be provided in accordance with the "Corridor Landscape Master Plan" adopted by the Planning Commission, where applicable. Landscape buffering and/or screening shall be provided when a commercial business is proposed adjacent to residentially zoned property. The Community Development Director shall determine the type and extent of screening.

18.120.070 Interpretations.

In the event a dispute or disagreement arises over the district design objectives, the Community Development Director shall place the site plan or building elevations on the agenda of the Planning Commission. The Planning Commission shall determine if the site plan or building elevations comply with the intent of the design objectives.

Chapter 18.125
F-P – FLOOD PLAIN OVERLAY DISTRICT

(Repealed by Ord. 2319)

Chapter 18.130 INDUSTRIAL AIRPORT AREA OVERLAY DISTRICT

Sections:

| | |
|----------------------------|---|
| 18.130.010 | Preface. |
| 18.130.020 | Purpose and intent. |
| 18.130.030 | Definitions. |
| 18.130.040 | Establishment of district. |
| 18.130.050 | Overlay District and boundaries of Overlay Zones. |
| 18.130.060 | Permitted uses. |
| 18.130.070 | Conditional uses. |
| 18.130.080 | Property development standards. |
| 18.130.090 | Use limitations. |
| 18.130.100 | Height Hazard Zones and height limitations. |
| 18.130.110 | Land Use Zones. |
| 18.130.120 | Noise attenuation construction standards. |
| 18.130.130 | Nonconforming uses. |
| 18.130.140 | Hazard marking and lighting. |
| 18.130.150 | Administration. |

18.130.010 Preface.

The regulations contained within this chapter are based upon and in accordance with the goals, policies and strategies contained in the Johnson County Industrial Airport Comprehensive Compatibility Plan. The protection of the public's health, safety, and welfare is one of the paramount interests in that plan, and toward that end, the regulations in this chapter strive to avoid the establishment of airport hazards, lessen or prevent noise impacts affecting the public and the surrounding landowners, and promote a pattern of future land uses which encourages compatibility between the airport and its environs. Furthermore, the regulations in this chapter recognize and adopt the statutory findings of fact of K.S.A. 3-702, which state that:

Airport hazards are contrary to the public interest, endanger the lives and property of users of the airport and of occupants of land nearby, and, if of the obstruction type, in effect reduce the size of the area available for the landing, taking-off and maneuvering of aircraft, and thus tend to destroy or impair the utility of the airport and the public investment or interest therein. Accordingly, it is hereby declared:

- A. That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport; and
- B. That it is therefore necessary in the interest of the public health, safety, and general welfare that the creation or establishment of airport hazards be prevented.
- C. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which the City and/or County may raise and expend public funds and acquire land or property interests therein.

In addition, the minimization of aircraft noise impacts on the surrounding area is critical for striving to achieve airport-environs compatibility and for assuring that persons who live, work, or own property near the airport may enjoy a maximum amount of freedom from noise or other adverse impacts of the airport.

18.130.020 Purpose and intent.

The Industrial Airport Area Overlay District is intended to regulate and restrict the height of structures and objects of natural growth and otherwise regulate the use of property in the vicinity of the Industrial Airport to:

- A. Protect persons and property near the airport.
- B. Provide for aircraft safety in the use of the airport.
- C. Regulate land uses and development to ensure compatibility with the airport.
- D. Provide a comprehensive zoning plan to provide for orderly development of land near the airport.

The regulations in this chapter for the Industrial Airport Area Overlay District shall be supplementary to the regulations of the underlying zoning districts contained within the zoning regulations for Johnson County, Kansas. In the event of a conflict between the regulations in this chapter and any other regulations applicable to this same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and control to the extent of such conflict, but no further.

18.130.030 Definitions.

A. Basic Terms. For the purpose of this chapter, unless otherwise specifically provided, the words and phrases defined in this section shall have the following meanings:

1. "Affected jurisdiction(s)" means the municipal or quasi-municipal entities which have adopted the regulations in this chapter, specifically the city of Olathe, Kansas; the City of Gardner, Kansas; the County of Johnson, Kansas; and the Johnson County, Kansas, Airport Commission.
2. "Airport" means the Johnson County Industrial Airport and all appurtenances used or acquired for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes, for airport buildings or other airport facilities, and all other appurtenant rights-of-way or other interests either heretofore or hereafter established.
3. "Airport elevation" means the highest point of an airport's usable landing area measured in feet from sea level.
4. "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at the Johnson County Industrial Airport or is otherwise hazardous to such landing or taking-off of aircraft.
5. "Approach surface" means a surface longitudinally centered on the extended centerline of the runway and extending outward and upward from the end of the primary surface at the same slope as the Approach Zone height limitation slope set forth in GMC [18.130.100](#). In plan-view, the perimeter of the approach surface coincides with the perimeter of the Approach Zone.
6. "Approach, Transitional, Horizontal, and Conical Zones" means height hazard zones as defined and set forth in GMC [18.130.100](#).
7. "Communications nuisance" means a use or structure which creates interference with radio communications and electronic navigational aids or devices, including instrument landing systems, for aircraft using the airport.
8. "Conical surface" means an inclined surface extending upward and outward from the periphery of the horizontal surface at a slope of one foot upward for each 20 feet outward for a horizontal distance of 4,000 feet.
9. "Datum". For the purpose of determining the height limits in all zones set forth herein, the "datum" shall be mean sea level elevation unless otherwise specified.
10. "Decibel" means the unit for expressing and measuring the relative intensity of sounds on a scale from zero for the average least perceptible sound for the human ear to about 135 for the average sound level which inflicts pain to humans.
11. "Director" shall mean the Director of Planning for Johnson County, Kansas, or such person's designee.
12. "FAA" means Federal Aviation Administration.
13. "Height" means the vertical distance between the top of any structure and datum unless a reference elevation other than datum is specifically required by the regulations in this chapter.
14. "Helipad" means the designated takeoff and landing area for helicopters at a heliport.

15. "Helipad primary surface" means a horizontal plane area which coincides with the size and shape of the helipad and which is at the established elevation of the helipad.
16. "Heliport" means a landing, loading and takeoff area used by helicopters, whether at ground level or elevated on a structure, and including necessary passenger and cargo facilities, maintenance equipment and overhaul areas, fueling, service, storage, tie-down areas, hangars, and other necessary buildings and open spaces.
17. "Horizontal surface" means a horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan-view coincides with the perimeter of the Horizontal Zone.
18. "Identified critical corridors" means the linear-shaped areas of the width and length established by this chapter which are located along and centered on the extended centerline of runway 17-35 at the Johnson County Industrial Airport and which are labeled in a general fashion as "Critical Corridors" by the Johnson County Industrial Airport Comprehensive Compatibility Plan.
19. "Illumination nuisance" means a use which creates difficulty for pilots to distinguish between navigational lights or markers and other lights or which otherwise impairs visibility with respect to aviation operations in the vicinity of the airport.
20. "Imaginary surfaces" means planes having no real existence at the heights, slopes and dimensions of the approach, transitional, horizontal, and conical surfaces as defined and established by the regulations in this chapter.
21. "LDN (day-night average sound level)" means the unit of measurement of sound levels on the day-night loudness decibel scale which averages the decibel levels of sounds over a 24-hour period and reflects the tendency for sounds to be more disruptive between 10:00 p.m. and 7:00 a.m. by adding 10 decibels to all sound intensities occurring between those hours.
22. "Noise-sensitive land use" means (1) an activity or use of property which is sensitive to aircraft noise generation (examples include, but are not limited to: residential uses; educational classroom or assembly facilities; religious classroom or worship facilities; hospitals and similar health service facilities; transient lodging quarters; outdoor places of public assembly such as amphitheaters, stadiums, arenas, and the like; indoor places of public assembly such as auditoriums, convention centers, concert halls, meeting halls, theaters, offices; and the like) or (2) such unconstructed uses as listed above, having an approved subdivision plat, development plan or building permit.
23. "Nonconforming use" means any preexisting structure, tree, or use of land which does not conform to the provisions contained within the regulations in this chapter, or any amendment thereto, as to the effective date of such regulations.
24. "Nonprecision instrument runway" means a runway having a nonprecision instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment for straight-in, nonprecision instrument approach procedure has been approved or planned and for which no precision approach facilities are planned or indicated on an approved airport layout plan or any other officially adopted airport planning document.
25. "Official zoning map(s)" means the map(s) showing zoning districts for land subject to the zoning authority of Johnson County as prepared by the Johnson County Planning Office and duly adopted by the Board and any amendments thereto.
26. "Overlay District zoning map" means the official map for the Industrial Airport Area Overlay District prepared by the Johnson County Planning Office and duly adopted by the Board and any amendments thereto.
27. "Plan-view" means the image of an object or area as would be seen from directly above all points on the object or area being viewed.

28. "Planning Commission Secretary" means the person appointed by the Planning Commission to serve as secretary.
29. "Precision instrument runway" means a runway having an instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR), and any runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other officially adopted airport planning document.
30. "Primary surface" means a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; for military runways or when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in GMC [18.130.100](#). The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. (See also helipad primary surface.)
31. "Runway" means a defined area on the airport prepared for landing and take-off of aircraft along its length.
32. "SEL (sound exposure level)" means the unit of measurement of single-event sound levels which combines both the maximum intensity and the duration of the sound event.
33. "Structure" means any object, including a mobile object, constructed or installed by man, including, but not limited to, buildings, towers, smokestacks, poles, pole lines, light poles, signs, earth formations, overhead transmission lines, radio and television aeriels and antennae.
34. "Transitional surfaces" means the surfaces extending outward at a 90 degree angle to the centerline of the runway and the extended centerline of the runway at a slope of one foot upward of each seven feet outward from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. The transitional surfaces connect the horizontal, conical, primary and approach surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90 degree angle to the centerline of the runway and the extended centerline of the runway.
35. "Tree" means any object of natural growth.
36. "Underlying zoning district" means the existing zoning district beneath a particular portion of the Overlay District.
37. "Utility runway" means a runway that is constructed and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.
38. "Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures.
39. Zoning Map. See "Overlay District zoning map."

18.130.040 Establishment of district.

The Industrial Airport Area Overlay District (hereinafter referred to as the "Overlay District") is hereby established in like manner as other zoning districts permitted pursuant to K.S.A. 3-301 et seq., and 3-701 et seq. There are two categories of overlay zones within the Overlay District: the Industrial Airport Height Hazard Overlay Zones (hereinafter referred to as "Height Hazard Zones") and the Industrial Airport Interest Area Land Use Overlay Zones (hereinafter referred to as "Land Use Zones"). Boundaries for the overlay district and said overlay zones are described in the following GMC [18.130.050](#) and regulations pertaining to these overlay zones are contained within GMC [18.130.100](#) and [18.130.110](#) respectively.

18.130.050 Overlay District and boundaries of Overlay Zones.

The outer boundaries of the Overlay District coincide with the outer boundaries of the Height Hazard Zones and the Land Use Zones as shall be established by adoption of the Overlay District zoning map (hereinafter referred to as the “zoning map”). The zoning map reflects the Overlay District and Overlay Zone boundaries as follows:

- A. The boundaries of the Height Hazard Zones are identical to the boundaries of the approach, transitional, horizontal, and conical surfaces of the airport as established in GMC [18.130.100](#) and are shown in Exhibit A at the end of this chapter. Said surfaces shall be based upon the obstruction surfaces described in Subpart C of Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace.
- B. Consistent with Exhibit A of the Johnson County Industrial Airport Comprehensive Compatibility Plan at the end of this chapter which outlines the boundaries of the Airport Interest Area around the Johnson County Industrial Airport, the outer boundaries of the Land Use Zones match the outer boundaries of the Airport Interest Area as shown in Exhibit B at the end of this chapter. The boundaries of zones in the Land Use Zones area are established as shown on the zoning map. The boundaries of the Height Hazard Zones and the Land Use Zones are shown on the zoning map which is hereby incorporated by reference as though fully set forth herein. A reduced-size copy of the zoning map is included at the end of this chapter for reference purposes as Exhibit C. Official copies of the zoning map shall be on file at the Johnson County Planning Office. Land areas subject to the zoning map are identified on the official zoning map(s) for Johnson County by the suffix “AOD” added to the underlying zoning district abbreviations used on the official zoning map(s).

18.130.060 Permitted uses.

Permitted uses within the Overlay District shall be those uses which are permitted by regulation in the underlying zoning district, with the exception of those uses which are prohibited by this chapter. (See especially GMC [18.130.110](#).) Furthermore, all uses which are permitted by regulation in the underlying zoning district and not prohibited by this chapter are subject to all qualifications and limitations as established by this chapter. It should be noted that the use of land within the identified critical corridors is restricted as set forth in GMC [18.130.110](#).

18.130.070 Conditional uses.

Conditional uses within the Overlay District shall be those uses which are: (A) listed as conditional uses in the specific underlying zoning district, with the exception of those uses which are prohibited by this chapter, or (B) listed in the general regulations pertaining to special use permits within the City of Gardner zoning ordinance, with the exception of those uses which are prohibited by this chapter. Furthermore, the approval of conditional or special uses shall be subject to all qualifications and limitations as established by this chapter. (See especially GMC [18.130.110](#), which identifies review procedures for conditional or special uses.)

18.130.080 Property development standards.

Property shall be developed in accordance with the property development standards of the underlying zoning district, unless such standards are in conflict with this chapter, in which event the regulations in this chapter shall control. The applicable development standards shall include, but not be limited to, the regulations governing the following development characteristics: minimum lot size, maximum lot coverage, bulk regulations, open space requirements, landscaping and screening requirements, parking and loading regulations, and sign regulations.

18.130.090 Use limitations.

In addition to the use limitations imposed by the underlying zoning district, the following use limitations shall also apply to all properties located within the Overlay District:

- A. Uses within the Overlay District shall be permitted only in accordance with the maximum height restrictions in GMC [18.130.100](#).

- B. Uses located within the Land Use Zones within the Overlay District shall be permitted only in accordance with all applicable restrictions and standards as set forth in GMC [18.130.110](#).
- C. Uses located within the Noise Impact Area of the Land Use Zones within the Overlay District shall be permitted only in accordance with any applicable noise attenuation construction standards as required under GMC [18.130.120](#).
- D. At the time of issuance of any building permit for any structure within the Overlay District, the Johnson County Airport Commission reserves the right to request the voluntary dedication of an avigation easement when it is determined by the commission that said easement is needed over the subject property to further the purpose and intent of the regulations in this chapter.

18.130.100 Height Hazard Zones and height limitations.

- A. Generally. In order to carry out the regulations in this chapter, and in furtherance of Federal Aviation Regulations Part 77 which recommends height limitation standards, there are hereby established Height Hazard Zones. The Height Hazard Zones shall encompass all the lands within Johnson County lying beneath the Approach, Transitional, Horizontal, and Conical Zones which are based on and reflect the approach, transitional, horizontal, and conical surfaces (see Exhibit A at the end of this chapter), as they apply to the Johnson County Industrial Airport and as further defined within this section. The Height Hazard Zones are shown on the zoning map (see Exhibit C at the end of this chapter). The height limitations established for these zones shall be based upon the established elevation of the Johnson County Industrial Airport, which is 1,087 feet. From and after the effective date of the regulations in this chapter, except as otherwise provided in this chapter, no structure or tree shall be erected, altered, allowed to grow or allowed to exist in any zone created by the regulations in this chapter to a height in excess of the applicable height limitations established herein for the Height Hazard Zones. An area located in more than one of the identified zones is considered to be only in the zone with the more restrictive height limitation.
- B. Height Hazard Zones Defined. The Height Hazard Zones and height limitations for the Overlay District are created and defined as follows:
 - 1. Airport Approach Height Hazard Zones, AA-1, AA-2, and AA-3 (as further defined in Table 1 herein), and height limitations:
 - a. General Provisions.
 - i. The centerline of all Runway Approach Zones coincides with the continuation of the centerline of the runway.
 - ii. The inner edge of all Runway Approach Zones coincides with the outer edge of the primary surface of the runway and has the same width as the primary surface of the runway.
 - iii. All Approach Zones expand outward uniformly from the inner edge to the outer edge at the horizontal distance and outer edge width specified in Table 1.
 - iv. The height limitation at the inner edge of all Approach Zones is the same elevation as the primary surface.
 - v. The height limitation in all Approach Zones increases continually and evenly from the inner edge to the outer edge of the Approach Zone at the rate or grade specified in Table 1, and the rate of increase in elevation is expressed and specified in the format of: "horizontal distance in feet outward for each foot of increased elevation," and is commonly abbreviated as "horizontal distance: vertical distance."
 - vi. The height limitations in the Approach Zones are established by the imaginary surface sloping upward at the grade specified for the particular Approach Zone as specified in Table 1 herein.
 - b. Airport Approach Zones and the imaginary surfaces establishing applicable height limitations are established as provided in the following Table 1:

TABLE 1: AIRPORT APPROACH ZONES AND THE IMAGINARY SURFACES ESTABLISHING APPLICABLE HEIGHT LIMITATIONS

| IMAGINARY SURFACE | | ZONE WIDTH (FEET) | | HORIZONTAL DISTANCE ALONG EXTENDED RUNWAY CENTERLINE (FEET) | | Upward Slope |
|--|---|-------------------|------------|---|--|---------------------------------|
| Zone | Zone Name | Inner Edge* | Outer Edge | From Inner Edge and Outer Edges* | | (Horiz. Feet: Vertical Feet.) |
| AA-1 Runway 4-22 Runway 13-31 | Utility Runway Visual Approach Zone | 500 | 2,000 | 5,000 | | 20:1 |
| AA-2 Runway 17R- 35L Runway 17L- 35R | Precision Instrument Runway Approach Zone | 1,000 | 16,000 | 50,000 | | 50:1 (First 10,000 ft.) 40:1 |

* The inner edge of the Approach Zones coincides with the outer edge of the primary surface of the runway.

2. Airport Transitional Zones, AT, and height limitations:

- a. The Airport Transitional Zones are the areas beneath the transitional surfaces of the airport runways as further defined herein.
- b. The height limitations for the Airport Transitional Zones are established by an imaginary surface that slopes one foot upward for each seven feet outward, beginning at the sides of, and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the established airport elevation. In addition to the foregoing, there are established height limits sloping one foot upward for each seven feet outward beginning at the sides of, and the same elevation as, the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway Airport Approach Zone projects beyond the Airport Conical Zone, there are established height limits sloping one foot upward for each seven feet outward beginning at the sides of, and the same elevation as, the approach surface and extending a horizontal distance of 5,000 feet measured at a 90 degree angle to the extended runway centerline.

3. Airport Horizontal Zone, AH, and height limitations:

- a. The Airport Horizontal Zone is established by swinging arcs of 5,000 feet radii for all runways designated utility or visual and 10,000 feet for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The Airport Horizontal Zone does not include the Airport Approach Zones or the Airport Transitional Zone.
- b. Airport Horizontal Zone height limitation is established at 150 feet above the established airport elevation.

4. Airport Conical Zone, AC, and height limitations:

- a. The Airport Conical Zone is established as the area that commences at the periphery of the Airport Horizontal Zone and extends outward for a horizontal distance of 4,000 feet.
- b. The Airport Conical Zone height limitation is established by an imaginary surface that slopes one foot upward for each 20 feet outward beginning at the periphery of the Airport Horizontal Zone and at 150 feet above the established airport elevation and extending to a height of 350 feet above the airport elevation.

C. Exceptions to Height Limitations. Nothing in this chapter shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree, to a height up to 75 feet above the surface of the land.

D. Permits in Airport Height Hazard Overlay Zone.

1. Future Uses. Except as specifically provided in subsections (D)(1)(a), (b), and (c) of this section, no new structure or use may be constructed or otherwise established in any zone created by this section unless a permit therefor shall have been applied for and granted by the City. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particulars for the City to determine whether the resulting use or structure would conform to the regulations within this chapter. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of the regulations in this chapter shall be granted unless a variance has been approved as provided for in GMC [18.130.150](#).

a. In areas lying within the limits of the Approach Zones, but at a horizontal distance of 4,200 feet or more from each end of the runway, no permit shall be required for any structure less than 75 feet of vertical height above the ground, except when such structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such Approach Zones.

b. In the areas lying within the limits of the Transitional Zones beyond the perimeter of the Horizontal Zone, no permit shall be required for any structure less than 75 feet of vertical height above the ground, except when such structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such Transitional Zones.

c. In the area lying within the limits of the Horizontal Zone and Conical Zone, no permit shall be required for any structure less than 75 feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such structure would extend above the height limits prescribed for such zones.

Nothing contained in any of the foregoing exceptions (subsections (D)(1)(a), (b), and (c) of this section) shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this chapter except as set forth in subsection (C) of this section. Furthermore, any permit or variance granted pursuant to the regulations in this chapter may, if such action is deemed advisable to effectuate the purpose of this chapter and to be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the Johnson County Airport Commission, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to pilots the presence of an airport hazard.

2. Existing Uses. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was on the effective date of the regulations in this chapter, or any amendments thereto, or than it was when the application for a permit was made. Except as provided herein, all applications for permits for uses which conform to the regulations in this chapter shall be granted. (See also GMC [18.130.130](#), Nonconforming uses.)

18.130.110 Land Use Zones.

A. Prohibited Development and Land Use Characteristics. Notwithstanding any other provision to the contrary contained within this chapter, no use may be made of land or water within the Land Use Zones which would in any manner:

1. Create electrical or electronic interference with navigational signals or radio or radar communication between the airport and aircraft,

2. Make it difficult for pilots or aviation operations personnel of the control tower to distinguish between airport lights and other lights,
 3. Result in glare in the eyes of pilots using the airport or the eyes of aviation operations personnel of the control tower,
 4. Impair visibility with respect to aviation operations in the vicinity of the airport,
 5. Endanger or interfere, in any other way, with the landing, takeoff, or maneuvering of aircraft,
 6. Create bird strike hazards or promote large population concentrations of birds, or
 7. Emit or discharge smoke, steam or fog that would impair visibility with respect to aviation operations in the vicinity of the airport in any manner which would interfere with the health and safety of pilots and the public in the use of the airport.
- B. Minimum Performance Standards. The following minimum standards and specifications shall apply for all land uses within the Land Use Zone.
1. Lighting and Glare. All lights, illumination, or glare used in conjunction with street, parking, signs or use of land and structures shall be arranged and/or operated in such a manner that is not misleading or dangerous to aviation operations at the airport or within the vicinity thereof. Except when lighting must be otherwise installed or operated for proper aviation operations at the airport or within the vicinity thereof, all lights shall be so installed and operated to prevent glare and deflect illumination from residential developments, streets and the aircraft flight paths normally used by aircraft arriving at or departing from the airport.
 2. Fire and Explosion Hazards. All activities involving the storage of inflammable and explosive materials, where permitted, shall be provided with adequate safety devices to guard against the hazard of fire and explosion, and with adequate fire-fighting and fire suppression equipment and devices standard in the industry. All such activities shall meet or exceed the minimum requirements imposed by the Uniform Fire Code as adopted by the City of Gardner.
 3. Burning. Burning of waste materials in open fires shall be prohibited within the Land Use Zone unless otherwise authorized by law, and shall be subject to such reasonable conditions as may be prescribed in each case. Compliance with the relevant provisions of K.S.A. 28-19-45, 28-19-46, and 28-19-47 and local laws and regulations shall also be required.
 4. Electrical Disturbance. No electrical disturbance or activities shall be permitted which would interfere with or disrupt the reliable and effective use of communications or navigation equipment normally used for aircraft operations at the airport or in the vicinity thereof. No electrical or other disturbance resulting from radio or television transmission or the operation of electrical, electronic, electro-magnetic equipment or devices shall be tolerated which affects adversely the operation at any point in the Land Use Zones of any equipment other than that of the creator of such disturbance.
 5. Smoke, Fly Ash, Fumes, Vapors, Gases, and Other Forms of Air Pollution. No emission shall be permitted at any point in the Land Use Zones which exceeds those standards established in any applicable local, state, and/or federal air pollution regulations.
- C. Critical Corridor Areas.
1. Establishment of Critical Corridor Areas. There are hereby established Critical Corridor Areas within the area of the Land Use Zones as shown on the zoning map. These Critical Corridor Areas extend outward from both ends of Runway 17R-35L and Runway 17L-35R. Each Critical Corridor Area is located along and centered on the extended centerline of the respective runway. These Critical Corridor Areas extend both north and south of the airport to the distances shown on the zoning map, and the Critical Corridor Areas serve as the normal approach/departure flight path for aircraft using any of the runways. Within these Critical Corridor Areas, three Subareas are defined and established: Critical Corridor Subarea A: Limited Development and Uses Area, Critical Corridor Subarea B: Limited Development Area, and Critical Corridor Subarea C: Development of Compatible Uses Area.

- a. The Critical Corridor Area for Runway 17R-35L is an open strip of land 1,000 feet wide. Within the Critical Corridor Area for Runway 17R-35L there are defined and established two Critical Corridor Subareas as follows:
 - i. Critical Corridor Subarea A: Limited Development and Uses Area is:
 - (A) That portion of the Critical Corridor Area for Runway 17R-35L which lies north of the runway and north of 151st Street as shown on the zoning map, and
 - (B) That portion of the Critical Corridor Area for Runway 17R-35R which lies south of the runway and south of 183rd Street as shown on the zoning map.
 - ii. Critical Corridor Subarea C: Development of Compatible Uses Area is:
 - (A) That portion of the Critical Corridor of Runway 17R-35L which lies north of the runway and south of 151st Street as shown on the zoning map, and
 - (B) That portion of the Critical Corridor of Runway 17R-35L which lies south of the runway and north of 183rd Street as shown on the zoning map.
 - b. The Critical Corridor Area for Runway 17L-35R is an open strip of land 500 feet wide. Within the Critical Corridor Area for Runway 17L-35R there are defined and established three Critical Corridor Subareas as follows:
 - i. The Critical Corridor Subarea A: Limited Development and Uses Area is that portion of the Critical Corridor Area for Runway 17L-35R which lies north of the runway and south of 143rd Street as shown on the zoning map,
 - ii. Critical Corridor Subarea B: Limited Development Area is:
 - (A) That portion of the Critical Corridor of Runway 17L-35R which lies north of the runway and north of 143rd Street, and
 - (B) That portion of the Corridor of Runway 17L-35R which lies south of the runway and at least 1,000 feet south of 175th Street,
 - iii. Critical Corridor Subarea C: Development of Compatible Uses Area is that portion of the Critical Corridor Area which lies south of the runway and which is not more than 1,000 feet south of 175th Street.
2. Critical Corridor Area Use Restrictions. Due to the increased noise impacts and the increased potential for aircraft accidents within the Critical Corridor Areas, the use of land in the Critical Corridor Areas is restricted to the following uses, but only if the following uses also are permitted by the underlying zoning district:
- a. Critical Corridor Subarea A: Limited Development and Uses Area. The Johnson County Industrial Airport Comprehensive Compatibility Plan identifies land areas adjacent to Critical Corridor Subarea A: Limited Development and Uses Area as an area for airport rural residential densities, airport estate residential densities, and for medium-density residential uses. Due to the noise sensitivity of residential uses and the potential for land use compatibility conflicts if there are high concentrations of persons within this area, the use of land within the Critical Corridor Subarea A: Limited Development Area is restricted to the following uses, but only if the following uses also are permitted by the underlying zoning district:
 - i. General agricultural uses except feed lots or other agricultural uses which have the potential to attract substantial quantities of birds;
 - ii. Conservation areas or open space or any combination thereof;
 - iii. Public or private parks, golf courses, or similar or natural recreation areas;
 - iv. Cemeteries;

- v. Landscape nurseries for the raising or storage of plant materials but not including greenhouses or retail uses within the corridor;
 - vi. Public utility local distribution or transmission facilities necessary for public service;
 - vii. Open storage area for personal property such as boats and travel trailers;
 - viii. Off-street parking lots; and
 - ix. Drainage ways without new permanent impoundments.
- b. Critical Corridor Subarea B: Limited Development Area. The Johnson County Industrial Airport Comprehensive Compatibility Plan identifies land areas adjacent to Critical Corridor Subarea B as areas for park/open space uses and for low-density residential, medium-density residential and airport estate residential densities. Due to the noise sensitivity of residential uses and the potential for land use conflicts if there are high concentrations of persons within this area, the use of lands within Critical Corridor Subarea B: Limited Development Area is restricted to the following uses, but only if the following uses also are permitted by the underlying zoning district:
- i. Planned Cluster Developments for uses and densities consistent with the Johnson County Industrial Airport Comprehensive Compatibility Plan. Such Planned Cluster Developments shall:
 - (A) Place any new dwellings outside the Critical Corridor Area wherever possible,
 - (B) Not result in uses which concentrate more than 100 persons in the Critical Corridor Subarea B at any one time,
 - (C) Result in the noise attenuation construction standards in GMC [18.130.120](#) being satisfied for any new dwellings, and
 - (D) Result in the provisions of Chapter [17.30](#) GMC being satisfied for any new subdivisions.
 - ii. Uses permitted in Critical Corridor Subarea A also are permitted in Critical Corridor Subarea B.
- c. Critical Corridor Subarea C: Development of Compatible Uses Area. The Johnson County Industrial Airport Comprehensive Compatibility Plan identifies the Critical Corridor Subarea C: Development of Compatible Uses Area as an area for general commercial and airport industrial park uses. Nonresidential uses are generally less sensitive to aircraft noise impacts and are therefore determined to be more compatible with airport operations. However, concentrations of persons within this area remains a primary concern when evaluating proposed urban development within Critical Corridor Subarea C. Nonresidential development and uses are permitted within Critical Corridor Subarea C if nonresidential development and uses also are permitted by the underlying zoning district and if the development and uses fully comply with the following restrictions:
- i. Compliance with the Noise Attenuation Construction Standards contained in GMC [18.130.120](#) shall be required for all structures as therein defined that develop in the Critical Corridor Subarea C: Development of Compatible Uses Area.
 - ii. Nonresidential uses are permitted in Critical Corridor Subarea C: Development of Compatible Uses Area as permitted by the underlying zoning district. However, special design standards shall be applied to site development plans reviewed with respect to the regulations in this chapter. The purpose of the special design standards is to achieve, to the greatest extent possible, site layouts which place open space or only very low-density uses in the most critical locations which are generally those areas of highest aviation activity. Compliance with the special design standards therefore is intended to minimize concentrations of persons in areas of highest aviation activity. For example, compliance with these special

design standards could result in the use of Critical Corridor Subarea C for accessory site uses such as off-street parking lots, drainage and open space areas, outdoor storage areas, and the like.

- iii. The following uses are encouraged within Critical Corridor Subarea C, as permitted by the underlying zoning district:
 - (A) General agricultural uses except feed lots or other agricultural uses which have the potential to attract substantial quantities of birds;
 - (B) Conservation areas or open space or any combination thereof;
 - (C) Public or private parks, golf courses, or similar or natural recreation areas;
 - (D) Cemeteries;
 - (E) Landscape nurseries for the raising or storage of plant materials but not including greenhouses or retail uses within the corridor;
 - (F) Public utility local distribution or transmission facilities necessary for public service;
 - (G) Warehousing including building(s) for commercial storage of personal property;
 - (H) Outdoor storage of equipment, automobiles, machinery, building materials, and contractor's equipment storage yards;
 - (I) Open storage areas for commercial or private storage of personal property such as boats and travel trailers;
 - (J) Rail or trucking freight terminal;
 - (K) Off-street parking lots; and
 - (L) Drainage ways without new permanent impoundments.

2. Planned Cluster Development. Planned Cluster Development which clusters or concentrates buildings outside the Critical Corridor Areas is encouraged and permitted for parcels of land which are in or partially in a Critical Corridor Area. Planned Cluster Development of such parcels of land:

- a. Shall allow buildings, structures and uses permitted by the underlying zoning district(s) to be clustered or concentrated outside the Critical Corridor Areas,
- b. Shall also allow buildings, structures and uses consistent with subsection (C)(2) of this section on the portion(s) of the parcel of land in a Critical Corridor Area,
- c. Shall retain the required open space and limited development character in the Critical Corridor Areas by clustering or concentrating buildings on a smaller land area outside the Critical Corridor Areas, by reducing the area of individual lots, and by alternate bulk requirements than those of a conventional development or subdivision, and
- d. Shall not result a greater net density (number of lots or total building square footage) with respect to the entire parcel of land than would be allowed by development of the entire parcel without clustering or concentrating the buildings outside the Critical Corridor Areas.

Planned development and Planned Cluster Development proposals shall be reviewed and processed pursuant to the following review procedures (subsection (D) of this section), and in accordance with the City of Gardner zoning ordinance and subdivision regulations applicable for planned development and for cluster development.

D. Review Procedures and Issuance of Permits.

1. Application. The review procedures contained within this subsection shall apply and be utilized by the City of Gardner as a supplementary part of its prescribed zoning and land use regulation procedures for the following types of zoning and land use development activities which occur or are proposed within the Overlay District, including all airport-owned property located within the joint-review area as shown on Exhibit D at the end of this chapter:
 - a. Zoning and rezoning applications;
 - b. Conditional use permit applications;
 - c. Subdivision plat proposals; and
 - d. Development and/or site plans for any multifamily residential development of four or more dwelling units per building or any nonresidential development.
2. Administrative Review.
 - a. Generally. Written notices of all zoning and land use development activities listed in subsection (D)(1) of this section shall be provided as follows:
 - i. For all unincorporated areas, including airport-owned properties located within the joint-review area (shown in Exhibit D at the end of this chapter): the Johnson County Planning Office shall provide written notice to the Johnson County Airport Commission, and to the planning department of the applicable nearby city or cities (the city of Olathe and/or the City of Gardner);
 - ii. For all incorporated areas, including airport-owned properties located within any incorporated area: the city of Olathe planning department or the City of Gardner, as applicable, shall provide written notice to the Johnson County Airport Commission and to the Johnson County Planning Office.

The review procedures contained within this subsection may be further implemented through mutually agreed-upon departmental procedures established by the affected jurisdictions hereto. Said procedures may be supplementary to the review procedures established herein, but shall not, in any instance, supersede or nullify the review procedures established within this subsection. In the event of a conflict, either real or apparent, between such supplementary departmental procedures and the regulations contained within this subsection, the regulations contained within this subsection shall control.

- b. Jurisdictional Notice.
 - i. The Planning Commission Secretary, upon receipt of any zoning or land use development proposal or application as defined under subsection (D)(1) of this section, shall provide written notice and copies of all relevant documentation within seven days of their receipt, to the Johnson County Airport Commission (hereinafter referred to as the "Airport Commission") and to the planning departments of the city of Olathe (hereinafter referred to as the "city") and Johnson County (hereinafter referred to as "County"). The written notice shall be sent by certified mail, return receipt requested, and the notice shall invite and seek to obtain city and County review and comment regarding said proposals or applications.
 - ii. The Airport Commission, the city and County shall submit their comments to the Planning Commission Secretary within five working days after receipt of the notice and documentation. Failure on the part of the reviewing jurisdiction(s) to provide comments within this time frame shall indicate their concurrence with said proposal or application.
 - iii. The Planning Commission Secretary shall incorporate any such comments and recommendations received on the proposal or application within its review and shall include them in the official record related thereto;

- iv. The Planning Commission Secretary shall provide to the Airport Commission, the city and County a full and complete copy of its comments or recommendations upon the proposal or application at least seven days prior to the applicable Planning Commission meeting at which official consideration or action would be expected to be initiated;
 - v. The Airport Commission and the city shall notify the Planning Commission Secretary in writing, within three days of receipt of the Secretary's comments or recommendations, of any conflict or dispute related to the recommendations on the proposal or application;
 - vi. If no conflict or dispute is identified throughout this review procedure, the City of Gardner may proceed to take final action on the proposal or application through its regular review procedures, including as exhibits to the staff reports all comments submitted by the Airport Commission or the city;
 - vii. Upon receipt of any notice of conflict or dispute from the Airport Commission, city or County, the City of Gardner shall refrain from any official consideration or official action upon the proposal or application until representatives of the City of Gardner, the Airport Commission, city and County have met to discuss resolution of the conflict or dispute. Said meeting shall be held within 30 days following the receipt of notice of conflict or dispute;
 - viii. In the event the conflict cannot be resolved through mutually acceptable recommendations at the staff level, then the Planning Commission Secretary shall submit the joint review comments and recommendations to the Planning Commission for consideration and action. All comments received from the Airport Commission, city or County shall be included as exhibits to the staff reports;
 - ix. In the event the conflict or dispute cannot be resolved through mutually acceptable recommendations at the Planning Commission level, then all statements of objection and recommendations submitted by the Airport Commission, city or County shall be included as exhibits to the staff reports and shall be made a part of the official record on the proposal or application. The proposal or application shall then be submitted to both the Johnson County Board of County Commissioners and to the Governing Body for the City for final approval or denial. Both governing bodies must approve the proposal or application in order for said proposal or application to be granted; denial of a proposal or application by either of the governing bodies shall render said proposal or application denied. The two governing bodies shall take action on the proposal or application within 30 days of each other.
 - x. Appeals from a decision made by either the Johnson County Board of County Commissioners or the Governing Body for the City shall be processed pursuant to the appellate procedures established in GMC [18.130.150](#).
 - xi. The attached Exhibit E at the end of this chapter shall serve, by way of example, as a procedural diagram of the review and comment process.
3. Issuance of Permits. Permits for land uses or developments which have been approved pursuant to this chapter shall be issued by the Planning Commission Secretary. No permit for a land use which is inconsistent with any provision of this chapter shall be granted unless a variance has been approved as provided for in GMC [18.130.150](#).

18.130.120 Noise attenuation construction standards.

Attenuation of noise, or outdoor to indoor noise level reductions (NLR), by blocking noise paths or by use of other soundproofing measures, can reduce the impacts of aircraft noise on noise-sensitive land uses. It should be noted, however, that while compliance with the NLR criteria required in this section will reduce noise impacts, compliance will not eliminate, nor is it intended to eliminate, all indoor or outdoor noise problems resulting from outdoor noise sources.

- A. In the Noise Impact Area of the Land Use Zones within the Overlay District identified and shown in Exhibit E at the end of this chapter, if any building(s) or any portion(s) of any building(s) as follows are regularly occupied by humans more than four hours per day with respect to noise-sensitive land uses, compliance with the noise attenuation construction standards designated herein shall be required for:
1. All new building(s) or portions thereof,
 2. All addition(s) to any building(s) which existed before the adoption of the regulations in this chapter,
 3. All building(s) which existed before the adoption of the regulations in this chapter if alteration(s), repair(s) or renovation(s) costing more than 50 percent of the market value of the building immediately prior to the alteration(s), repair(s) or renovation(s) are undertaken.

The Planning Commission Secretary shall determine whether the proposed alteration(s), repair(s) or renovation(s) would cost more than 50 percent of the market value of such building(s). The determinations shall be made with respect to evidence from the tax appraisal records, the estimated cost(s) of the proposed alteration(s), repair(s) or renovation(s), and, if necessary for an accurate determination, with respect to evidence from qualified, independent, third-party real estate appraisals and evidence from qualified, independent, third-party estimates of the construction cost(s).

Furthermore, the noise attenuation construction standards contained herein are strongly recommended, although not required, throughout all other areas of the Overlay District.

- B. The above identified types of buildings, structures or portions thereof shall be provided with acoustical treatment at the time of construction which is capable of providing a noise level reduction (NLR) of a total of 30 decibels. For comparative purposes, normal construction standards can be expected to provide an NLR of 20 to 25 decibels.

This standard shall be met by the applicant submitting, at the time of building permit application, a verification statement by an acoustical engineer or other qualified professional engineer or architect that the design of the structure and the construction practices and/or materials of the structure will achieve the specified interior noise level reduction. The acoustical professional shall submit relevant information to permit the Planning Commission Secretary to verify that the proposed measures will achieve the interior noise level reduction standard.

18.130.130 Nonconforming uses.

- A. Regulations Not Retroactive. The regulations prescribed in this chapter shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to these regulations when adopted or amended, or otherwise interfere with the continuance of such nonconforming use, except as provided in subsection (C) of this section.
- B. Removal or Relocation of Poles and Lines. The City may require, upon 30 days' notice in writing to any person, firm, association, or corporation owning and maintaining any nonconforming pole or pole line upon the roads and highways immediately adjoining the airport, to remove, lower, change, or alter said nonconforming pole or pole line upon prior payment by the City to said person, firm, association, or corporation of the reasonable and necessary expense of removing, lowering, changing, or altering said pole or pole lines; or in lieu thereof to execute good and sufficient bond with corporate surety thereon as security for the payment of the reasonable and necessary expense of removing, lowering, changing, or altering such pole or pole lines. Reasonable and necessary expense of removing, lowering, changing, or altering said pole or pole lines shall include, among other items of expense, the actual cost of: (1) constructing underground conduits and the construction of such wires and equipment in such conduits, and (2) rerouting wires together with the poles, cross arms and other equipment connected thereto, together with the cost, if any, of new right-of-way made necessary by such rerouting. The City of Gardner shall not be held to be responsible for payment for the removal or relocation of poles and lines, if said costs have been previously addressed through franchise agreement.

C. Termination of Nonconforming Uses.

1. Abandonment. Where there has been a discontinuance of a nonconforming use for a period of one year, or where there has been an express acknowledgment by the property owner that the use has in fact been abandoned, regardless of the time period involved, then said nonconforming use shall be considered abandoned, and such nonconforming use shall not thereafter be used.
2. Partial Destruction. Any nonconforming use which, as a result of fire, explosion, or other casualty, has been damaged to the extent of more than 50 percent of its value immediately prior to damage shall thereafter be terminated, and any new construction, repair, alteration, and/or renovation shall be in accordance with the regulations in this chapter.
3. Change of Nonconforming Use. Whenever a nonconforming use has been changed to a more restrictive or conforming use, such previously existing nonconforming use shall not thereafter be allowed.
4. Nonconforming Use Not to be Expanded. Any existing nonconforming use, structure or tree shall not be expanded so as to permit it to be made or become higher or become a greater hazard to air navigation than it was when the regulations contained herein were adopted or than it was when the application for a permit was made.

18.130.140 Hazard marking and lighting.

In granting any permit or variance under this section, Johnson County may, if it deems such action advisable to effectuate the purposes of the regulations in this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the County, at its own expense, to install, operate, and maintain such markers and lights as may be necessary to indicate the operators of aircraft in the vicinity of the airport the presence of such airport hazards.

18.130.150 Administration.

- A. Enforcement. It shall be the duty of the Planning Commission Secretary to administer and enforce the regulations in this chapter. Violations of these regulations shall be processed in accordance with the City of Gardner zoning ordinance and subdivision regulations concerning violations thereof.
- B. Interpretations. In the event an administrative interpretation of the regulations in this chapter is necessary, said interpretation shall be made by the Planning Commission Secretary or such person's designee such that the result will not be contrary to the spirit, intent, and purpose of the regulations in this chapter. The interpretation may include the classification of uses which are not specifically listed as a permitted or conditional use in the underlying zoning district, and those not included as a prohibited use by GMC [18.130.110](#), or of the appropriate zoning procedures for said proposed use. If it is determined by said Planning Commission Secretary that the interpretation could constitute a significant departure from the normal interpretational decisions typically made by the Planning Commission Secretary, then the Planning Commission Secretary shall notify the directors of all affected jurisdictions which are a party to the regulations in this chapter, including the Executive Director of the Airport Commission, informing them of said interpretation. The director of any affected jurisdiction, including the Executive Director of the Airport Commission, may appeal said interpretation through the appeals procedures established within this section.
- C. Amendments. Amendments to the regulations in this chapter may be proposed by any affected jurisdiction which is a party to these regulations. If an amendment is initiated by the City of Gardner, the amendment shall be processed in the manner prescribed in the City of Gardner zoning ordinance and subdivision regulations and in accordance with all regulations contained therein. The Gardner Planning Commission shall make a recommendation to the Governing Body, who will then, after review and recommendation from the Johnson County Airport Commission and all affected jurisdictions hereto, take final action to approve or disapprove the proposed amendment.

- D. Variances. Any landowner desiring to erect or increase the height of any structure or permit the growth of any tree or otherwise use his property in violation of the airport zoning regulations in this chapter may apply for a variance from the regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations in this chapter would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations. Any variance may be allowed subject to any reasonable conditions that the City of Gardner may deem necessary to effectuate the purposes of the regulations in this chapter. Such variances shall be processed in the manner prescribed in the City of Gardner zoning ordinance and in accordance with all regulations contained therein, with review and comment from the Johnson County Airport Commission and all other affected jurisdictions in the manner required by the regulations in this chapter.
- E. Appeals. (Reserved)
- F. Severability. If any of the provisions of the regulations in this chapter or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application and, to this end, the provisions of these regulations are declared to be severable.
- G. Effective Date. The regulations in this chapter and all exhibits hereto shall be in full force and effect from and after its adoption by all affected jurisdictions: the city of Olathe, Kansas, the City of Gardner, Kansas, and the County of Johnson, Kansas, and the regulations in this chapter shall be incorporated into and declared a part of the City of Gardner zoning ordinance.
- H. Recording of Notice of Overlay District Zoning. Following the adoption of the regulations in this chapter by the Governing Body, the Planning Commission Secretary shall prepare and record notices for all properties located within the Overlay District stating that the property is located within this special Overlay District and is therefore subject to certain restrictions which have been placed on the development and use of land within this Overlay District. The notice shall also state that the zoning of the property has been changed to include the Airport Interest Area suffix "AOD" designating the property's location within this Overlay District. The form attached at the end of this chapter as Exhibit F shall serve as a model for said notice. A copy of said notice shall be sent to the property owner of record as of the effective date of these regulations by certified mail, return receipt requested.

Approved by the City of Olathe, Kansas.

Approved by the City of Gardner, Kansas.

Approved by the Johnson County Board of County Commissioners.

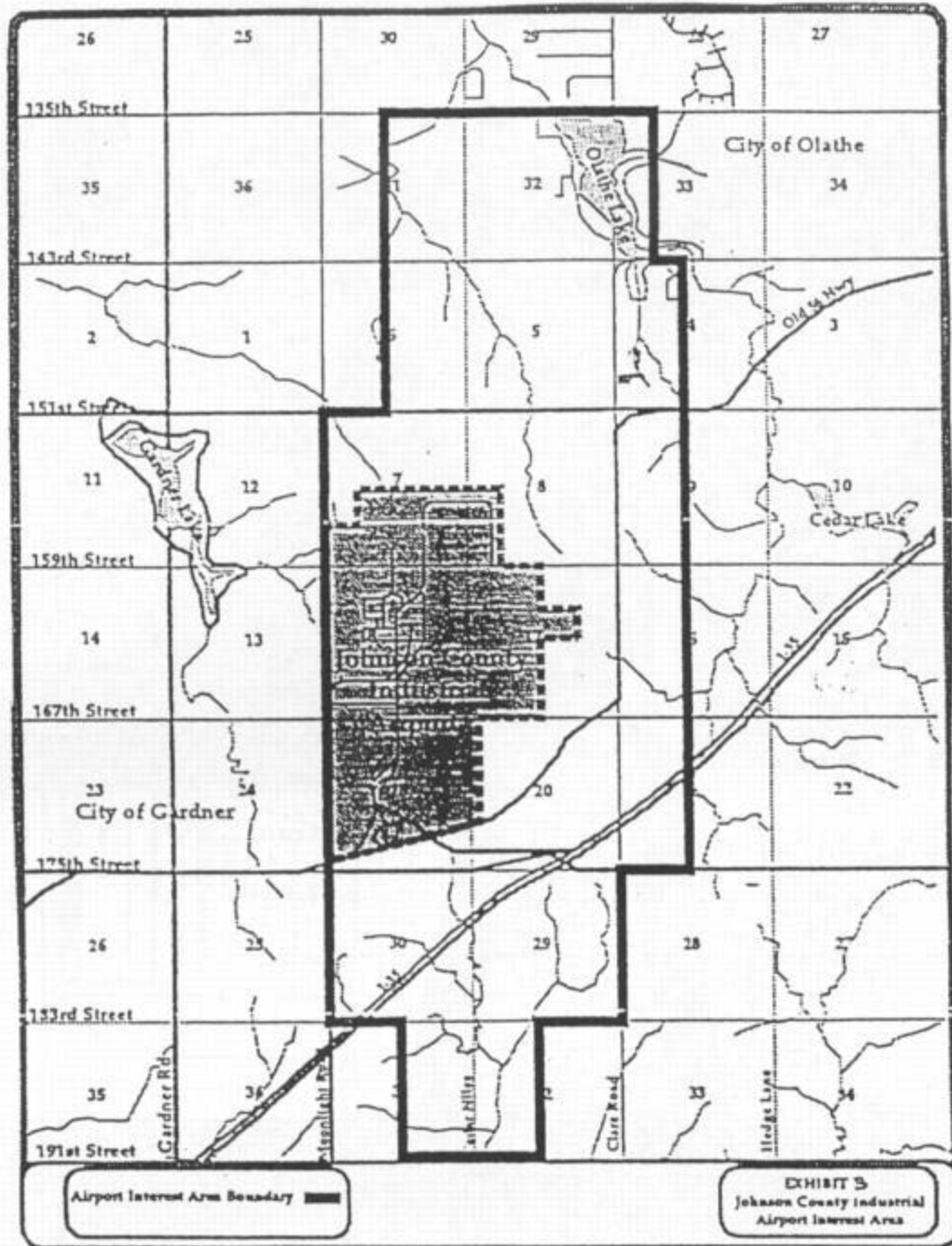


Exhibit B

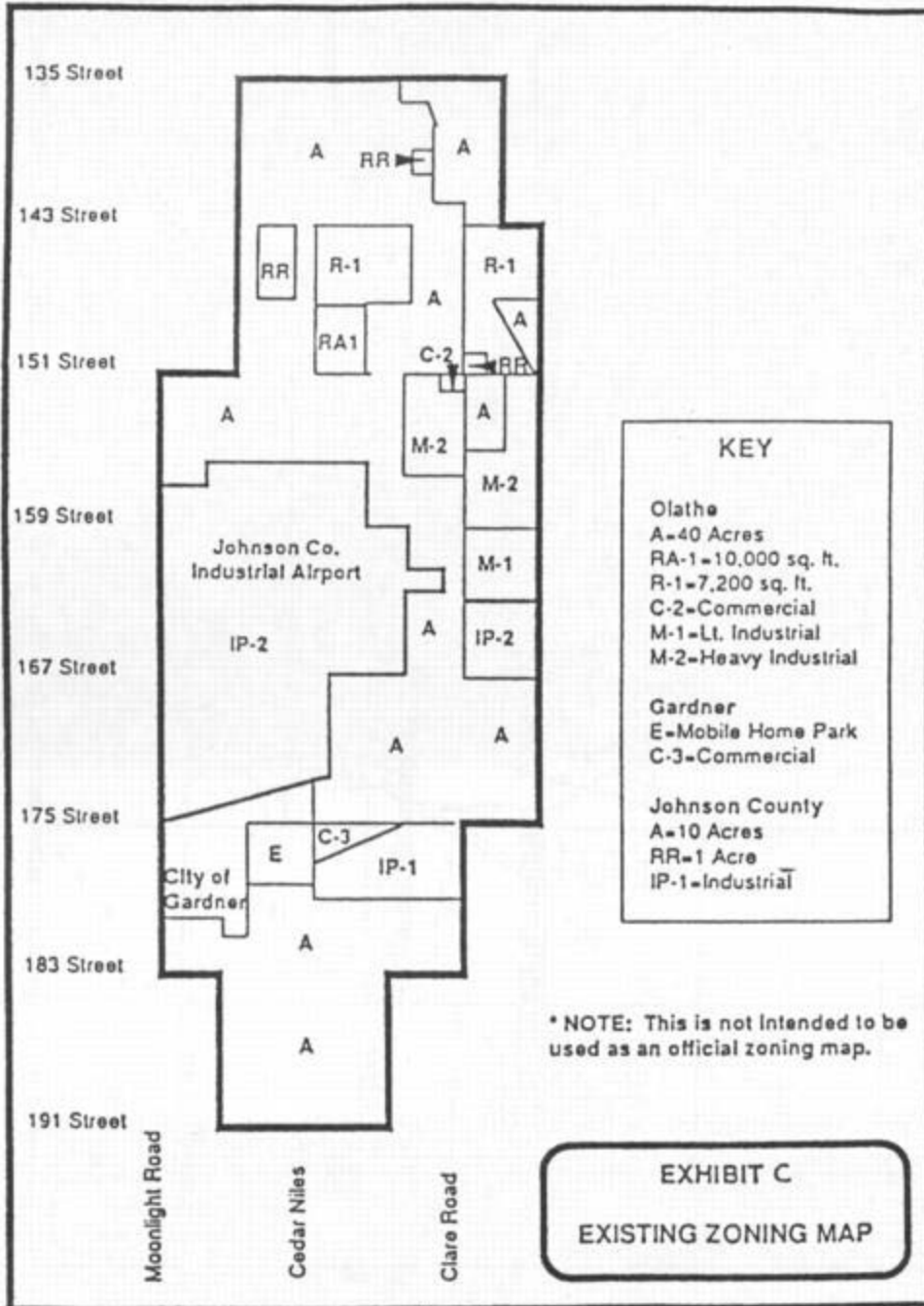


Exhibit C

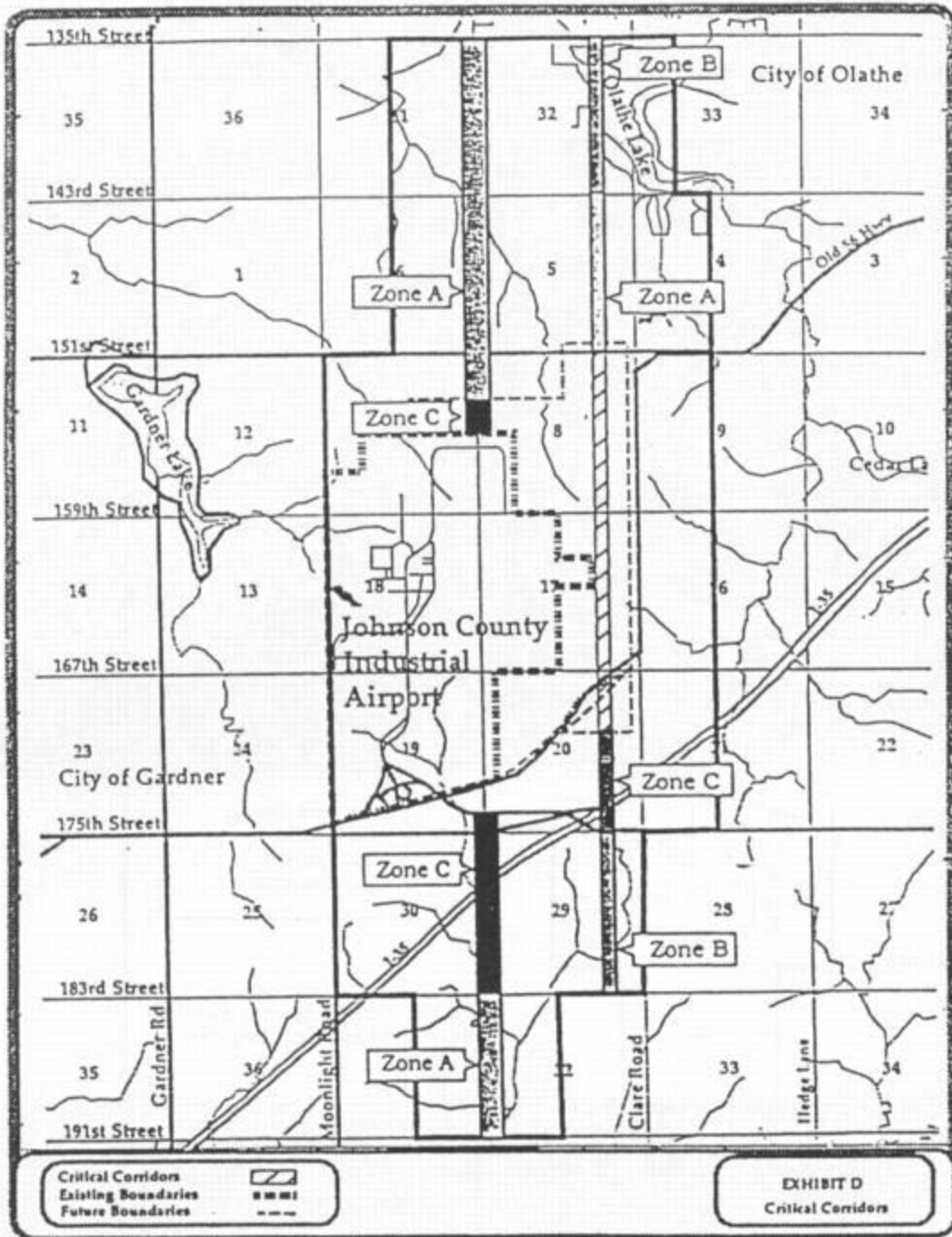


Exhibit D

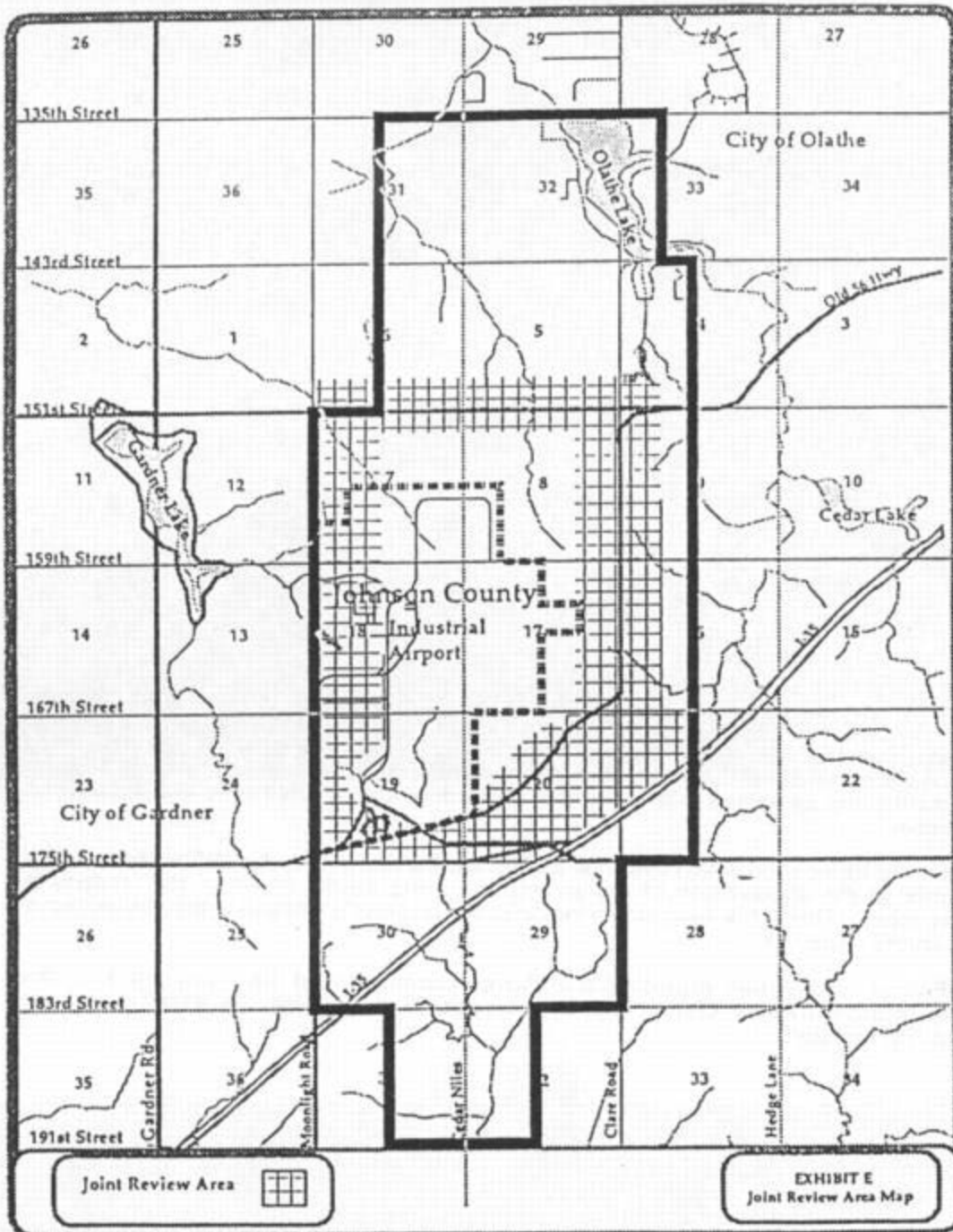


Exhibit E

EXHIBIT F

AFFIDAVIT OF INTEREST

Notice is hereby given by the filing of this affidavit of interest that the property addressed as _____ and legally described as:

is located within the Industrial Airport Overlay District (hereinafter referred to as "Overlay District") as adopted by the City of Gardner, Kansas. Pursuant to the property's location within this Overlay District, the property is subject to certain restrictions which have been placed on the development and use of land within the Overlay District which are in addition to the restrictions contained within the City of Gardner Zoning Ordinance and Subdivision Regulations.

Due to its location within this Overlay District, the designation "AOD" has been added as a suffix to the abbreviation of the underlying zoning district in which the property is currently zoned. This suffix designation indicates the property's location within the Industrial Airport Overlay District.

Further information regarding the above referenced land use restrictions of the Industrial Airport Overlay District can be obtained by contacting the Secretary of the Planning Commission.

Chapter 18.135 INDUSTRIAL PARK OVERLAY DISTRICT

Sections:

- [18.135.010](#) Purpose and intent.
- [18.135.020](#) Use regulations.
- [18.135.030](#) Boundary of Overlay District.
- [18.135.040](#) District regulations.
- [18.135.050](#) Performance standards.
- [18.135.060](#) Interpretations.

18.135.010 Purpose and intent.

The Industrial Park Overlay District is established to promote a high-quality industrial park development with an emphasis on aesthetics, compatibility and overall site integration. The district is intended to enhance the visual image of the City of Gardner and buffer the impacts of higher-intensity development while allowing the necessary function of an industrial park development.

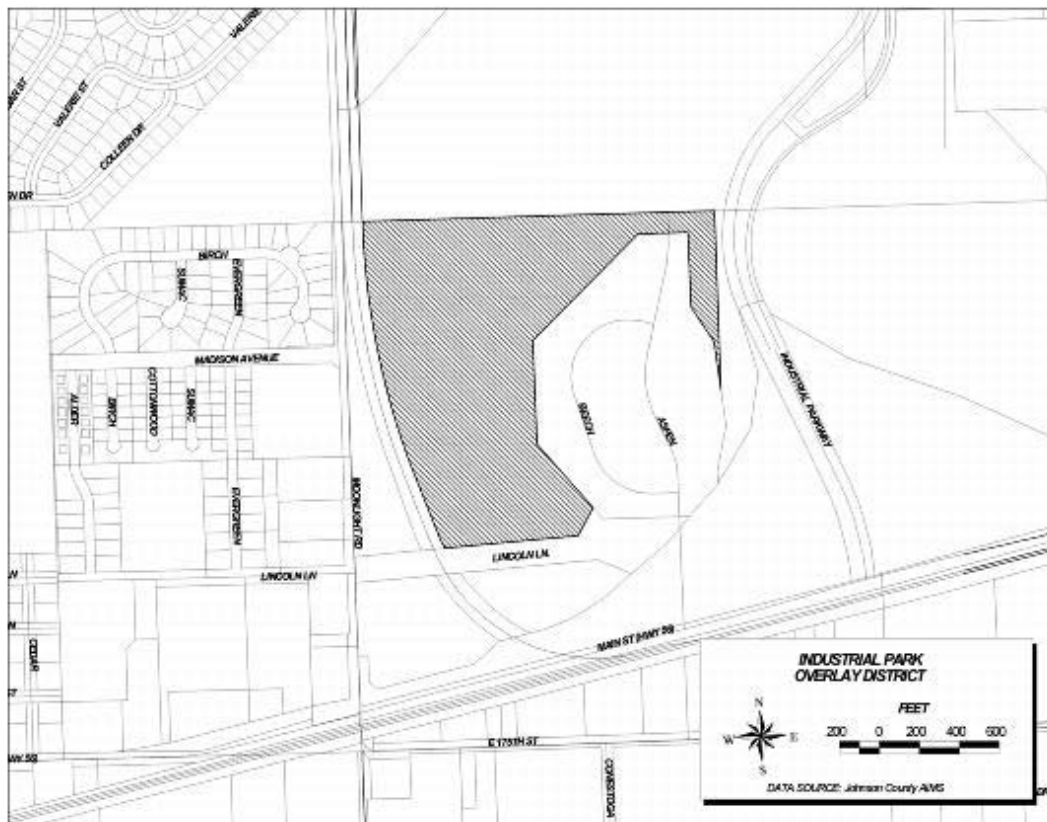
18.135.020 Use regulations.

Uses permitted in the underlying zoning district are permitted in the Industrial Park Overlay District, along with uses permitted as conditional uses.

18.135.030 Boundary of Overlay District.

The Industrial Park Overlay District shall include that area generally located at the northeast corner of the intersection of Highway 56 (Main Street) and Moonlight Road. This area includes lots, tracts, or parcels of land bound by the Burlington Northern Santa Fe Railroad to the West, Lincoln Lane to the South and multifamily housing to the East (see Figure A).

Figure A
Boundary of Overlay District



18.135.040 District regulations.

The requirements of both the Industrial Park Overlay District and those of the underlying zoning district shall apply. When the base and overlay district regulations conflict, the most restrictive requirements shall take precedence, unless modified by the Planning Commission. In the Industrial Park Overlay District, no building or land shall hereafter be used, and no building or structure shall be erected, altered or enlarged other than in accordance with the regulations of this chapter.

18.135.050 Performance standards.

Upon submission of an application for a building permit, the applicant shall prepare a site plan, building elevations and landscaping plan in sufficient detail as necessary for the Community Development Director to determine compliance with the Industrial Park Overlay District design objectives.

A. Site and Building Design.

1. Compatibility with Other Development.

- a. The form and proportion of buildings shall be consistent or compatible with the scale, form and proportion of other development within the industrial park.
- b. The rhythm of structural mass to voids, such as windows and glass doors, of a front facade shall generally relate to the rhythms established in adjacent buildings.
- c. Care shall be exercised to coordinate final grades and site arrangement with those of adjoining properties and streets.

2. Location. Buildings shall be located to ensure the provision of adequate open space for outdoor gathering areas, facilities, services and amenities and to provide natural indoor light, air and privacy to the extent possible. All buildings, parking lots and other structures shall be located to integrate with the natural topography and to avoid deep cuts and fills, excessive foundation wall depth, unnecessary steps and steep access gradients.

3. Lot Coverage. The maximum lot coverage shall be 70 percent. Lot coverage includes those portions of the net site area covered by the ground floor of any structure, parking lots, and private streets and drives. Lot coverage does not include sidewalks or plazas.

4. Design Focus. The front facade of a building as well as the main entrance(s) shall be designed as focal points to the building. The main entrances shall incorporate devices such as canopies, overhangs, arcades, raised parapets over the door, larger door openings, display windows, accent colors, and other architectural details such as moldings. The remaining portions of the building shall be designed in a way that complements and is consistent with the building's street facade.

5. Visual Interest.

- a. Architectural design shall create visual interest through the use of different textures, complementary colors, shadow lines and contrasting shapes. Monotonous design shall be avoided. Variation of detail, form, and siting shall be used to provide visual interest. Facades shall be articulated with variations in the building plane and parapet height, materials and colors, entrance canopies, and landscaping.

At a minimum, facades facing a public or private street shall incorporate at least two of the following features along each applicable facade. These standards shall be applied to each facade individually:

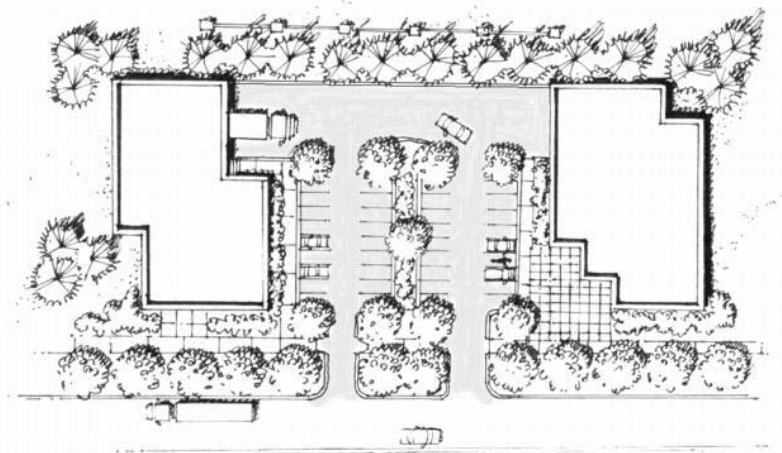
- i. Recesses and projections along at least 20 percent of the length of the building facade.
- ii. Windows, awnings, arcades or other significant architectural feature used along at least 60 percent of the front building facade length or 30 percent of the side or rear building facade length.

- iii. Brick, natural or fabricated all-weather stone covering at least 50 percent of the area when applied to the front building facade or 25 percent of the area when applied to a side or rear building facade.
 - iv. Landscaping islands or planting against the building, covering at least 30 percent of the length of the building facade.
 - b. Loading docks, trash enclosures, outdoor storage and similar facilities and functions shall be incorporated into the overall design of the building and the landscaping so that the visual and acoustic impacts of these functions are reduced to as great an extent as possible and are out of view from adjacent properties and public street.
 - c. Long expanses of overhead doors shall be relieved by matching their color to the wall or trim, recessing the doors, or adding architectural details to diminish the dominance of the doors.
 - d. The use of unusual shapes, color and other characteristics that cause new buildings to call excessive attention to themselves and create disharmony shall not be allowed.
6. Materials.
- a. The use of high-quality materials such as brick, glass, stucco, natural and fabricated stone, treated wood or similar durable and visually pleasing material shall be used on the front facade and main entrances to the building. The remaining portions of the building shall be designed to be compatible with the front facade and building entrance features. The following construction materials shall be permitted:
 - i. Reinforced Concrete and Masonry. A concrete finish or precast concrete panel (tilt-wall) must have an exposed aggregate, be hammered or sandblasted, or be covered with a cement-based acrylic coating to add visual interest. Masonry includes solid cavity-faced or veneered-wall construction or materials. Brick material used for masonry shall be composed of hard fire (kiln-fired) all-weather common brick or other all-weather facing brick.
 - ii. Corrugated Metal or Aluminum Panels. The use of panels on front building facades or side building facades when abutting a public or private street is prohibited. Corrugated metal or aluminum facades shall be complemented with the use of masonry, whether brick, stone, stucco, split-face block, or broken up with the use of landscaping. Panels shall have a depth of one inch or greater and/or a thickness greater than U.S. Standard 26 gauge.
 - iii. Stucco or Gypsum Concrete/Plaster. These materials shall be complemented with the use of masonry, whether brick, stone, stucco, split-face block, or broken up with the use of landscaping.
 - iv. Treated Wood. The use of wood paneling or plywood on the front building facade or side building facades when abutting a public or private street is prohibited.
 - v. Structural steel or structural aluminum.
 - vi. Glass.
 - b. All elevations of the building shall be designed in a consistent and coherent architectural manner.
 - c. Where a change in material, color, or texture along the exterior side of a building is proposed, the demarcation of the change shall occur a minimum of 20 feet on both adjacent sides of the building or to the natural dividing point established by the physical plan of the building.
7. Building Color. Building color shall be limited to light, medium, and dark shades of earth tone gold and brown colors. Approximately 90 percent of each building wall surface shall be light

and medium colors. The remaining surfaces shall be restricted to a darker color. The use of walls in a single color, with little detailing or completely blank, is not permitted.

8. Roofs. Careful consideration of durable materials, proportions, and shapes, emphasizing the importance of roofs as integral and embracing elements of the overall design, is particularly important. Building roof tops shall have at least two of the following features:
 - a. Parapets concealing flat roofs and roof top equipment;
 - b. Overhanging eaves;
 - c. Sloped roofs;
 - d. Three or more roof slope planes.
9. Parking.
 - a. Parking shall be designed in ways that do not overpower the character of the development nor appear as a dominant feature of the site.
 - b. With the exception of customer/visitor parking, parking shall be located to the rear and interior side of the building. Customer/visitor parking stalls shall be located to the front or street side of the building; provided, that screening and bonus landscaping is designed as follows:
 - i. The parking area shall not exceed 30 percent of the overall parking area developed;
 - ii. Parking shall not span more than 50 percent of the lot width or depth;
 - iii. Parking shall not be located closer than 20 feet to the front or street-side property or lease line;
 - iv. Parking shall be screened as required for parking visible from residential development (see subsection (C)(13) of this section); and
 - v. Planting islands shall cover a minimum of 10 percent of the parking area located to the front or street side of the building. Parking islands shall be planted with a minimum of one ornamental tree and shrubbery and/or ground cover.
 - c. On-street parking or loading is prohibited.
 - d. Off-street parking and loading shall be provided on the same lot as the use served except as otherwise approved as part of a shared parking concept (see Figure B).

Figure B
Shared Parking Concept



Parking is designed to be shared between adjacent sites. The shared parking concept maximizes usable space and provides additional traffic circulation.

B. Pedestrian Access and Circulation.

1. Access. Pedestrian access shall be an integral part of the overall design of the development. The pedestrian access shall provide not only safe and convenient access to and from off-street parking areas but shall also connect with abutting properties and developments so as to accommodate an alternative means of transportation such as walking or biking to and from work and surrounding activities. Access to site or park amenities shall also be provided.
2. Sidewalks.
 - a. Sidewalks at least five feet in width shall be provided along all sides of a lot that abut a dedicated public or private street. A continuous internal pedestrian sidewalk shall be provided from the perimeter public sidewalk to the principal building entrance(s).
 - b. Sidewalks shall be provided along the full length of any facade featuring a customer entrance and along any facade abutting a public parking area. Such sidewalks shall be located at least 10 feet away from the building facade to provide planting areas for landscaping along the foundation of the building.
3. ADA Compliance. All sidewalks, crosswalks, parking lots, or other areas of pedestrian circulation shall comply with ADA accessibility guidelines and standards.

C. Landscaping and Screening.

1. Landscaping Plan. Every site on which a building will be placed shall be landscaped in accordance with plans and specifications submitted according to the landscaping regulations of Chapter [18.165](#) GMC, except as otherwise specified herein. An on-site grading plan will be part of this landscape plan. The landscape plan must be submitted for review along with the building plans.
2. Installation. Required landscaping or screening shall be installed at the time of building construction as the season permits. All other materials shall be installed during the next planting season.
3. Maintenance. The plan shall include provision for ground maintenance such as an adequate supply of hose bibs. After completion, such landscaping shall be maintained in a slightly and well-kept condition.
4. Grass Sod and Seed, and Ground Cover. The required front and street side yards shall be entirely graded and sodded or seeded from the existing or proposed street curb back to the building excepting only such areas used for plantings, drives, parking, or walks. Rear yards and interior side yards shall be seeded or sodded except areas used for plantings, storage, parking, drives, or walks. Other types of ground cover in limited areas may be approved. All existing trees shall be saved when possible.
5. Street Trees. One street tree shall be required for every 40 feet of street frontage. Street trees shall be located in the street yard setback, and shall not be located in the right-of-way.
6. Landscape Materials. Landscape materials used for required landscaping and screening shall be from the "Permitted Plant Materials" list (see Table A), unless otherwise approved by the Community Development Director. Evergreen trees and shrubs shall be used as the primary landscape materials when required for screening or buffering.

**Table A
Permitted Plant Materials List**

| Scientific Name | Common Name |
|---|--------------------------|
| Deciduous Trees | |
| Acer rubrum | Red Maple |
| Fraxinus americana | White Ash |
| Fraxinus excelsior | European Ash |
| Fraxinus pennsylvanica | Green Ash |
| Gleditsia triacanthos | Honeysuckle |
| Populus alba | White Poplar |
| Quercus acutissima | Sawtooth Oak |
| Quercus macrocarpa | Bur Oak |
| Quercus rubra | Red Oak |
| Quercus shumardi | Shumard Oak |
| Ulmus parvifolia | Lacebark Elm |
| Evergreen Trees | |
| Picea abies | Norway Spruce |
| Picea pungens | Colorado Blue Spruce |
| Pinus cembroides | Pinyon Pine |
| Pinus densiflora | Japanese Red Pine |
| Pinus nigra | Austrian Pine |
| Pinus ponderosa | Ponderosa Pine |
| Pinus resinosa | Red Pine |
| Pinus strobus | White Pine |
| Pseudotsuga menziesii | Douglas Fir |
| Ornamental (Small Deciduous) Trees | |
| Ilex decidua | Deciduous Holly |
| Koeleruteria paniculata | Panicled Golden Raintree |
| Malus species | Flowering Crabapple |
| Morus alba | White Mulberry |
| Prunus armeniaca | Apricot |

| | |
|----------------------------|-------------------------|
| Salix discolor | Pussy Willow |
| Salix matsudana "Tortuosa" | Corkscrew Willow |
| Sapindus drummondii | Western Soapberry |
| Syringa reticulata | Japanese Tree Lilac |
| Deciduous Shrubs | |
| Berberis thunbergii | Japanese Barberry |
| Cornus stolonifera | Red-Osier Dogwood |
| Cotoneaster species | Cotoneaster |
| Euonymus alata | Burning Bush |
| Forsythia species | Forsythia |
| Hibiscus rosa-sinensis | Rose of Sharon |
| Kolwitzia amabilis | Beautybush |
| Ligustrum species | Privet |
| Lonicera fragrantissima | Winter Honeysuckle |
| Rhibes alpinum | Alpine Currant |
| Spiraea x vanhouttei | Vanhoutte Spiraea |
| Syringa vulgaris | Common Lilac |
| Evergreen Shrubs | |
| Buxus sempervirens | Common Box |
| Lonicera japonica | Japanese Honeysuckle |
| Mahonia bealei | Leatherleaf Mahonia |
| Pyracantha coccinea | Pyracantha |
| Pyracantha koidzumii | Formosa Pyracantha |
| Juniperus chinensis | Chinese Juniper |
| Pinus mugo | Mugo Pine |
| Ground Cover | |
| Aegopodium podagraria | Bishop's Weed |
| Euonymus fortunei | Evergreen Wintercreeper |
| Hedera helix | English Ivy |
| Juniperus davurica | Parson's Juniper |
| Juniperus horizontalis | Creeping Juniper |

| | |
|-----------------------|-------------------------|
| Juniperous procumbens | Japanese Garden Juniper |
| Liriope muscari | Liriope |
| Vinca major | Periwinkle |
| Vinca minor | Common Periwinkle |
| Perennials | |
| Achillaea sp. | Yarrow |
| Aster sp. | Daisy |
| Asclepasis tuberosa | Butterfly Weed |
| Coreopsis vert. | Threadleaf Coreopsis |
| Dianthus sp. | Sweet William |
| Hemmerocallis sp. | Daylily |
| Iris sp. | Bearded Iris |
| Bulbs | |
| Crocus sp. | Crocus |
| Narcissus sp. | Daffodils |
| Tulipa sp. | Tulips |

7. **Roof-Mounted Equipment.** Roof-mounted equipment, including ventilators, and satellite dishes greater than 30 inches shall be screened from view (100 percent opacity) or isolated so as not to be visible from ground level of any adjacent public thoroughfare or residentially zoned area, up to a maximum of 300 feet away. Screening shall completely obscure from ground level all surfaces of the equipment. The appearance of roof screens shall be coordinated with and integral to the building design to maintain a unified appearance, not merely a separately designed afterthought. It is not the intent of this requirement to increase the height of the screening significantly above that of the equipment in order to screen it from view from tall buildings or from higher ground.
8. **Utilities.** All telephone and cable television lines, electrical services and distribution lines shall be placed underground, except that this provision shall not include meters, electric and telephone service pedestals, transformers, three phase feeder lines, subtransmission and transmission lines, electrical substations and such other facilities as the utility may deem necessary to install utilizing "overhead" type construction. These above ground utilities shall be located as close to the building as permitted by the utility company and screened from view of public streets to the extent possible through the use of landscaping or screening walls that are integrated into the overall site design.
9. **Mechanical Equipment.** All electrical and mechanical equipment located adjacent to the building and visible from any adjacent public thoroughfare or residentially zoned area shall be screened from view (100 percent opacity), up to a maximum of 300 feet away. Screening shall completely obscure from ground level all surfaces of the equipment. Such screens and enclosures shall be treated as integral elements of the building's appearance.
10. **Trash.** All trash, refuse, debris or garbage shall be contained within an enclosed building or container designed for such purposes. Outdoor containers or dumpsters shall be shielded on all sides by a wall or decorative fence constructed of the same or complementary

materials to those used on the primary building. The use of landscaping to further decrease the visual impact of the trash enclosures is encouraged.

11. Loading Docks.

- a. Loading areas shall not be located at the front of the building, and, where visible from the front of the building, shall be screened from view from the street and neighboring properties.
- b. Where visible from a public street or residential-zoned property, the visual impact of loading docks shall be minimized to the greatest extent possible through the use of landscaping, fences and berms.
- c. Where possible, the screening shall be an integral part of the building structure and be used in conjunction with landscaping, ground cover, trees and shrubbery. If the screening is not an integral part of the building, then landscaping, ground cover, trees and shrubbery shall be used to screen the loading area.

12. Exterior Storage. Except during permitted construction periods, all exterior storage of equipment, raw materials or finished products shall be fully screened from the view of adjacent parcels and streets by a visual barrier such as a solid screen fence. Such exterior storage shall not exceed the height of the barrier. The barrier shall be a minimum of six feet in height. Additional height or screening such as landscaping may be required based upon the height of the items to be screened. Chain-link fence with vertical slats shall not be permitted.

13. Parking. Parking lots shall be screened from view from surrounding residential development. Such screening shall be effective to a height of 42 inches for vehicles under six feet in height. For vehicles over six feet in height, the screen shall be effective to a height of six feet. If landscaping is utilized to provide screening, the effective height shall be reached upon maturity, but in no case shall the initial effectiveness be less than 50 percent of that required.

14. Signs. Landscaping shall be included in the design of all ground signs at the entrance to the sight. The use of ornamental trees, flowering or ornamental shrubs and ground covers are encouraged.

D. Lighting.

1. Light Mitigation. Cut-offs and lighting shields shall be used to prevent spill over and glare onto adjoining streets and residential properties. Exposed lighting sources such as unshielded wall packs shall not be permitted.
2. Color. Lighting shall predominantly consist of lights that have a "warm" appearance. Parking lot lighting shall be of a type that provides sufficient lighting for safety and security without distorting the perception of color. Low-pressure sodium lights may not be used in parking areas or at main entrances.
3. Coverage. Light coverage shall be localized as part of an overall lighting plan. Light fixtures that broadcast light over large areas or that are a source of glare, sky-glow or other light pollution shall not be permitted.
4. Height.
 - a. Building-mounted lighting shall not extend above the roof line of the building on which it is mounted.
 - b. Pole lighting heights shall be as shown on the lighting standard illustrations on the following pages.
5. Lighting Standards. Lighting standards (poles) shall be as shown in Figures C and D.

Figure C
Typical Light Standard for Streets, Walkways and Small Parking Areas

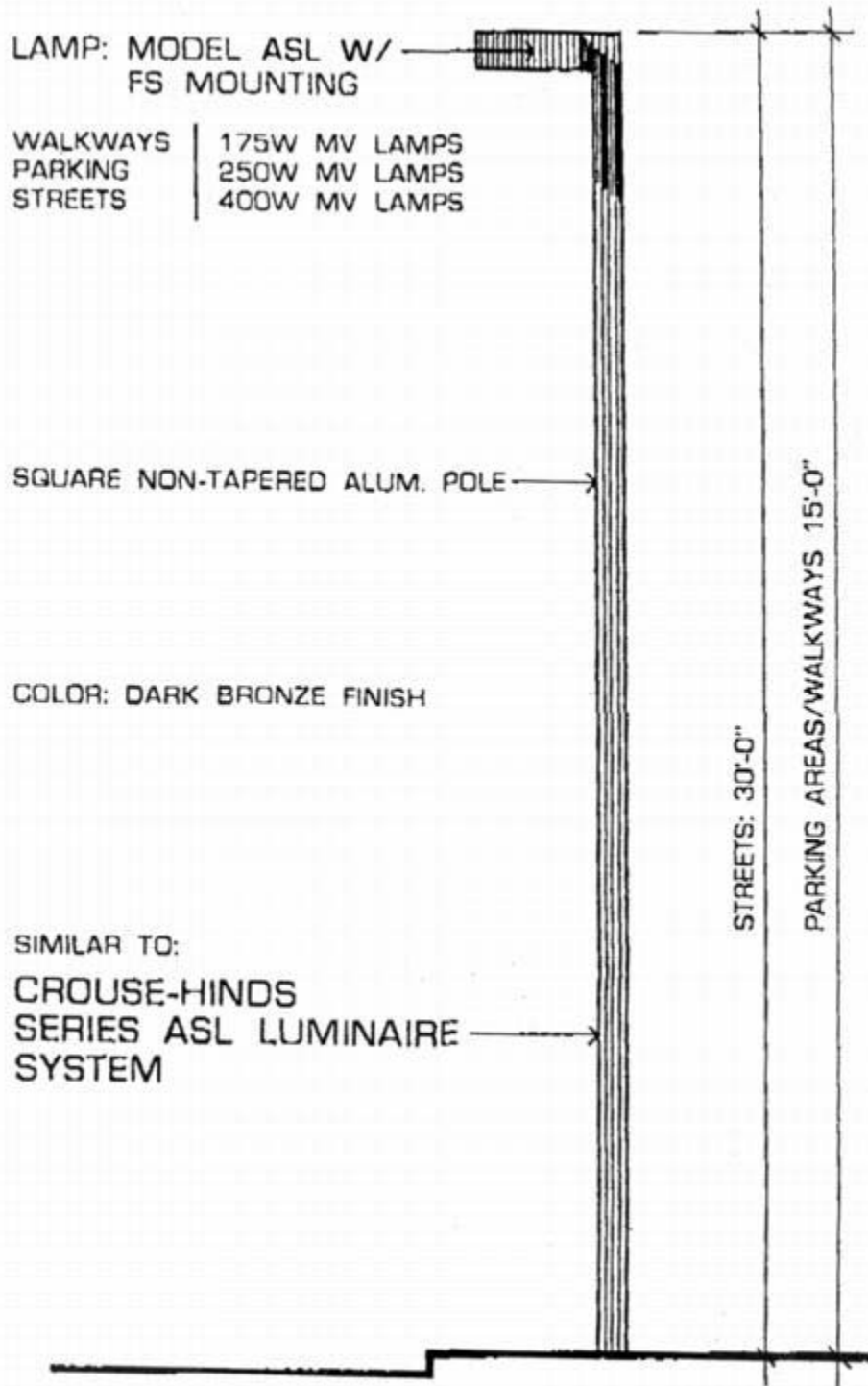
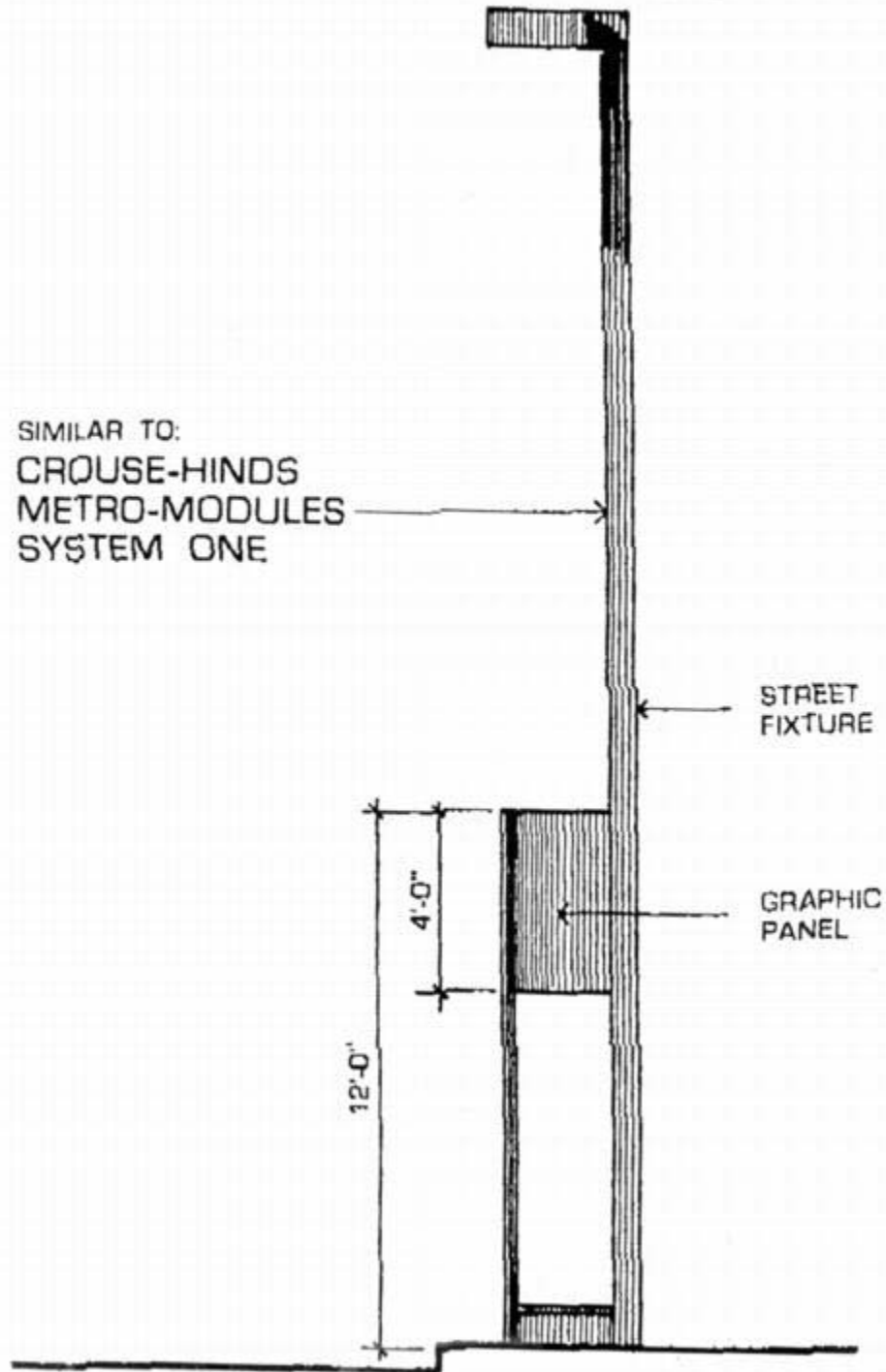


Figure D
Typical Light Standard with Metro Module System*



* To be installed at street intersections and other locations where appropriate information is needed to help identify and locate areas in the park.

E. Signs.

1. Types of Signs Permitted.

- a. On-site ground sign: a sign on one or more supports erected parallel with (one-sided) or at right angles to (two-sided) the street frontage. The ground sign shall not exceed four feet in height from ground elevation, and shall not exceed 50 square feet in area (see Figure E).
 - b. Wall sign: a sign at the main entrance to the building displaying the company name and address only. Wall signs shall be limited to 10 square feet in area. Wall signs shall be constructed of raised lettering of a single color complementary to that of the building, and shall not project more than one foot from the face of the building. The sign shall be placed no more than six feet from the ground elevation.
 - c. On-site temporary sign – ground or wall: a sign for the purposes of describing a construction or improvement project or advertising the lease of a site or buildings. The sign shall be limited to 32 square feet and shall not remain longer than completion of construction.
2. Message. Signs shall be limited to advertising only the names of the firms, companies or corporations operating the use conducted on the site or the products produced or sold thereon.
 3. Movement. Signs shall not rotate, gyrate, blink or move in any animated fashion.
 4. Illumination. Illumination of the signs shall be limited to 40 percent of the surface of the sign for non-neon lighting and 10 percent for neon lighting. In all instances, illumination shall not be a nuisance to surrounding property nor conflict with aircraft operations. All lighting shall be shielded and confined within property lines. Internal illumination brightness level shall be from 100 to 200 foot lam.

Chapter 18.140 ACCESSORY USES

Sections:

| | |
|----------------------------|------------------------------------|
| 18.140.010 | Purpose and intent. |
| 18.140.020 | Definitions. |
| 18.140.030 | Complaints. |
| 18.140.040 | Appeals. |
| 18.140.050 | Nonconforming occupations. |
| 18.140.060 | Other requirements. |
| 18.140.070 | Private walk or drive. |
| 18.140.080 | Eligibility for accessory use. |
| 18.140.090 | Accessory uses and buildings. |
| 18.140.100 | Districts R-1 and R-2. |
| 18.140.110 | Districts R-3, R-4, and R-5. |
| 18.140.120 | Districts C-O, CO-A and C-1. |
| 18.140.130 | Districts C-2 and C-3. |
| 18.140.140 | Districts M-1 and M-2. |
| 18.140.150 | Special uses and conditional uses. |

18.140.010 Purpose and intent.

It is the purpose and intent of this chapter to:

- A. Maintain neighborhood integrity and preserve the residential character of neighborhoods by encouraging compatible land uses.
- B. Provide residents of the City with an option to utilize their residences as places to enhance or fulfill personal economic goals as long as the choice of home occupations does not infringe on the residential rights of neighbors.
- C. Establish criteria for operating home occupations in dwelling units within residential districts.
- D. Assure that public and private services such as street, sewer, water or electrical systems are not burdened by home occupations to the extent that usage exceeds that which is normally associated with a residence.

18.140.020 Definitions.

A home occupation is an accessory use by the occupant(s) of a dwelling unit in which goods are produced or traded, or services are rendered as an economic enterprise. Such use shall be clearly incidental or subordinate to the residential use of a dwelling.

- A. Performance Standards – Districts R-1, RP-1, R-2, RP-2, R-3, RP-3, R-4, R-5, and RP-5. Home occupations are permitted as an accessory use to a residence only when all of the following criteria are met:
 1. Area of Use. Home occupations shall be entirely contained within the interior of a residence and shall not be located in garages or accessory structures on the site. No visible evidence of the business shall be apparent from the street nor surrounding area. Family day-care homes will be allowed to have an outside play area which shall be fenced. A home occupation shall use no more than 20 percent of the total dwelling unit floor area. Those home occupations which require occasional meetings using more than 20 percent of the floor space may be permitted, providing such meetings do not occur more frequently than once per month.
 2. Employees. The home occupation shall be conducted by family members residing on the premises with no assistance from other individuals or groups.
 3. Sales, Repairs, and Leasing.
 - a. Sales. The commercial exchange of tangible goods or other items constituting a sale between the proprietor of a home occupation and members of the general public shall not be permitted on the premises of a home occupation. Members of the general public shall not include persons in the home by prior individualized invitation.

- b. Repairs. The repair of items out of a home occupation may occur only when the delivery and pickup of the items is conducted by the proprietor of the home occupation or by employees of the home occupation as defined in this section. No trips shall be generated to or from the home occupation by customers with items to be or which have been repaired.
- c. Leasing. The exchange of items in a lease agreement between the proprietor of a home occupation or an assistant and a customer shall not occur on the premises of a home occupation.
4. Traffic and Parking. No parking in the public right-of-way shall occur as a result of this home occupation except for occasional meetings. If parking for a home occupation occurs in a manner or frequency causing disturbance to the normal traffic flow for the neighborhood, the occupation shall be considered a business best handled in a commercial district rather than as a home occupation.
5. Changes to Exterior. The appearance of a dwelling as a residence shall not be altered to the extent that attention is drawn to the structure as a commercial or business operation.
6. Nuisance Controls. A home occupation shall not create excessive noise, dust or dirt, heat, smoke, odors, vibration, and glare or bright lighting which would be over and above that created by a single residential dwelling. The production, dumping, or storage of combustible or toxic substances shall not be permitted on site. Additionally, a home occupation shall not create interference or fluctuations of radio or television transmission.
7. Visitation. A home occupation may attract patrons, students, or any business-related individuals only between the hours of 6:00 a.m. and 9:00 p.m. At any time during the day or evening, the parking standards in this chapter shall apply to the activity generated by the home occupation. A home occupation shall also not generate more than six business-related visitations per day which shall constitute six arrivals and six departures by vehicle. Family day-care operations shall not generate more than 12 arrivals and 12 departures per day by vehicle. These standards shall not be construed so as to prohibit occasional group gatherings, recitals, or demonstrations. However, such gatherings shall not occur more frequently than once per month and must be held within the visitation hours specified in this chapter.
8. Signage. No signage or other forms of advertising pertaining to the home occupation may be placed or painted onto the exterior of the residence or in the yard of a residence.
9. Teaching. Teaching or instruction as a home occupation shall be limited to not more than three students at any one time and not more than 12 students per day.

18.140.030 Complaints.

Complaints against home occupations shall be filed with the Codes Administrator and shall be set forth in writing with copies available through the Codes Administrator.

18.140.040 Appeals.

Any individual who is aggrieved by a decision of the Codes Administrator may appeal that decision to the Board of Zoning Appeals. An appeal must be filed within 10 days of the decision by the Codes Administrator. The Board of Zoning Appeals shall determine whether the judgment of the Codes Administrator was correct. The hearing shall take place within 30 days of the filing date of the appeal. A decision shall be rendered within 30 days from the date of the hearing.

18.140.050 Nonconforming occupations.

Those home occupations which are presently in operation and which do not conform to these standards shall have up to a maximum of 90 days from the passage of this chapter in which to comply as determined by the Codes Administrator.

18.140.060 Other requirements.

Home occupations shall comply with all other local, state, or federal regulations pertinent to the activity pursued. The requirements of a home occupation under this chapter shall not be construed as an exception from such regulations.

18.140.070 Private walk or drive.

No private walk or drive serving a District C-1 to M-2 inclusive shall pass through or be located in a District R-1 to C-O inclusive.

18.140.080 Eligibility for accessory use.

The determination of the eligibility of a proposed use as an accessory use shall be made by the Codes Administrator and appeal can be made from his/her decision as set out in GMC [18.140.040](#).

18.140.090 Accessory uses and buildings.

Buildings and structures may be erected and land may be used for purposes which are clearly incidental to, and customarily and commonly associated with, the main permitted use of the premises. Such accessory buildings and uses shall be so constructed, maintained and conducted as to not produce noise, vibration, concussion, dust, dirt, fly ash, odor, noxious gases, heat or glare which is injurious, damaging, unhealthful or disturbing to adjacent property or the users thereof and shall be on the premises of the main use.

In any zoning district, permanent cargo containers are prohibited except where otherwise specified. Cargo containers shall not be modified or retrofitted for on-site habitation. Cargo containers shall be prohibited from having windows, heating and cooling, plumbing, or multiple entrances. Cargo containers are allowed to have electric and ventilation systems installed that would be necessary to meet the minimum codes and standards for lighting and air circulation for storage purposes.

Cargo containers may be used as temporary construction site storage for non-residential construction projects and for residential construction projects consisting of at least 20 dwelling units, subject to the following regulations:

- A. Cargo containers are prohibited as temporary construction site storage for residential construction projects (regardless of the number of units) in the following zoning districts: A, RE, R-1, R-1A, RP-1, R-2, RP-2, M-P and M-S.
- B. Cargo containers must be located on a platted lot that has an active building permit.
- C. Cargo containers on lots smaller than five acres shall not remain on the lot longer than six months, even if a building permit is still active. Cargo containers on lots that are five acres or larger shall not remain on the lot longer than nine months, even if a building permit is still active.
- D. Items stored in cargo containers must be used on the same platted lot where the cargo containers are located. The cargo containers shall not be used to store items for use on other construction sites.
- E. Cargo containers shall be located at least 10 feet from all property lines.
- F. At the time of placement, cargo containers shall not be located within 100 feet of any occupied dwelling unit.
- G. Cargo containers shall be kept safe, structurally sound, stable, and in good repair. Any cargo container that becomes unsound, unstable or otherwise dangerous shall be immediately repaired or removed from the property to a location that can legally accept it.
- H. The property surrounding the cargo containers (within 10 feet) shall be maintained and kept free of weeds.
- I. The maximum number of cargo containers allowed for temporary construction site storage per lot per year (any 12-month consecutive period) shall be as follows:
 1. Lots that contain five acres or less are permitted a maximum of one cargo container.

2. Lots that are more than five acres and less than 10 acres in size are permitted a maximum of three cargo containers.
 3. Lots that are 10 acres or larger are permitted a maximum of six cargo containers.
- J. No cargo container shall be allowed for temporary construction site storage until a temporary cargo container permit has been obtained from the Community Development Department. There shall not be any additional fees to obtain the temporary cargo container permit. The permit application shall include a site plan or plot plan showing where the container will be located on the site. Permitted cargo containers shall not be relocated on the site without updating the permit.
- K. The Codes Administrator may grant an exception to any of the above restrictions (subsections (A) through (I) of this section) only if the construction project has a unique characteristic that warrants special consideration. Any such exception may be subject to additional conditions or restrictions as deemed necessary by the Codes Administrator.

18.140.100 Districts R-1 and R-2.

- A. Day-Care Home, Group Day-Care Home. Day-care homes for children provided the maximum number of children does not exceed the following, including the provider's own children under 14 years of age:

| No. of Children under 18 Months | Maximum No. of Children 18 Months to Kindergarten Age | Maximum No. of Children in Attendance* |
|---------------------------------|---|--|
| 0 | 6 | 10 |
| 1 | 5 | 10 |
| 2 | 3 | 9 |
| 3 | 1 | 8 |

*Includes children kindergarten age to age 14.

The maximum number of children for which a group day-care home may be licensed shall be as follows:

| No. of Adults Providing Child Care | Age of Children Enrolled | Maximum No. of Children in Attendance* |
|------------------------------------|---|--|
| 1 Adult | 2-1/2 years to 14 years of age 3 years to 14 years of age Kindergarten age to 14 years of age | 9 10 12 |
| 2 Adults | No more than 3 children under 18 months Not more than 5 children 18 months to kindergarten age | 12 |
| 2 Adults | No more than 5 children 18 months to 2-1/2 years | 12 |

B. Accessory Buildings and Structures.

1. Location. Accessory buildings and structures shall be located in the rear yard. The building or structure shall be located at least 15 feet from the principal building. Accessory buildings or structures less than 250 square feet shall be located at least five feet from the side and rear property lines. Accessory buildings or structures 250 square feet or larger shall meet the

setback requirement of the zoning district for side and rear yards. No accessory structure may be located on a vacant lot.

- a. Number of Structures. There may be one detached garage or carport and one detached accessory building used for storage.
- b. Size. The maximum size of an accessory building or structure is 1,000 square feet. However, in no instance shall the accessory building or structure exceed one-third of the habitable living area of the residence located on the parcel. The height of the accessory structure shall not exceed the height of the primary structure.

C. Fences. Fences may be constructed to a maximum height of eight feet above the average grade level on the property line with the following exceptions and restrictions:

1. A fence may not be constructed in the front yard or beyond the front platted building line.
2. Where there is no platted side or rear building setback line, a fence may not be constructed within 15 feet of the property line along any street right-of-way.
3. Fences constructed beyond platted rear or side yard building setback lines may be constructed to a maximum height of six feet above the average grade but not within 15 feet of the property line along any street right-of-way.
4. A permit to install or modify a fence shall be obtained from the Codes Administrator.
5. RP-1 and RP-2 Zoning Districts may have fences along arterial streets only when approved by the Planning Commission as part of the final development plan approval.
6. Exceptions to the above may occur only when a master landscape/screening plan has been approved by the Planning Commission for a subdivision.
7. All fences shall be constructed with the finished side facing outward from the property. The posts and support beams shall be on the inside or shall be designed as an integral part of the finished surface.

Any preexisting, nonconforming fence that is replaced 50 percent or more must come into compliance with the fence ordinance.

D. Animals. Horses, ponies, cows, honeybees, fowl, goats, rabbits or other animals of similar size are permitted as follows:

1. On lots 3 acres or more in size.
2. On lots of less than 3 acres in size, the keeping of rabbits, chickens or fowl of similar size, or other animals of a similar size and characteristics may be approved by either of the following:
 - a. The Business and Economic Development Director or designee upon review of a plot plan or site plan in accordance with the following standards:
 - i. No more than 1 fowl or rabbit per 1,000 square feet of lot area and no more than 15 per lot.
 - ii. Roosters are not permitted.
 - iii. Fowl and rabbits are not permitted to run or fly at large and shall be kept in an enclosed structure or area located in the rear yard of the principal dwelling. Enclosed structures and areas shall be located a minimum of 30 feet from neighboring dwelling and 9 feet from side and rear lot lines. Enclosures open to the sky shall be surrounded with a wall or fence with a minimum height of 4 feet. The combined area of structures and enclosures for fowl shall provide a minimum of 10 square feet per fowl or rabbit.
 - b. A Special Use Permit subject to Chapter 18.145 if the above standards cannot be met.

- E. Hobby Activity. A hobby activity may be operated as an accessory use by the occupant of the premises purely for personal enjoyment, amusement or recreation; provided, that the articles produced or constructed are not sold either on or off the premises.
- F. Additional Uses. Such additional accessory uses as private swimming pools, gardens, television and radio receiving antennas not exceeding 60 feet in height, signs as permitted by ordinance, parking areas, toolshed not exceeding 200 square feet, and play equipment are permitted. If any of the accessory uses described above exceeds 10 feet in height, it shall be located a distance inside the property line at least equal to one-third its height. Ground-mounted satellite dish antennas are permitted if the following performance standards are met:
1. "Satellite dish antenna" as used herein means any parabolic or dish or similar shape antenna constructed for the purpose of communicating or receiving signals from a satellite.
 2. Maximum number per lot: one.
 3. Maximum height: 13 feet.
 4. Maximum diameter: 11 feet.
 5. No antenna shall be located in a front or a side yard.
 6. Minimum setback from center of satellite dish to property lines of lot: 15 feet.
 7. Must be ground-mounted and securely attached to a concrete pad.
 8. All lines, wires or cables serving a satellite dish antenna must be buried underground.
 9. The construction of satellite dish type antennas will conform to the Uniform Building Code, as adopted by the Governing Body of the City of Gardner, Kansas. The permit fee shall be paid as established by the Governing Body by resolution.

Solar collectors are permitted; provided, that the following performance standards are met:

1. Roof-mounted solar collectors located on front and side building roofs visible from the public right-of-way shall not extend above the peak of the roof plane where they are mounted; and further provided, that no portion of any such solar collector shall extend more than 24 inches perpendicular to the point on the roof where it is mounted.
 2. Roof-mounted solar collectors located on the rear side of building roofs shall not extend above the peak of the roof plane where they are mounted; and further provided, that no portion of any such solar collector shall extend more than four feet perpendicular to the point on the roof where it is mounted.
 3. Ground-mounted solar collectors shall not exceed eight feet in total height and shall be located within the rear yard at least 12 feet inside the property line.
 4. All lines serving a ground-mounted solar system shall be located underground.
- G. Outdoor Storage of Equipment, Material or Vehicle.
1. Outdoor Storage of Vehicles. Outdoor storage of boats, camping trailers, pickup campers, motor homes, recreational vehicles or hauling trailers is permitted on a lot in the R-1 and R-2 districts with the following exceptions and restrictions:
 - a. One hauling trailer which is used primarily to support a resident's occupation may be stored in the front yard on a paved driveway, and one of the above described vehicles (boat, camping trailer, pickup camper, motor home recreational vehicle or hauling trailer) may be stored in the rear yard or side yard but not on the street side of a corner lot.
 - b. A hauling trailer used primarily to support a resident's occupation shall not be stored in a manner which encroaches upon or obstructs a sidewalk.
 - c. Rear and side yard storage areas are not required to be paved.

- d. A boat, camping trailer, pickup camper, motor home or a recreational vehicle may be parked in a driveway for purposes of loading or unloading or trip preparation for a period of time not to exceed 48 hours in a 30-day period in a residential district.
 - e. Exceptions from the above may be granted by the Business and Economic Development Director or designee upon express written approval of either:
 - i. plans indicating screening to be installed and setbacks used; or
 - ii. demonstration that a vehicle other than a hauling trailer is used primarily to support a resident's occupation.
 - f. None of the vehicles in this section may be stored in an Inoperable condition. For purposes of this Section, "Inoperable" means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the functions or purpose for which it was originally constructed. Nothing herein shall be deemed to create an exception or exemption to the City's Code requirements stated within Chapter 10.20 relating to inoperable and abandoned motor vehicles.
2. Outdoor Storage of Materials, Products or Equipment. All storage of materials, products or equipment (beyond customary building mechanical systems) within the R-1 and R-2 districts shall be within the primary residence or other approved fully enclosed accessory structure. All other outside storage of materials, products or equipment shall not be permitted except for construction materials and equipment related to active construction activity upon the dwelling, accessory building or fence located on the lot upon which such construction and materials are stored.
- H. Fruit and Vegetable Gardens. Gardens for production of fruit and vegetables are permitted.

18.140.110 Districts R-3, R-4, and R-5.

- A. Uses. In the R-3, R-4 and R-5 Districts, accessory uses are as follows: parking areas, signs as permitted by this title, recreation areas including tenant-used swimming pools and minor recreation buildings, trash collection centers, power generators, vending machines for tenant use, and other similar uses. Satellite dish antennas shall be allowed; provided, that installation conforms with the regulations set forth in GMC [18.140.100](#). Solar collectors are permitted; provided, that the following performance standards are met:
- 1. Roof-mounted solar collectors located on front and side building roofs visible from the public right-of-way shall not extend above the peak of the roof plane where they are mounted; and further provided, that no portion of any such solar collector shall extend more than 24 inches perpendicular to the point on the roof where it is mounted.
 - 2. Roof-mounted solar collectors located on the rear side of building roofs shall not extend above the peak of the roof plane where they are mounted; and further provided, that no portion of any such solar collector shall extend more than four feet perpendicular to the point on the roof where it is mounted.
 - 3. Ground-mounted solar collectors shall not exceed eight feet in total height and shall be located within the rear yard at least 12 feet inside the property line.
 - 4. All lines serving a ground-mounted solar system shall be located underground.

18.140.120 Districts C-O, CO-A and C-1.

- A. Uses. In the C-O, CO-A and C-1 districts, accessory uses are as follows: parking areas, signs as permitted by this title, food service and vending machines for tenants only, private garages for motor vehicles, apartment for maintenance personnel, low-level exterior lighting, radio, television or microwave antennas not exceeding 60 feet in height, flagpoles, cooling towers, and other similar uses. Ground-mounted satellite dish antennas shall be no taller than 30 feet in height and shall be located behind the required yard setback of each district. Any satellite dish antenna mounted on the roof of a structure shall not extend more than 13 feet above the roof surface. No such antenna shall be utilized as a sign and any satellite dish of a temporary nature shall not be

on the premises over 72 hours. Additional requirement: all roof-mounted satellite dish antennas shall be required to have a final development plan approved prior to the issuance of any permit such that the antenna is screened from view to the fullest extent possible without interfering with the operation of the antenna. All ground-mounted satellite dish antennas shall be required to have a final development plan approval prior to the issuance of any permit if said antenna is proposed to be located within 400 feet of any property zoned R-1 through R-5 as well as any equivalent planned zoning district. Said plan shall require the screening of the antenna to the fullest extent possible without interfering with the operation of the antenna.

18.140.130 Districts C-2 and C-3.

- A. Uses. In the C-2 and C-3 Districts, accessory uses are as follows: parking areas, signs as permitted by this title, floodlighting, and other similar uses. Ground-mounted satellite dish antennas shall be no taller than 30 feet in height and shall be located behind the required yard setback of each district. Any satellite dish antenna mounted on the roof of a structure shall not extend more than 13 feet above the roof surface. No such antenna shall be utilized as a sign and any satellite dish antenna of a temporary nature shall not be on the premises over 72 hours. Additional requirement: all roof-mounted satellite dish antennas shall be required to have a final development plan approved prior to the issuance of any permit such that the antenna is screened from view to the fullest extent possible without interfering with the operation of the antenna. All ground-mounted satellite dish antennas shall be required to have a final development plan approval prior to the issuance of any permit if said antenna is proposed to be located within 400 feet of any property zoned R-1 through R-5 as well as any equivalent planned zoning district. Said plan shall require the screening of the antenna to the fullest extent possible without interfering with the operation of the antenna. Washing and other passenger car cleaning shall be permitted as an accessory use in service stations, providing such washing and cleaning shall not utilize more than two car stalls or more than 30 percent of the floor area in any one station, shall be a part of the main building, and washing and cleaning operations shall utilize the same entrance drives as the service station and may use coin-operated or attendant-operated equipment, but not continuous line or conveyor-type washing equipment.

18.140.140 Districts M-1 and M-2.

- A. Uses. In the M-1 and M-2 Districts, accessory uses are as follows: parking and loading areas, signs as permitted by this title, security and screen fencing, radio and microwave towers to heights as set out in this title, gatehouse, loading equipment, employee recreation and other similar uses.
- B. On platted lots larger than one acre, a maximum of two permanent cargo containers may be used as cargo container storage sheds; provided, that:
1. The cargo containers must be located within an outdoor storage area that is properly screened according to the use limitations for outdoor storage areas (GMC [18.95.070](#) or 18.100.070) and screening requirements (GMC 18.165.090).
 2. No cargo container may be located within 20 feet of any property line.
 3. All signage on the cargo container shall be removed and the cargo container shall be painted an earth tone color.
 4. Cargo containers shall be anchored to the ground, and must be maintained such that they are safe, structurally sound, stable, and in good repair. Any cargo container that becomes unsound, unstable or otherwise dangerous shall be immediately repaired or removed from the property to a location that can legally accept it.
 5. Cargo containers shall not be modified or retrofitted for on-site habitation. Cargo containers shall be prohibited from having windows, heating and cooling, plumbing, or multiple entrances. Cargo containers are allowed to have electric and ventilation systems installed that would be necessary to meet the minimum codes and standards for lighting and air circulation for storage purposes.

18.140.150 Special uses and conditional uses.

The following are considered accessory uses associated with special uses and conditional uses permitted by this chapter.

Any of the accessory uses listed below may be specifically prohibited or further controlled by restrictions written into the special use permit prior to its being approved.

- A. Motor hotels: a restaurant, banquet rooms, liquor, notions and magazine counters, vending machines, beauty and barber shops, flower and gift shops, provided all are within the main building and designed to serve primarily the occupants and patrons of the motor hotel.
- B. Hospitals: residential quarters for staff and employees, nursing or convalescent quarters, storage and utility buildings, food service and vending machines, laundry and other similar services for hospital personnel, visitors and patients.
- C. Utility buildings: outside storage of materials and equipment provided all outside storage is screened from view from off the premises and meets the use limitations for outside storage in the M-2 district (GMC 18.100.070(A)).

Chapter 18.145 SPECIAL USES

Sections:

| | |
|----------------------------|--------------------------------------|
| 18.145.010 | Intent. |
| 18.145.020 | Uses. |
| 18.145.030 | Short-term special uses. |
| 18.145.040 | Short-term special uses – Procedure. |

18.145.010 Intent.

Certain uses of land or buildings may not be appropriate under all circumstances in any zoning district, but may be appropriate where adequate precautions can be taken to assure the compatibility of the use with surrounding uses. It is the intent of this chapter to allow for such uses by the granting of a special use permit, subject to approval by the City Council, after recommendation by the Planning Commission and subject to the same procedures used for conditional use permits.

18.145.020 Uses.

Any building, structure, land or premises may be used, and any building or structure may be erected, constructed, reconstructed, moved or altered, for one or more of the following special uses, subject to approval of a special use permit by the City Council and subject to any development and performance standards set forth herein. The City Council may also consider such conditions as to operation, site development, signs, time limit and other factors as deemed necessary in order that such use will not seriously injure the appropriate use of nearby properties, and will conform to the general intent and purpose of this title and of the regulations of the zoning district in which it may be located. It shall be presumed that any use listed in this section shall not be permitted in the City without a special use permit unless that use is also specifically listed as a use permitted by right or as an accessory use in a given zoning district.

1. Adult uses.
2. Amusement parks, privately owned baseball or athletic fields, or racetracks.
3. Aviation fields or airports, under such restrictions as the Council may impose on land, buildings, or structures within an approach or transition plane or turn zone, to promote safety of navigation and prevent undue danger from confusing lights, electrical interference or other hazards.
4. Cemeteries, mausoleums, or crematories for the disposal of the dead.
5. Chemical and fertilizer manufacturing and storage.
6. Clubs, private, where alcoholic beverages are consumed on the premises.
7. Concrete and asphalt plants.
8. Drive-in theaters.
9. Golf driving ranges, commercial or illuminated.
10. Grain processing.
11. Gun clubs, skeet shoots, or target ranges.
12. Hospitals or penal or correctional institutions.
13. Camping areas, picnic groves and fishing lakes, including minor and incidental concession facilities for patrons only.
14. Mines or quarries, including the removing, screening, crushing, washing or storage of ore, sand, clay, stone, gravel or similar materials; provided, however, that no permit shall be issued until and unless the location, site plan, and method of operation, including necessary structures, have been submitted to and approved in writing by the Council, which permit shall be for a limited period of time not to exceed five years.

15. Nursery sales office, building, greenhouse, or area (wholesale or retail).
16. Nursing and convalescent homes.
17. Package liquor sales.
18. Radio, television and microwave towers over 60 feet in height.
19. Refuse dumps.
20. Reservoirs, towers, filter beds, or water treatment plants.
21. Riding stables and tracks.
22. Sewage, refuse, garbage disposal plants or sanitary fills.
23. Steel mills and foundries.
24. Hotels and motels.
25. Buildings, structures, and premises for public utility services, or public service corporations, which buildings or uses the Council deems reasonably necessary public convenience or welfare (excluding offices).
26. Temporary use of land for commercial or industrial purposes; provided, that any building or structure constructed thereon which is not otherwise permitted in the district in which such land is situated shall be by temporary building permit, and any stored equipment for material shall be removed upon the date of expiration of the special use permit, which permit shall be valid for not more than two years, but may be renewable after public hearing.
27. Assembly halls.
28. Group care centers for children under 10 years of age not allowed in the home occupation section including preschools and private kindergartens.
29. Keeping of horses, ponies, cows or chickens on less than three acres.
30. Off-street parking lots or structures of a temporary or permanent nature.
31. Outdoor storage that does not meet the use limitations required for that zoning district, subject to the following requirements:
 - a. Zoning. The property must be zoned for industrial uses (M-1, MP-1, M-2, or MP-2).
 - b. Storage yards shall be paved unless the Planning Commission determines that a gravel surface is appropriate due to the location and nature of the operation. If a gravel surface is to be permitted:
 - i. The type and thickness of aggregate surfacing is subject to approval by the City as part of the site plan application. The minimum thickness of aggregate shall be six inches.
 - ii. The applicant shall submit a dust control plan for the storage facility, subject to approval by City staff, at the time of application for site plan approval. The purpose of the dust control plan is to prevent fugitive dust from leaving the storage yard site. The dust control plan shall address the type of dust control measure(s) to be employed and the frequency of application of those control measures. In the event the dust control measures are found to be inadequate, the City reserves the right to require additional measures to mitigate the migration of dust from the site.
32. Cargo container facilities, subject to the following standards:
 - a. Zoning. The property must be zoned M-2 (General Industrial District) or MP-2 (Planned General Industrial District).
 - b. Platting. Cargo container facilities must be located on a platted lot.
 - c. Minimum Lot Size. Cargo container facilities shall have a minimum lot size of 20 acres.

- d. Traffic Analysis. A traffic analysis must be submitted with the special use permit application.
- e. Right-of-Way Dedication. Cargo container facilities shall dedicate adequate right-of-way to the City of Gardner for public highways, streets, and other public purposes. The dedication shall be in a form acceptable to the City and shall be made at no expense to the City.
- f. Public Improvements. Cargo container facilities shall design and install, at no expense to the City of Gardner, public improvements adjacent to the facility at the time and in the manner specified by the City in conjunction with the development or subdivision of the parcel, whichever occurs first. The improvements shall be engineered, reviewed, approved, and installed according to the procedures and conditions set forth by the City.
- g. Access. Cargo containers on or off a chassis may not be stored in a manner that impedes access to public rights-of-way, public utility or drainage easements, adjacent structures, and buildings. Access aisles shall be at least 24 feet wide.
- h. Paving. All interior driveways and cargo container storage bays shall be paved with asphalt or concrete in accordance with City standards.
- i. Parking. No portion of any required off-street parking or loading/unloading areas shall be used for the storage of cargo containers or similar storage devices. The minimum amount of off-street parking spaces shall be one per employee, but not less than six spaces, and one space per 1,000 square feet of gross floor area of any structure located on site.
- j. Storm Water. Drainage shall be designed and storm water detention required in accordance with City standards.
- k. Security. The facility shall be completely enclosed by gated security fencing. The fence shall be between six and 12 feet in height, and shall not include any barbed wire or razor wire. The gates may remain open when the facility is open, but shall be closed and locked when the facility is closed. The gate shall be located to prevent stacking on the streets. Minimum stacking requirements shall be based upon the results of the required traffic analysis, but in no case shall the driveway between the gate and the street be less than 150 feet in length and 24 feet in width.
- l. Screening and Landscaping. The City shall require screening within landscape easements along the full perimeter of the property. The landscape easements shall be a minimum of 90 feet in width adjacent to public and private streets and any property in a different zoning district, and a minimum of 20 feet in width adjacent to a property in the same zoning district. These easements shall include landscaping as outlined in this subsection. Additionally, continuous berming is also required in the landscape easements adjacent to public and private streets and any property in a different zoning district.
 - i. A landscaping plan shall be submitted with the special use permit application. The landscaping plan shall indicate the number, species, and location of all existing and proposed landscaping material.
 - ii. For every 100 linear feet of perimeter landscape easement, landscaping shall consist of a minimum of:
 - (A) Seven upright evergreen trees (minimum of six feet tall);
 - (B) Four ornamental trees (minimum of six feet tall);
 - (C) Three medium to large deciduous trees (minimum two-inch caliper, as measured six inches above the ground);
 - (D) Thirty shrubs (at least 36 inches tall).
 - iii. Berms shall have a minimum height of 12 feet and shall not have a slope greater than 3:1 (three horizontal feet per one vertical foot).
 - iv. The required security fencing shall be located on the interior side of perimeter landscaping.

- v. Landscaping, fencing, and berming shall be installed prior to a certificate of occupancy.
- vi. Maintenance of perimeter landscaping shall be the responsibility of the property owner and shall continue to meet the minimum standards for landscaping as established by the City.
- m. Lighting. Cargo container facilities shall provide adequate lighting on site, including at all entrances and exits. A lighting plan shall be submitted and approved in conjunction with the permit. The lighting plan must illustrate adequate minimum illumination on the property to allow for safe and efficient movement and monitoring during evening hours. Exterior lighting fixtures shall be shaded so that no direct light is cast upon any adjacent property and no glare is visible to any traffic on any public street. Lighting shall not adversely affect adjacent properties.
- n. Noise. Cargo container facilities shall make every effort to contain noise within the site.
- o. Racking Height. Racking of a chassis shall be limited to 57 feet in height. When a racked chassis exceeds 30 feet in height, an additional foot shall be added to all setbacks (from property line) for each additional foot of height for the racked chassis.
- p. Stacking Height for Cargo Containers. Cargo containers shall not be stacked more than three units high. When stacked, an additional 30 feet shall be added to all setbacks for each additional level of stacked cargo containers.
- q. Stacking Height for Chassis. Empty chassis shall not be stacked more than five units high.
- r. Setbacks and Separation Distance.
 - i. Storage of cargo containers and chassis shall be set back at least 10 feet from interior edge of the required landscape easements.
 - ii. Storage of cargo containers and chassis shall be set back at least 1,000 feet from any property zoned or used for residential land uses.
 - iii. Storage of cargo containers and chassis shall be at least 24 feet from any structure or building on site.
 - iv. No side-by-side grouping shall exceed 20 cargo containers or 20 chassis in width and no end-to-end grouping shall exceed two cargo containers or two chassis in length. Groupings shall be spaced at least 24 feet apart.
- s. Structural Integrity, Surety for Removal.
 - i. Any cargo container stored or kept on property under the jurisdiction of the City of Gardner shall be safe, structurally sound, stable, and in good repair, as determined by the Codes Administrator.
 - ii. Any cargo container that becomes unsound, unstable, or otherwise dangerous shall be repaired or removed from the property where kept within 14 days, subject to the City's requirements.
 - iii. Any cost or expense associated with the removal of violating cargo containers is the responsibility of the property owner. All associated costs, including but not limited to legal fees and court costs, shall constitute a debt due and owed to the City of Gardner and shall be recordable as a lien upon the land of the cargo container facility and/or property owner.
- t. Materials Stored. Materials stored in the cargo containers shall not include any material that would be required to be placarded as Class 7 (radioactive materials) according to the US Department of Transportation (DOT) Emergency Response Guidebook (ERG), or any other material generally considered to be hazardous, explosive, or poisonous. All materials stored at the facility shall be properly placarded according to the ERG. Each terminal manager shall maintain adequate and current bills of lading for the contents of all cargo containers stored on site.

- u. Fire Code and Insurance. All facilities shall comply with the locally adopted fire code and provide adequate means for fire and emergency vehicle access to cargo containers both on and off a chassis. All facilities engaged in storage and stacking of cargo containers must carry adequate insurance and provide a Certificate of Insurance prior to the issuance of a special use permit.
- v. Modification or Retrofit. Cargo containers may not be modified or retrofitted for on-site habitation. Cargo containers shall be prohibited from having windows, heating and cooling, plumbing, or multiple entrances. Cargo containers are allowed to have electric and ventilation systems installed that would be necessary to meet the minimum codes and standards for lighting and air circulation for storage purposes.
- w. Signage. No signage, other than company identification logos, shall be allowed on any cargo container. Each face of the cargo container may contain a maximum of one company identification logo.
- x. Maintenance. Cargo container facilities shall be well maintained to meet property maintenance requirements (GMC Title 8) and to keep the premises free from vermin and weeds.
- y. Time Limitation. The initial special use permit may be issued for a maximum time period of 10 years, with subsequent renewals issued for a maximum time period of 10 years.

18.145.030 Short-term special uses.

The chief building inspector may, upon application, issue a short-term special use permit for the use of a specified parcel of land for the following temporary short-term uses:

- A. Carnivals, circuses, fairs, and special events;
- B. Christmas tree sales;
- C. Religious tent meetings;
- D. Concession sales, including crafts;
- E. Season sale of farm produce;
- F. Commercial tent sales or sidewalk sales;
- G. Exhibits for high technology products;
- H. Garage sales in excess of three days per calendar year.

18.145.040 Short-term special uses – Procedure.

Such short-term special use permit may be issued without publication or posted notice and without referral to the Planning Commission if the following conditions are met:

- A. That the applicant submit an application containing:
 - 1. A description of the land proposed to be used.
 - 2. Written permission from the owner of the property, if not owner/applicant.
 - 3. A site plan showing setbacks, property lines and adjoining structures and the proposed location of the temporary special use.
 - 4. A description of the proposed use.
 - 5. Hours of operation.
 - 6. Estimates of accumulated automobiles and persons per hour.
 - 7. Proposed sanitary facilities.
 - 8. Proposed parking facilities.

9. Health inspection certificate where applicable.
- B. That such proposed use shall be only located on property zoned A, C-1, C-2, C-3, M-1 and M-2, except that garage sales may be located in Zones R-1, R-2, R-3 and R-4.
- C. That temporary structures erected must be set back from the street right-of-way at least 30 feet, where applicable.
- D. That such proposed use not be operated after 12:00 midnight and before 8:00 a.m.
- E. That such proposed use not be located closer than 50 feet from property zoned residential, where applicable.
- F. That the location of any proposed driveway entrance not create a traffic hazard.
- G. That the proposed site contain adequate parking. Adequate parking shall be determined on the basis of one parking space per four estimated people attending per hour.
- H. That the proposed site contain adequate sanitation facilities. Adequate sanitary facilities shall be determined on the basis of one temporary restroom facility per 100 estimated people in attendance per hour; provided, however, that no sanitary facilities shall be required for Christmas tree sales lots or seasonal sale of farm produce.
- I. That the term of the permit shall be as follows:
1. Carnivals, circuses and fairs: not to exceed seven days.
 2. Christmas tree sales: not to exceed 60 days.
 3. Religious tent meetings: not to exceed seven days.
 4. Concession sales, including crafts: not to exceed seven days.
 5. Season sale of farm produce: not to exceed five months.
 6. Commercial tent sales or sidewalk sales: not to exceed seven days.
 7. Exhibits for high technology products: not to exceed seven days.
- J. Upon the cessation of the short-term special use permit, all materials, equipment and signs shall be promptly removed and the property restored to its normal conditions.
- K. Carnivals, circuses and fairs shall also provide a certificate of insurance in an amount as established by the Governing Body by resolution with the City of Gardner named as an additional insured.
- L. A fee, as established by the Governing Body by resolution, shall be charged each applicant for a short-term special use permit. Only one fee will be required for carnivals, circuses or fairs.
- M. The Codes Administrator may allow variances in some instances; provided, however, that the allowed variances do not violate the intents and purposes of the short-term special use regulations.

Chapter 18.150 NONCONFORMING SITUATIONS

Sections:

| | |
|----------------------------|--|
| 18.150.010 | General policy/applicability. |
| 18.150.020 | Nonconforming uses of land. |
| 18.150.030 | Nonconforming use of buildings or sites. |
| 18.150.040 | Nonconforming buildings. |
| 18.150.050 | Completion of construction. |
| 18.150.060 | Variances permitted. |

18.150.010 General policy/applicability.

- A. Policy. It is the general policy of the City to allow uses, buildings and lots that were created legally and in conformance with then-applicable requirements, but that do not conform to the current applicable requirements of the zoning ordinance to continue. However, it is also the policy of the City to bring such uses, buildings and lots into conformance with current regulations as is reasonably practical. The provisions of this chapter are intended to recognize the interests of property owners but to discourage the substantial expansion of properties and to preclude the re-establishment of an abandoned use or buildings that has been substantially destroyed.
- B. Applicability. This chapter shall apply to circumstances that became nonconforming by initial adoption of these chapters, amendment to these chapters or by annexation. It shall also apply to nonconforming situations that were legal nonconformities under previously applicable ordinances or resolutions and that remain nonconforming under these chapters, even if the type or extent of nonconformity is different.
- C. Continuation Permitted. Any nonconforming use, building or other situation which existed lawfully on the adoption of these chapters or which becomes nonconforming upon the adoption of any amendment to these chapters may be continued in accordance with the provisions of this chapter. Where two or more provisions of this chapter apply, the more restrictive requirement controls.
- D. Proof of Nonconformancy. The burden shall be on the landowner or developer to establish entitlement to continuation of nonconforming situations or completion of nonconforming projects.

18.150.020 Nonconforming uses of land.

The lawful nonconforming use of land not involving a building, or where any building is merely incidental to or accessory to the principal use of land, may continue subject to the following requirements:

- A. Expansion. A nonconforming use of land may not be expanded beyond the area that it occupied on the date that it became nonconforming.
- B. Discontinuance. A nonconforming use of land may not be renewed when the use has been discontinued for six consecutive months. Any subsequent use of land shall conform to the applicable regulations of the zoning district in which the land is located.
- C. Change of Use. A nonconforming use of land may not be changed to another use unless the use is permitted in the zoning district in which the land is located.

18.150.030 Nonconforming use of buildings or sites.

The lawful nonconforming use of a building or site may continue subject to the following requirements:

- A. Expansion.
 1. Expansion within an Existing Building. A nonconforming use may be expanded throughout a building it occupies a portion thereof.
 2. Expansion of the Physical Area of a Building or Site. A building located on a nonconforming property may be expanded by 25 percent or less without bringing the site into compliance with current regulations. If a site contains more than one building, the 25 percent expansion

permitted shall apply to the total floor area of all buildings located on the site. For purposes of this chapter, "site" shall mean all lots and/or parcels under ownership or control of the person proposing the expansion contiguous to the property containing the buildings to be expanded. Such conditions that may be nonconforming include, but are not limited to, lack of screening, lack of landscaping, inadequate surface or curbing of parking areas or drives, discharge of surface water, noncompliance with one or more performance standards or other similar conditions. The Community Development Director shall have the authority to determine what improvements would be required to bring a property fully or substantially into compliance as part of new construction, alteration or expansion which exceeds 25 percent of the area of the existing improvements on the property.

- B. Discontinuance. A nonconforming use of a building or site may not be re-established if it is discontinued for a period of six consecutive months. Any subsequent use of a building or site shall conform to the applicable regulations of the zoning district in which the property is located.
- C. Change of Use. A nonconforming use of a building or site may not be changed to another use unless the use is permitted in the zoning district in which the land is located.

18.150.040 Nonconforming buildings.

A lawful, existing nonconforming building may remain subject to the following requirements:

- A. Expansion. A nonconforming building may not be expanded so as to increase the degree of nonconformity. Other expansions may occur; provided, that such additions comply with the requirements of these chapters and applicable zoning and building codes.
- B. Remodeling. Remodeling of a building within an existing footprint is permitted; provided, that the remodeling does not increase the degree of nonconformity and the applicable building codes are met.
- C. Replacement and Repairs. A nonconforming building may be replaced or restored within six months if it is destroyed by not more than 50 percent of its appraised valuation through fire, explosion, act of God or the public enemy. When such restoration becomes involved in litigation, the time required for such litigation shall not be counted as part of the six months allowed for reconstruction, and nothing in this chapter shall be taken to prevent the continued occupancy or use of such building or part thereof existing at the time of such partial destruction. Any building so damaged by more than 50 percent of its appraised value may not be rebuilt, repaired or used unless it is made to conform to all regulations for building in the district in which it is located.

18.150.050 Completion of construction.

Nonconforming projects which were issued a building permit or approved in writing by staff before the effective date of an amendment to an ordinance affecting the project may be completed in accordance with the terms of their permits or approvals, so long as those permits or approvals were validly issued and remain unrevoked and unexpired.

18.150.060 Variances permitted.

Except as otherwise provided herein, the Board of Zoning Appeals may grant variances consistent with the intent of this chapter, in accordance with the provisions of Chapter [18.190](#) GMC.

Chapter 18.155

HEIGHT AND AREA EXCEPTIONS

Sections:

[18.155.010](#) Height and area exceptions.

18.155.010 Height and area exceptions.

The regulations and requirements as to height of buildings and area of lots which may be occupied by buildings, front yards, rear yards and other regulations and requirements set forth in the foregoing sections of this title shall be subject to the following exceptions and additional regulations.

A. Height Exceptions.

1. In any district, public or semi-public buildings, such as hospitals, churches, sanitariums or schools, either public or private, where permitted, may be erected to a height not exceeding 75 feet; provided, that such buildings shall have yards which shall be increased one foot on all sides for each additional foot that such buildings exceed the specified height limit as established by the regulations of the district in which such buildings are situated.
2. Parapet walls and false mansards shall not extend more than six feet above the height limit. Flagpoles, chimneys, cooling towers, elevator bulkheads, penthouses, finials, gas tanks, grain elevators, stacks, storage towers, radio transmitter towers, ornamental towers, monuments, cupolas, domes, spires, standpipes, and other necessary mechanical appurtenances shall be erected, as to height, in accordance with existing or hereafter enacted laws affecting the same.

B. Yard Exceptions.

1. In Districts R-1, R-2, R-3, R-4, and R-5, where lots comprising 40 percent or more of the frontage, on the same side of a street between two intersecting streets (excluding reverse corner lots) are developed with buildings having front yards with a variation of not more than 10 feet in depth, the average of such front yards shall establish the minimum front yard depth for the entire frontage, except that where a recorded plat has been filed showing a setback line which otherwise complies with the requirements of this title, yet is less than the established setback for the block as provided above, such setback line shall apply; provided, that the Board of Appeals may permit variation in case of hardship or where the configuration of the ground is such as to make conformity with the front yard requirements impractical.
2. In Districts C-O to M-2 inclusive, where buildings located in the same block on the same side of a street have provided front yards of greater or less depth than herein required, the Planning Commission may require a similar setback for buildings or structures constructed hereafter.
3. Where an official line has been established for future widening or opening of a street upon which a lot abuts, the depth or width of a yard shall be measured from such official line to the nearest line of the building.
4. Every part of a required yard or court shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, belt courses, cornices, chimneys, buttresses, ornamental features and eaves; provided, however, that none of the above projections shall extend into a court more than six inches nor into a minimum yard more than 30 inches; and provided further, that canopies or open porches having a roof area not exceeding 60 square feet may project a maximum of six feet into the required front or rear yard and existing open porches extending into the required yard shall not be enclosed.
5. An open fire escape may project into a required side yard not more than half the width of such yard, but not more than four feet from the building. Fire escapes, solid floored

balconies and enclosed outside stairways may project not more than four feet into a required rear yard.

6. In any district, a detached accessory building not exceeding 24 feet or two stories in height, or in any case not higher than the main building, may occupy not more than 30 percent of a rear yard.
 7. All corner lots shall provide sight distance triangles, the short leg of which shall be 15 feet, and the long leg of which shall be 140 feet measured along the curb line or edge of the pavement. Such area shall be and remain free of shrubbery, fences or other obstruction to vision more than two feet in height measured from the roadway.
 8. No rear yard shall be required in Districts C-1 to M-2 inclusive on any lot used for business or industrial purposes, the rear line of which adjoins a railway right-of-way or which has a rear railway track connection.
 9. In computing the depth of a rear yard for any building where such yard abuts an alley, one-half of such alley may be assumed to be a portion of the rear yard.
 10. A through lot having one end abutting a limited access highway, with no access permitted to that lot from said highway, shall be deemed to front upon the street which gives access to that lot.
 11. Accessibility to the rear portion of all lots in a District C-O to M-2 inclusive for four-wheeled vehicles from and to a public street, alley or way shall be provided unless waived by the Planning Commission.
- C. Special Height Regulations Adjacent to Airports, Including Landing Strips. Any land located within the present or future corporate limits of the City of Gardner, which is situated adjacent to or close enough to be affected by the operations of an airport or landing strip, shall be subject to any additional height regulations which may be in effect at the time the ordinance codified in this title is adopted, or to any future regulations which may be legally imposed from time to time by the City or County in accordance with applicable statutes and planning laws of the State of Kansas. Such regulations shall apply, but shall not necessarily be limited to, the Gardner municipal airport and the Johnson County Industrial Airport.

An "approach plan," which defines airport hazard areas, height and clearance limits for the Johnson County Industrial Airport (said plan being dated April 11, 1975) has been adopted by the Federal Aviation Administration and the Johnson County Airport Authority as a part of the airport layout plan for the Industrial Airport. A copy of this plan, along with any future revisions which may be made in the approach plan, will be on file with the City Clerk of Gardner, Kansas, and shall be used to define additional regulations pertaining to maximum heights permitted in areas surrounding the Johnson County Industrial Airport.

No building or structure, including transmission line, communication line, pole, tree, smokestack, chimney wires, tower or other structure or appurtenances thereto of any kind or character, shall hereafter be erected, constructed, reconstructed, moved or altered, nor shall any tree or other object of natural growth be allowed to grow so as to encroach within the clearance limits set forth on said approved "approach plan."

Chapter 18.160 PARKING AND LOADING REQUIREMENTS

Sections:

| | |
|----------------------------|--------------------------------|
| 18.160.010 | Existing structure expansions. |
| 18.160.020 | Improvement of parking areas. |
| 18.160.030 | Additional regulations. |
| 18.160.040 | Screening of parking areas. |

18.160.010 Existing structure expansions.

For all existing buildings or structures hereafter reconstructed, moved or altered for building expansion, off-street parking complying with this chapter in the form of garages or areas made available exclusively for that purpose shall be provided if the floor expansion (contributing floor area) exceeds 25 percent of the original floor area. The original floor area shall be defined as that floor area existing at the time of the adoption of this provision of the zoning ordinance.

- A. New Structures Requirements. For all new buildings or structures hereafter erected, constructed, or moved, off-street parking in the form of garages or areas made available exclusively for that purpose shall be provided. Such parking spaces shall be located entirely on private property with no portion except the necessary drives extending into any street or other public way. Except for those uses listed below, parking spaces shall be provided as set out in Chapters [18.140](#) through [18.155](#) GMC.
1. Churches, theaters, athletic fields, and other seating facilities shall provide one off-street parking space for every four beds or seating capacity.
 2. Libraries shall provide one off-street parking space for every two employees and for every 200 square feet of service floor area.
 3. Fraternity or sorority houses, dormitories, hotels, and apartment hotels shall provide one off-street parking space for every two employees and for every two guest rooms or guest beds.
 4. Hospitals, sanitariums or homes for convalescent or aged shall provide one off-street parking space for every four beds and for each staff and visiting doctor.
 5. Banks shall provide one off-street parking space for every two employees and for every 150 square feet of service floor area.
 6. Barber or beauty shops shall provide one off-street parking space for every two employees and every 100 square feet of service floor area.
 7. Cafes or cafeterias shall provide one off-street parking space for every two employees and for every four seating capacities.
 8. Clinics shall provide one off-street parking space for every four beds and for each staff and visiting doctor as well as every 100 square feet of service floor area.
 9. Dry cleaning and laundry coin-operated center shall provide one off-street parking space for every 200 square feet of service floor area.
 10. Photographic or portrait studio shall provide one off-street parking space for every two employees and every 100 square feet of service floor area.
 11. Elderly group housing shall provide parking spaces as set by the Planning Commission after study of the individual situation.
 12. Schools shall provide parking spaces as set by the Planning Commission after study of the individual situation.
 13. Telegraph offices shall provide one off-street parking space for every two employees and for every 150 square feet of service floor area.

14. Armories or assembly halls shall provide one off-street parking space for every 100 square feet of service floor area.
15. Bakeries shall provide one off-street parking space for every two employees.
16. Mortuaries shall provide one off-street parking space for every two employees and for every four seating capacities.
17. Printing and publishing plants shall provide one off-street parking space for every two employees.
18. Radio and television broadcasting stations and studios shall provide one off-street parking space for every two employees.
19. Shops for customer work or light manufacture shall provide one off-street parking space for every two employees.
20. Taverns or night clubs shall provide one off-street parking space for every four seating capacities.
21. Frozen food lockers shall provide one off-street parking space for every 100 square feet of service floor area.
22. Gymnasiums shall provide parking spaces as set by the Planning Commission after study of the individual situation.
23. Miniature golf courses shall provide parking spaces as set by the Planning Commission after study of the individual situation.
24. Wholesale sales offices and sample rooms shall provide one off-street parking space for every two employees and for every 200 square feet of service floor area.

18.160.020 Improvement of parking areas.

All parking spaces shall be at least nine feet by 18 feet exclusive of driveways, shall be ready for use upon occupying a building, and shall be surfaced with a permanent, bituminous or portland cement concrete pavement meeting the standards of the specifications of the City of Gardner prior to the issuance of an occupancy permit, unless special permission is granted by the City Engineer, due to weather conditions not being satisfactory for placing asphaltic or concrete materials. Ingress and egress shall be by means of paved driveways not exceeding 35 feet in width. The driveway curb return radius shall not be less than five feet or more than 15 feet. The minimum width for a one-way driveway is 12 feet and 24 feet for a two-way driveway. Head-in parking from any public right-of-way shall not be permitted. No parking spaces shall be located within six feet of an adjoining lot in a District R-1 to R-3 inclusive. Any lights used to illuminate said parking area shall be so arranged as to direct light away from any adjacent premises in a residential district.

18.160.030 Additional regulations.

- A. In Districts C-O and CO-A, no parking shall be permitted in that part of the front yard setback when fronting on a street. In Districts C-2 to C-3 inclusive, no parking area shall be permitted within 15 feet of a right-of-way line. Such setback area shall be graded and planted with grass and shrubs or trees to the extent that it will constitute a finished lawn.
- B. All parking lots and drives leading thereto, except those serving single-family and two-family dwellings, shall have curbs and drainage facilities approved by the City Engineer. Where greater setback requirements do not prevail, the back of the curb of a paved parking area shall not be closer than six feet to a property line except that, in a planned zoning district, the Planning Commission may permit a lesser setback where similar development on an adjoining lot will produce a satisfactory relationship.
- C. No signs shall be permitted on parking lots except those necessary for the orderly parking thereon, and not more than one sign with maximum area of 20 square feet at each entrance to identify such parking area and present any regulations governing same.

- D. The Planning Commission may require that a parking area be screened on any side where it may adversely affect adjacent property by a wall, screen planting, or fence of a height that the Commission deems adequate.
- E. No vehicle, boat, trailer, recreational vehicle or equipment shall be parked and displayed for sale for a period in excess of 24 hours in parking lots in the C-O, C-1, C-2, or C-3 Zoning Districts, unless such sales are permitted by the zoning regulations.
- F. No vehicle in excess of one ton shall be parked or stored on any private residential property or on any property in a private residential parking area or private residential common area on any property used for residential purposes in any zoning district for more than two hours, except when necessary for loading and unloading or within the performance of a service to or upon property of which the vehicle is parked.
- G. One temporary cargo container is allowed per dwelling unit for up to two weeks; provided, that:
 - 1. The temporary cargo container may only be used for purposes of storage in conjunction with moving or relocating residents' household belongings.
 - 2. Each dwelling unit is entitled to no more than two temporary cargo containers per year (any 12-month consecutive period).
 - 3. The temporary cargo container must be located on a paved surface.
 - 4. The temporary cargo container may not be located on any public or private street. Additionally, the temporary cargo container may not be placed in any sight triangle or in any location that would interfere with traffic safety.

A resident may apply for a permit for an extension to allow a cargo container to remain for an additional two weeks. There shall be no fee for the permit.

18.160.040 Screening of parking areas.

The Planning Commission, in specific cases, may require any screen planting, fence, or wall around a parking lot to be set back from a street if such setback will prevent adverse effects upon the appropriate use of adjacent property, or will prevent a traffic hazard; but provided, that such setback need not be greater than the respective front or side yard requirement in that district.

18.160.050 Reduction in parking requirements in C-1 District.

The Business and Economic Development Director or designee may reduce the number of required parking spaces by as much as 40 percent for properties zoned C-1 – Central Commercial District with on-street parking upon a finding of little or no encroachment of commercial parking on the parking needs of adjacent less intensive uses. Decisions of the Business and Economic Development Director or designee may be appealed to the Planning Commission. The request for reduced parking requirements may include a parking study documenting a reduced need for parking, and shall include:

- A. List and schedule of activities generating peak parking demand.
- B. A site plan and onsite parking space count.
- C. A description and count of available on-street parking.

Chapter 18.165 LANDSCAPING AND SCREENING

Sections:

| | |
|----------------------------|--|
| 18.165.010 | Purpose/intent. |
| 18.165.020 | General conditions/plan requirements. |
| 18.165.030 | Landscaping prior to occupancy permit. |
| 18.165.040 | Maintenance. |
| 18.165.050 | Exceptions and changes. |
| 18.165.060 | Planting requirements – Size. |
| 18.165.070 | Planting requirements – Number/location. |
| 18.165.080 | Planting within parking/vehicular-use areas. |
| 18.165.090 | Planting along building facades. |
| 18.165.100 | Planting requirements – Screening. |

18.165.010 Purpose/intent.

The purpose of this chapter of the Municipal Code is to accomplish the following goals:

- A. To visually soften paved areas and buildings through the use of landscape materials and features.
- B. To establish improved environmental conditions by providing shade, air purification, oxygen regeneration, ground water recharge, storm water runoff retardation, and noise, glare and heat abatement.
- C. To encourage plant species diversity with the use of plant material that is generally accepted as native or hardy to this region.
- D. To provide buffers between differing land uses and enhance the quality and appearance over the entire site of the project.
- E. To screen certain unsightly views from public streets or adjoining properties.
- F. To encourage preservation of existing plant material where feasible.
- G. To promote landscaping as a vital element of site and development plans that should be considered during the early stages of site design.
- H. To work in concert with the adopted City of Gardner Landscape Design Standards.

18.165.020 General conditions/plan requirements.

All plans submitted in support of a final development plan, building permit, or land use permit shall hereafter include a landscape plan and shall address the goals and requirements outlined in the City of Gardner Landscape Design Standards. All land areas which are to be unpaved or not covered by buildings shall be brought to finished grade and planted with turf or native grass or other appropriate ground cover and receive landscape materials and features as specified in the City of Gardner Landscape Design Standards and other sections of the GMC.

All plans submitted for approval of a landscape plan shall have the following information included:

- A. Name of the developer and firm responsible for preparation, north scale, and preparation date and revision dates.
- B. Topographic information and final grading adequate to identify and properly specify planting for areas needing slope protection.
- C. The location, size, and surface materials of all structures and parking areas.
- D. The location, size, and type of all above ground and underground utilities and structures with proper notation, where appropriate, as to any safety hazards to avoid during landscape installation.

- E. The location, type, size and quantity of all proposed landscape materials, along with common and botanical names of all plant species. The size, grading and condition shall be specified according to American Association of Nurserymen Standards.
- F. The location, size and common name of all existing plant materials to be retained on the site, with any proposed preservation measures identified.
- G. Mature sizes of plant material shall be drawn to scale and called out on the plan by common name or appropriate key.
- H. Annual and perennial planting beds shall be delineated on the plans.
- I. Location of hose connections, irrigation system layout and other watering sources.
- J. The location of all 12-inch caliper or larger trees that are proposed for removal.
- K. Maintenance plans/programs shall also be provided for review to ensure that such plans are appropriate to address the designated function (BMP, common area use, screening, etc.), as well as materials.

18.165.030 Landscaping prior to occupancy permit.

All landscape and hardscape material shall be in place and all plant material shall be healthy prior to issuance of a final certificate of occupancy. A temporary certificate may be issued without the installation, provided written assurances are given that the planting will take place when the proper season arrives.

18.165.040 Maintenance.

Trees, shrubs and other landscaping materials and features depicted on plans approved by the City shall be considered as elements of the project in the same manner as parking, building materials and other details are elements of the plan.

The developer, his/her successor and/or subsequent owners and their agents shall be responsible for the continued maintenance of such landscape materials and features. Irrigation of landscaped areas is strongly encouraged, and may be required by the Community Development Director for landscape materials that are known to have a low tolerance for drought.

Plant material which exhibits evidence of insect pests, disease, and/or damage shall be appropriately treated, and dead plants promptly removed and replaced within the next planting season.

All landscape materials and features shall be subject to periodic inspection by the Community Development Director or his/her designee.

Should landscaping materials and features not be installed, maintained and replaced as needed to comply with the approved plan, the owner and his/her agent or agents shall be considered in violation of the terms of the building or occupancy permit. The Community Development Director is empowered to enforce the terms of this chapter.

18.165.050 Exceptions and changes.

It is recognized that development constraints and site conditions vary greatly among sites. A landscape plan may be approved that does not strictly comply with one or more provisions of this chapter; provided, that the decision-making authority determines that such exception or deviation is warranted due to an exceptional circumstance or significant constraint. Any proposed deviations shall be clearly identified on the landscape plan along with any suggested alternatives or compromises, and accompanied by a written description explaining why said deviations are being requested.

The Community Development Director shall have the authority to approve changes to an approved landscape plan when warranted due to unforeseen conditions. Such decisions may be deferred to the Planning Commission at the Community Development Director's discretion. Decisions of the Community Development Director may be appealed to the Planning Commission.

18.165.060 Planting requirements – Size.

The minimum planting sizes for all plant material shall be the following:

- A. Medium and Large Deciduous Trees. At least two-inch caliper as measured six inches above the ground.
- B. Small Deciduous Trees. At least six feet in height, with the exception of true dwarf species.
- C. Evergreen Trees. Four feet in height, except for the true dwarf varieties.
- D. Deciduous and Evergreen Shrubs. Eighteen inches in height.
- E. Ground Cover Plants. Crowns, plugs, containers: in a number as appropriate by species to provide 50 percent surface coverage after two growing seasons.
- F. Native Grass. Seeding as appropriate.
- G. Lawn and Turf Grass. Lawn and turf areas shall be planted with species suitable as permanent lawns in Gardner. All lawn and turf areas shall be sodded at initial installation unless otherwise approved by the Community Development Director. In areas where grass seed is permitted, maintenance shall be provided until coverage is complete.
- H. Ornamental Grass/Perennial/Annual Plants. Size optional as determined by applicant.

The American Standard for Nursery Stock, as published by the American Association of Nurserymen and incorporated by reference herein, shall be referred to in determining the applicability of the descriptions and sizes above.

18.165.070 Planting requirements – Number/location.

- A. Street Frontage. One tree per 40 feet of public and/or private street frontage shall be required within the first 15 feet of property abutting such street frontage outside of any utility easement or right-of-way. Said trees may be clustered and need not be placed evenly at 40-foot intervals.

Annual and perennial planting beds may be planted along the street frontage in City easements and rights-of-way, subject to approval by the City to ensure that such plantings do not cause a safety hazard (blocking visibility, etc.) and that they are properly maintained. The owner assumes all risk and cost of replacement, if the beds need to be removed to maintain, repair or improve the improvements in the easements or rights-of-way.

- B. Internal Site. In addition to the required trees based on street frontage, one site tree shall be required for every dwelling unit for residential uses and for every 10,000 square feet of total property area for nonresidential and mixed uses. Site trees may be planted anywhere on the property (outside of utility easements and rights-of-way).

A minimum of three shrubs or evergreens per dwelling unit for residential uses and one shrub or evergreen per 5,000 square feet of total property area for nonresidential and mixed uses. Site shrubs or evergreens may be planted anywhere on the property (outside of utility easements and rights-of-way).

- C. Property Perimeter. For purposes of this section, the property perimeter is defined as the boundaries of a site that do not abut a street. Landscaping along the perimeter shall provide adequate screening to assist with the transition of different land uses and functions.

Perimeter landscaping is required on the property of the more intense land use or function as defined by the zoning districts and the following intensity tables. Said plantings need not be placed evenly at the exact intervals specified in the tables, but shall be spread fairly evenly along the perimeter.

| Zoning District | Corresponding Intensity Level |
|---|-------------------------------|
| AG, R-E, R-1, RP-1, R-1A, R-2, RP-2 | 1 |
| R-3, RP-3, R-4, RP-4, R-5, RP-5, M-P, M-S | 2 |
| C-O, CP-O, CO-A, CPO-A, C-1, CP-1, C-2, CP-2, C-3, CP-3, PUD, REC | 3 |
| M-1, MP-1, M-2, MP-2 | 4 |

| Subject Property Intensity Level | Perimeter Landscaping Requirement | Perimeter Landscaping Location |
|----------------------------------|---|------------------------------------|
| 1 | None | N/A |
| 2 | 1 tree per 40 linear feet and 1 shrub or evergreen per 10 linear feet | Adjacent to Intensity Level 1 |
| 3 | 1 tree per 40 linear feet; 1 evergreen per 20 linear feet; 1 shrub per 10 linear feet | Adjacent to Intensity Levels 1 – 2 |
| 4 | 1 tree per 30 linear feet; 1 evergreen per 15 linear; 1 shrub per 10 linear feet | Adjacent to Intensity Levels 1 – 3 |

In addition to the screening requirements found in GMC [18.165.100\(C\)](#), when a property zoned commercial or industrial is located adjacent to a residentially zoned property, additional perimeter landscaping may be required on such commercial or industrial property if deemed by the decision-making authority to be necessary to mitigate the sound, light, noise and visual impacts on the residential property.

The Community Development Director may allow the number of trees and shrubs required along a property perimeter to be reduced where berms, walls, fences, or other features will screen that same perimeter; however, such screening features shall not be used as a total replacement of required perimeter landscape materials. If such features are proposed, the Community Development Director shall work to ensure that appropriate visual variation occurs so as not to create long expanses of exposed fencing, walls or land on either side of such elements, and that sufficient screening is achieved in a manner that minimizes the impacts on adjacent property.

In areas where solid fences are not used or where building facade landscaping is not implemented due to the service nature of the facade (per GMC 18.165.090), then additional property perimeter landscaping may be required if deemed by the Community Development Director to be necessary to effectively block undesirable views from public areas and adjacent properties.

- D. Credits for Preservation of Existing Vegetation. Existing vegetation that is healthy and of a desirable species may be credited toward the minimum number required, as specified, provided it is protected and preserved on the site during construction. That existing vegetation shall be at least twice the minimum size that would be required if it was to be newly planted (i.e., twice the caliper or twice the height). Such credits shall be issued on a one-for-one basis and subject to the same location requirements. Such a preserved plant that is more than four times the minimum size required shall receive credits on a two-for-one basis; provided, that ample room exists for it to be replaced with two similar plants upon the end of its lifespan. The Community Development Director shall limit the number of credits received based upon how well the preserved vegetation meets the purpose and intent of this chapter (for example, a single stand of 20 trees that is preserved within a property perimeter may not provide the intended screening and therefore not

warrant full credit; however, 20 trees spread along the property perimeter that do achieve the intended screening would receive full credit).

18.165.080 Planting within parking/vehicular-use areas.

The intent of this section is to encourage interior landscaping within vehicular parking areas, to break up the large expanses of pavement, and to provide relief from the reflected glare and heat, as well as to guide vehicular and pedestrian traffic per the following requirements:

A. Parking Perimeter Landscaping.

1. Landscaping is required along the perimeter of a parking lot where that edge of the parking lot is adjacent to a public or private street, sidewalk, trail, area of open space, or another property. The decision-making authority may waive parking perimeter landscaping where property perimeter landscaping provides similar or greater screening. Parking perimeter landscape areas shall be no less than five feet wide and shall provide screening sufficient to block headlights from shining directly onto adjacent properties or public areas. The minimum and maximum heights specified in subsection (A)(2) of this section are intended for typical sites. Due to the slope of the land or characteristics of the adjacent use, additional height may be required where necessary and/or reduced height may be considered where appropriate.
2. Parking lot perimeter landscaping shall consist of at least one of the following:
 - a. Berm. A berm three feet high with a maximum slope of 3:1 and landscaped with trees and shrubs.
 - b. Hedge. A low continuous landscaped hedge at least two and one-half feet high, planted with a combination of evergreen and deciduous shrubs so as to achieve full screening at maturity.
 - c. Wall. A low decorative masonry wall no more than three feet high in combination with landscaping. The masonry wall material shall coordinate with the materials of the building or match a design theme for the adjacent corridor.
 - d. Fence. A low decorative wrought iron (or similar durable material) fence no more than three feet high in combination with landscaping planted so as to achieve full screening at maturity.
3. Perimeter parking lot landscaping, when adjacent to a public sidewalk and/or walkways, shall have logical periodic breaks to allow pedestrian access onto the property. Such breaks shall align with safe pedestrian routes connecting the sidewalk to building entries.

B. Parking Interior Landscaping

1. The total area of landscaping provided within parking areas shall be no less than 6.5 percent of the interior parking area for lots with more than 16 parking spaces.
2. The total amount of surface parking area shall be broken up into parking blocks containing no more than 40 parking spaces per block.
3. Parking blocks shall be separated on all sides by landscape areas (e.g., peninsulas, medians, islands, etc.).
 - a. Landscaped islands and peninsulas shall be no smaller than the approximate dimensions of one parking space. The pervious area of such islands or peninsulas shall be at least 150 square feet with a minimum width of eight feet.
 - b. Landscaped medians shall be at least 10 feet wide.
 - c. Pedestrian walkways within a landscaped median shall meet Americans with Disabilities Act requirements.

- d. Decorative fences or walls that separate parking blocks shall be no more than three feet high and shall be bordered by landscaping on at least one side.
 - e. BMP features (i.e., rain garden, bio-retention cell, etc.) shall be at least seven feet wide.
 - f. Barriers such as fences, walls, or continuous landscaping shall have logical periodic breaks to allow pedestrian access to adjacent parking blocks, sidewalks, or buildings. Such breaks shall align with safe pedestrian routes.
4. The maximum distance in any direction between landscape areas surrounding a parking block shall be 180 feet.
 5. The primary landscaping material used shall be trees that provide shade or are capable of providing shade at maturity. Shrubs, hedges and other plant materials may be used to complement the trees, but cannot be the sole means of landscaping.
 6. Lighting for parking lots shall not be located in landscaped islands or peninsulas with shade trees. Lighting may be contained within landscaped medians provided the landscaping and trees, at maturity and as maintained, shall not obstruct illumination.

18.165.090 Planting along building facades.

Building facades that are viewable by the public (i.e., customers/patrons, general public), on the property, on adjacent property, or from public or semi-public corridors (streets, sidewalks or trails), shall be subject to the provision of building facade plantings. Facades that are sufficiently screened by property perimeter landscaping from adjacent properties and corridors and are not viewable from public areas upon the same property shall be exempt from building facade plantings. To be considered facade landscaping the landscape material must be located adjacent to the building. A sidewalk may be located between the building and the facade plantings, but no significant features such as parking areas or driveways shall separate the landscape material from the building facade.

- A. For commercial and office building facades 20 feet in length or greater, the linear distance of landscape areas shall be equal to or exceed 25 percent of the linear footage of the length of the building facade.
- B. Facade landscape areas may be broken up into several planting areas, but no landscape area shall average less than five feet wide in any direction. Facade landscape areas incorporating shade trees shall be at least 10 feet wide at the trunk of the shade tree.
- C. Turf grass and mulch or rock areas without additional landscape materials (i.e., trees, evergreens, shrubs or perennials) shall not count toward meeting this requirement.

Further guidance for the treatment of the building facades can be found in the City of Gardner Landscape Design Standards.

18.165.100 Planting requirements – Screening.

- A. Trash Bins/Service Areas. All projects with the exception of single-family and duplex residential uses shall include, on the landscape plan, a detailed drawing of enclosure and screening methods to be used in connection with trash bins on the property. No trash bin or service area shall be visible from off the property, and a permanent masonry or frame enclosure compatible with project architecture shall be provided for each such bin.
- B. Ground/Wall-Mounted Equipment. All ground-mounted and wall-mounted mechanical equipment, utilities, and banks of meters shall be screened from public view with fencing, architectural elements, and/or landscaping. Fencing and architectural elements used to screen such equipment, utilities, and banks of meters shall be architecturally compatible with the project's major building components.
- C. Land Use Buffer. All properties thereto in Districts C-O through M-2 inclusive shall provide a solid screen fence or wall not less than six feet in height along all rear and side property lines which

are common to property zoned for residential purposes, except that such screening shall not extend in front of the building line or adjacent dwellings and shall not be required where such screening exists on the abutting residential property.

Further guidance for the treatment of the property perimeter is provided in GMC [18.165.070](#) and in the City of Gardner Landscape Design Standards.

Chapter 18.170 SIGNS

Sections:

| | |
|----------------------------|--|
| 18.170.010 | Generally. |
| 18.170.020 | District R-1, Single-Family District and District A, Agriculture District. |
| 18.170.030 | District R-2, Two-Family Residential District. |
| 18.170.040 | District R-3, R-4, and R-5, Garden Apartment, Condominium and Apartment House Districts. |
| 18.170.050 | Districts C-O and CO-A, Office Building District. |
| 18.170.060 | District C-1, Restricted Business District. |
| 18.170.070 | District C-2, General Business District. |
| 18.170.080 | District C-3, Commercial District. |
| 18.170.090 | Districts M-1 and M-2, Restricted General and Heavy Industrial Districts. |
| 18.170.100 | Signs for traffic control on private property. |
| 18.170.110 | Project announcement and promotional sign. |
| 18.170.120 | Temporary signs. |
| 18.170.130 | Obscene matter prohibited. |
| 18.170.140 | Signs not to constitute a traffic hazard or public nuisance. |
| 18.170.150 | Structural quality. |
| 18.170.160 | Sign permits. |
| 18.170.170 | Sign permit fees. |
| 18.170.180 | Sign inspection. |
| 18.170.190 | Nonconforming existing signs. |

18.170.010 Generally.

Signs may be permitted in all districts as described in this chapter. All signs shall be nonilluminated and nonmoving unless otherwise specified.

18.170.020 District R-1, Single-Family District and District A, Agriculture District.

- A. For a permitted home occupation, one non-illuminated sign per building, not more than six square feet in area, and mounted on the building.
- B. For permitted or otherwise approved non-residential uses, not more than two non-illuminated wall signs identifying uses on the property shall be permitted. On sites of 5 acres or greater, not more than three non-illuminated signs shall be permitted on each principal building. The area of signs shall not exceed 5 percent of the area of the wall on which the signage is mounted. In lieu of one of the wall signs permitted herein, one detached sign may be permitted.

Detached signs shall be built on a solid base at least 50 percent the width of the sign face and shall not exceed a height of six feet in overall height above finished grade adjacent to the sign. Detached signs may be single or double-faced. The actual sign face shall not exceed 25 square feet in area per face if set back the minimum of 10 feet from the property line. On sites of 5 acres or greater, for each additional five feet of setback, the overall sign height may be increased two feet and the sign face may be increased 10 square feet to a maximum of 15 feet in overall sign height and 50 square feet per sign face. If not sitting within a landscape area, the sign base shall be located within a curbed landscape area, extending a minimum of three feet on all sides of the sign base. Detached signs may be non-illuminated, indirectly illuminated or internally illuminated. Illuminated detached signage may be oriented to the street but shall be designed and located to minimize detrimental effects to adjacent residential properties.

For uses approved by preliminary and final development plan, the Planning Commission may approve illumination of attached signs provided the illumination is determined by the Planning Commission to have no detrimental effect on adjacent residential properties. Applicants applying for illuminated wall signs shall notify owners of all residential properties adjoining the site and owners of all residential properties abutting that part of the public street adjoining the site. Applicants shall submit proof of said notification with the application.

- C. One freestanding or attached, non-illuminated construction sign is allowed, not more than 32 sq. ft. in area and set back a minimum of 10' from all property lines. Sign shall include no advertising

other than the names of architects, engineers, or contractors related to the project. Removal of sign upon completion of project is required.

- D. Residential Project Identification Signs. Project identification signs for a subdivision or residential project may be permitted at each entrance to the subdivision or project. All project identification signs shall be ground-based signs with a minimum of 50 percent of the base enclosed and shall be located on the premises. The signs may be non-illuminated, indirectly illuminated or internally illuminated. Such signs shall not exceed six feet in overall height above the average grade, and the sign face shall not exceed 32 square feet in area per face. If not sitting within a landscape area, the sign base shall be located within a curbed landscape area, extending a minimum of three feet on all sides of the sign base. Illuminated detached signage may be oriented to the street but shall be designed and located to minimize detrimental effects to adjacent residential properties. Where a project is situated on both sides of a public or private street, one project identification sign may be located on each side of the street, or, alternatively, one project identification sign may be located in a landscaped median. A copy of the bylaws or other documentation of the association which will have permanent responsibility for maintenance of the sign and required landscaping shall be submitted with the permit application.

18.170.030 District R-2, Two-Family Residential District.

Signs shall be permitted as provided under District R-1 in GMC [18.170.020](#).

18.170.040 District R-3, R-4, and R-5, Garden Apartment, Condominium and Apartment House Districts.

- A. Signs shall be permitted as provided under District R-1 in GMC [18.170.020](#).
- B. For any one ownership containing a multifamily use, there shall be permitted only one nonilluminated detached sign for each 20,000 square feet of land area, identifying the use, not more than 20 square feet in area and not more than eight feet high overall inclusive of the structure supporting the sign, and such sign shall be located not more than one foot in front of a front or side building setback line. Such signs shall bear no advertising.

18.170.050 Districts C-O and CO-A, Office Building District.

- A. Signs shall be permitted for uses permitted in Districts R-1 through R-5 which are located in this district. Requirements for signs shall be as provided under Districts R-1 through R-5 in GMC [18.170.020](#), [18.170.030](#) and [18.170.040](#).
- B. Not more than two nonilluminated, indirectly illuminated or semi-illuminated wall signs shall be permitted on each office building, provided such signs shall indicate only the name of the building or establishments housed therein. No such sign shall have an overall area exceeding five percent of the area of the wall upon which it is mounted. In lieu of one of the wall signs permitted above, one detached sign may be permitted.

Detached signs must be built on a solid base at least 50 percent the width of the sign face and shall be low in profile. Detached signs may be single- or double-faced. Detached signs may be nonilluminated, indirectly illuminated or internally illuminated. The sign face and base shall not exceed six feet in overall height above the natural or average grade. The actual sign face shall not exceed 25 square feet in area per face if set back the minimum of 10 feet from the property line. For each additional five feet of setback, the overall sign height may be increased two feet and the sign face may be increased 10 square feet to a maximum of 15 feet in overall sign height and 65 square feet per sign face. When a single business or complex is located on a site more than five acres, in commercial or industrial districts, the detached sign may be increased to a maximum height of 21 feet and a maximum sign area of 95 square feet. The sign base area shall not exceed the actual sign face area by more than 10 percent. If not sitting within a landscape area, the sign base shall be located within a curbed landscape area, extending a minimum of three feet on all sides of the sign base.

18.170.060 District C-1, Restricted Business District.

- A. Signs shall be permitted for uses permitted in Districts R-1 through R-5 which are located in this district as provided under District R-1 through R-5 in GMC [18.170.020](#), [18.170.030](#) and [18.170.040](#).
- B. Each business or commercial establishment shall be permitted not more than two nonilluminated, semi-illuminated, or indirectly illuminated wall signs, not more than one on a facade, provided the area of each sign shall not exceed five percent of the total area of the facade upon which it is placed. In lieu of one of the above wall signs, one projecting sign shall extend more than four feet from the face of the building. (Such signs shall not extend above the height of the wall upon which they are mounted nor extend closer than 10 feet from the ground. In addition, one nonilluminated wall sign, not more than nine square feet in area, may be placed at each major entrance to the building.) Any signs painted directly upon wall surfaces shall not be larger than 10 square feet in area.
- C. In lieu of one of the above attached signs, businesses in this district with a minimum setback of 10 feet will be permitted one detached sign.

Detached signs must be built on a solid base at least 50 percent the width of the sign face and shall be low in profile. Detached signs may be single- or double-faced. Detached signs may be nonilluminated, indirectly illuminated or internally illuminated. The sign face and base shall not exceed six feet in overall height above the natural or average grade. The actual sign face shall not exceed 25 square feet in area per face if set back the minimum of 10 feet from the property line. For each additional five feet of setback, the overall sign height may be increased two feet and the sign face may be increased 10 square feet to a maximum of 15 feet in overall sign height and 65 square feet per sign face. When a single business or complex is located on a site more than five acres, in commercial or industrial districts, the detached sign may be increased to a maximum height of 21 feet and a maximum sign area of 95 square feet. The sign base area shall not exceed the actual sign face area by more than 10 percent. If not sitting within a landscape area, the sign base shall be located within a curbed landscape area, extending a minimum of three feet on all sides of the sign base.

18.170.070 District C-2, General Business District.

- A. Signs shall be permitted for uses permitted in Districts R-1 through C-1 which are located in this district as provided under Districts R-1 through C-1 in GMC [18.170.020](#) through [18.170.060](#).
- B. Each business or commercial establishment shall be permitted not more than three indirectly illuminated, semi-illuminated, or nonilluminated wall or marquee signs, not more than one on a facade, the total area of which sign shall not exceed 10 percent of the total area of the facade upon which it is placed. Such signs shall not extend more than 25 feet above ground level. Any signs painted directly upon wall surfaces shall not exceed 10 square feet in area.
- C. In lieu of one of the above attached signs, one detached sign may be permitted.

Detached signs must be built on a solid base at least 50 percent the width of the sign face and shall be low in profile. Detached signs may be single- or double-faced. Detached signs may be nonilluminated, indirectly illuminated or internally illuminated. The sign face and base shall not exceed six feet in overall height above the natural or average grade. The actual sign face shall not exceed 25 square feet in area per face if set back the minimum of 10 feet from the property line. For each additional five feet of setback, the overall sign height may be increased two feet and the sign face may be increased 10 square feet to a maximum of 15 feet in overall sign height and 65 square feet per sign face. When a single business or complex is located on a site more than five acres, in commercial or industrial districts, the detached sign may be increased to a maximum height of 21 feet and a maximum sign area of 95 square feet. The sign base area shall not exceed the actual sign face area by more than 10 percent. If not sitting within a landscape area, the sign base shall be located within a curbed landscape area, extending a minimum of three feet on all sides of the sign base.

18.170.080 District C-3, Commercial District.

- A. Signs shall be permitted as provided in District C-2.
- B. Not more than three signs of all types of degrees of illuminations shall be permitted. No sign shall be located closer than 10 feet to a property line and no sign shall exceed 200 square feet in area for each exposed face.
- C. For properties located within 1,000 feet of an interstate, the following regulations shall apply:
 - 1. Each business or commercial establishment shall be permitted not more than three indirectly illuminated, semi-illuminated or nonilluminated wall or marquee signs, not more than one on a facade, the total area of which sign shall not exceed 10 percent of the total area of the facade upon which it is placed. Such signs shall not extend more than 25 feet above ground level. Any signs painted directly upon wall surfaces shall not exceed 10 square feet in area.
 - 2. In lieu of one of the above attached signs, one detached sign per freestanding building shall be allowed, with a maximum height of 75 feet in height and a maximum size of 300 square feet per face, per business. The total square footage may be shared by businesses sharing a common sign pole. Detached signs shall be located not less than 10 feet from the property line.
 - 3. Each gasoline service station shall be allowed one additional detached sign not to exceed 25 feet in height nor 100 square feet per face to advertise the name of the service station and the gasoline prices.

18.170.090 Districts M-1 and M-2, Restricted General and Heavy Industrial Districts.

- A. Signs shall be permitted as provided in District C-3.
- B. Repealed by Ordinance Number 1912, Section 3, February 16, 1998.

18.170.100 Signs for traffic control on private property.

Signs indicating directional traffic movement, vehicular control, parking restrictions, and specific instructions for the control of vehicles or pedestrians will be permitted within Districts R-3 through R-5, C-O through C-3 and M-1 and M-2 in addition to the specific sign requirements within such districts as set forth in this chapter. All traffic control signs on private property shall conform to uniform traffic control device standards.

18.170.110 Project announcement and promotional sign.

- A. One indirectly illuminated or nonilluminated sign displaying information pertinent to an undeveloped subdivision, apartment complex, shopping center, or industrial district shall be permitted within that ownership; provided, that no such sign shall be closer than 200 feet to an occupied dwelling. Such signs shall be permitted on undeveloped tracts of at least 10 acres in area and shall not exceed 300 square feet for 10 acres plus 150 square feet for each additional 10 acres in the development site.
- B. Outdoor bulletin boards not over six square feet in area for the promotion of a civic, welfare, or charitable purpose, when the same are located on the premises of said institutions. They shall not be erected for more than a period of seven days and shall be the responsibility of the organization for the removal of the sign, and shall have no commercial advertising on the sign.
- C. Memorial signs or tablets, names of buildings, and date of erection, when cut into any masonry surface or when constructed of bronze or other incombustible material, will be permitted in any zoning district.

18.170.120 Temporary signs.

All political signs, real estate signs, garage sale signs, or other signs of a temporary nature shall conform with the following requirements:

- A. General Requirements – Temporary Signs.

1. No temporary signs of any nature shall be attached to any public utility pole or shall be installed within the right-of-way of a public road or street.
 2. No temporary sign shall be erected without the property owner's permission.
 3. It shall be the responsibility of the person who causes the temporary sign to be erected to see that the temporary sign is removed within 30 days, unless specifically noted otherwise.
- B. Political Signs.
1. Political signs shall not exceed 16 square feet in face area.
 2. Such sign shall be at least 10 feet from the property line.
 3. Political signs designating a political event or particular person shall be no closer than 70 feet apart.
 4. It shall be the responsibility of the property owner who gives written permission for the use of his/her property for such signs, or the political party for the political candidate, to have these signs removed not later than five days after the election or event to which they pertain and they shall not be erected earlier than 90 days prior to the election or event to which they pertain.
- C. Garage Sale and Similar Signs.
1. Advertising signs for a personal gain or residential property (i.e., garage sales) shall not be erected without the property owner's consent. Such signs shall not exceed 16 square feet.
 2. Temporary signs shall not be displayed for a period exceeding five days.
- D. Real Estate Signs.
1. Real estate type signs ("For Sale" or "For Rent") shall be located within the real estate parcel described on the sign.
 2. Two signs permitted per property, not over 16 square feet in size. The signs shall be valid until the property is sold.
 3. In addition to the above mentioned signs, two directional real estate signs shall be permitted per property or subdivision whichever the case may be.
- E. Portable Signs.
1. Portable signs shall include all signs not permanently affixed to the ground or to a building or structure such as signs mounted on vehicles or wheels or any sign designed for such purpose whether or not mounted on a vehicle or wheels.
 2. Such signs shall be permitted for a maximum period of 30 calendar days, in each calendar year.
 3. Portable signs, as described, may be moved from place to place but shall not be located within public right-of-way during said period.

18.170.130 Obscene matter prohibited.

It shall be unlawful for any person to display upon any sign or other advertising structure any obscene matter.

18.170.140 Signs not to constitute a traffic hazard or public nuisance.

- A. No sign or other advertising structure shall include attention-attracting devices.
- B. No sign or other advertising structure as regulated by this chapter shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision, or at any location where, by reason of the intensity, position, shape, or color, it may interfere with, obstruct the view, or be confused with any traffic sign, signal, or device; or which makes use of words "Stop," "Look," "Drive-In," "Danger," or any word, phrase, symbol, or character in such manner as to interfere with, mislead, or confuse traffic.

- C. No part of any sign shall be located less than 10 feet from a side or rear property line, nor less than 35 feet from the centerline of a single-family residential street, nor less than 40 feet from the centerline of a multifamily, commercial, industrial, or secondary thoroughfare street nor less than 50 feet from the centerline of a primary thoroughfare, nor less than 65 feet from the centerline of an arterial thoroughfare, nor less than 10 feet from a street right-of-way line, whichever provides the greater setback.
- D. No sign nor the illumination thereof shall create a public nuisance.

18.170.150 Structural quality.

- A. All permanent signs shall be of sound structural quality, be maintained in good repair, have a clean and neat appearance and land adjacent to such signs shall be kept free from debris, weeds, and trash.
- B. All signs as permitted above shall be so constructed and installed as to be satisfactory to the Codes Administrator.
- C. If signs become unsafe or in need of repair or repaint, the owner of the sign will repair or remove the sign within 30 days of written notice from the Codes Administrator.

18.170.160 Sign permits.

- A. No permanent sign or portable sign shall be installed, erected, or set in place until a sign permit has been issued therefor by the City of Gardner. The Codes Administrator will review, approve, and issue sign permits after payment of permit fee.
- B. Applications for a sign permit shall be made in duplicate upon forms provided by the Codes Administrator and, unless specifically waived by the Codes Administrator, shall contain, or have attached thereto, the following information:
 - 1. Name, address, and telephone number of applicant.
 - 2. Location of building, structure, or lot to which or upon which the sign or other advertising structure is to be erected.
 - 3. Position of the sign in relation to nearby buildings or structures.
 - 4. Two sets of drawings and specifications showing the proposed structure and the method of construction and attachment to the building or in the ground.
 - 5. Copy of the stress and design calculations showing the structure is designed for adequate dead load and wind pressure in any direction.
 - 6. The name of the person, firm, corporation, or association erecting the structure.
 - 7. Evidence that the electrical system for the sign complies with the National Electrical Code, as revised.
 - 8. Estimated total value of proposed sign, including costs of erection.
 - 9. Such other information as the Codes Administrator shall require to show full compliance with this and all other laws and ordinances of the City.
 - 10. It shall be the duty of the Codes Administrator after having issued the permit to follow up on the structure. If the work authorized under the permit has not been started within three months of date of issuance, the said permit shall become null and void.
 - 11. In making application for the sign permit, each applicant shall be required to issue written permission to the City of Gardner for the Codes Administrator or his/her representatives to enter the private property upon which the sign is to be erected to inspect such sign whenever deemed necessary by the Codes Administrator.
 - 12. All rights and privileges acquired under the provisions of this chapter or any amendment hereto are mere licenses revocable at any time by the Codes Administrator. All such permits shall be subject to this provision. This shall also include unsafe or unlawful areas.

13. The Codes Administrator is hereby authorized and empowered to revoke any permit issued by him/her upon failure of the holder thereof to comply with the public safety provisions of this chapter.

C. When a permanent sign is altered, rebuilt, extended, or relocated, a new sign permit shall be obtained from the City of Gardner and a permit fee shall be applied.

18.170.170 Sign permit fees.

For all permanent signs for which a permit is required, a fee shall be paid as established by the Governing Body by resolution. There shall be no fee for temporary signs.

18.170.180 Sign inspection.

The Codes Administrator, when he/she considers it necessary, shall inspect each sign or other advertising structures regulated by this chapter for the purpose of ascertaining whether it is in need of repair or removal.

18.170.190 Nonconforming existing signs.

Every sign or other advertising structure lawfully in existence at the adoption of the ordinance codified in this chapter shall not be altered, except in a manner which complies with requirements of this chapter.

Chapter 18.175 LAND USE PERMITS

Sections:

| | |
|----------------------------|-------------------------|
| 18.175.010 | Authority. |
| 18.175.020 | Uses requiring permits. |
| 18.175.030 | Application procedure. |
| 18.175.040 | Permit fees. |
| 18.175.050 | Permits revoked. |
| 18.175.060 | Right-of-way required. |
| 18.175.070 | Right-of-way required. |

18.175.010 Authority.

The Codes Administrator or his/her duly authorized representative shall be empowered to act within the provisions of this title upon all applications for land use permits. In the event of refusal to issue a permit upon an application, as herein provided, the applicant shall have the right to appeal to the Board of Appeals as set forth in Chapter [18.190](#) GMC.

18.175.020 Uses requiring permits.

No open, vacant or unimproved land shall be used for any purpose other than agricultural without first obtaining a land use permit from the Codes Administrator or his/her duly authorized representative. Land use permits shall be required for, but not limited to, the following uses:

- A. Parking lots not included in a building permit.
- B. Used car or auto storage lots.
- C. Machinery, equipment or materials storage yards.
- D. Skeet shoots or target ranges.
- E. Commercial, public or semi-public recreation areas, such as ballparks, golf courses, racetracks, fairs and similar temporary or permanent uses.
- F. Refuse dumps or sanitary landfills.
- G. Picnic groves or fishing lakes.
- H. Cemeteries.
- I. Nurseries.

18.175.030 Application procedure.

Applications for land use permits shall be filed with the Codes Administrator upon forms prescribed, setting forth the legal description of the lot, tract or parcel of land, together with a general description of the intended use.

No permit shall be issued for any land use unless the same be in conformity in every respect with all the provisions of this title.

The Codes Administrator or his/her duly authorized representative shall be empowered to act within the provisions of this title upon all applications for land use permits, and the same shall be approved or denied not later than the tenth business day succeeding the day of filing. In the event of refusal to issue a permit upon an application, as herein provided, the applicant shall have the right to appeal to the Board of Appeals as set forth in Chapter [18.190](#) GMC.

18.175.040 Permit fees.

The land use permit shall be paid as established by the Governing Body by resolution.

18.175.050 Permits revoked.

A permit may be revoked by the Codes Administrator at any time prior to completion, when it shall appear to him/her that there is departure from the conditions as required under terms of the permit, that the same

was procured by false representation or was issued by mistake, or that any of the provisions of this title are being violated. Written notice of each revocation shall be served upon the owner, his/her agent or contractor, or upon any person employed for which such permit was issued, or shall be posted in a prominent location, and thereafter no such construction shall proceed.

18.175.060 Right-of-way required.

When a land use permit is requested on a lot or tract abutting a public street, and such lot or tract is unplatted, the Codes Administrator shall determine that adequate right-of-way exists on that portion of the public street abutting said property. The minimum right-of-way, measured from the centerline of said street to the property line of said lot or tract, shall be as follows:

- Single-Family Area 30 Feet
- Multifamily and Industrial Areas 30 Feet
- Secondary Thoroughfares
(including collectors) 40 Feet
- Primary Thoroughfares 50 Feet
- Arterial Thoroughfares 55 Feet

18.175.070 Right-of-way required.

In any case where the abutting right-of-way does not clearly comply with the above dimensions, a land use permit shall not be issued for the lot or tract until title for the required additional right-of-way has been conveyed to the City of Gardner in keeping with established procedures.

Chapter 18.180

CERTIFICATE OF OCCUPANCY

Sections:

[18.180.010](#) Certificate of occupancy.

18.180.010 Certificate of occupancy.

No change in the character of use of land or of a building shall be made, nor shall any new or old building or structure be so occupied or used, until a certificate of occupancy is issued by the Codes Administrator or his/her authorized representative certifying that such building or use complies with all regulations of the zoning ordinance, building code and all other ordinances and regulations applicable thereto.

A record of all certificates of occupancy shall be kept on file in the office of the Codes Administrator, and copies shall be furnished on request to any persons having a proprietary or tenancy interest in land or building affected by such certificate of occupancy.

Chapter 18.185

AMENDMENT AND REZONING APPLICATIONS AND PROCEDURES

Sections:

| | |
|----------------------------|---|
| 18.185.010 | Initiation – Who may apply. |
| 18.185.020 | Application fees. |
| 18.185.030 | Application – Proof of ownership and/or authorization of agent. |
| 18.185.040 | Preapplication conference. |
| 18.185.050 | Submission of technical studies. |
| 18.185.060 | When an application is deemed complete. |
| 18.185.070 | Application submission deadlines. |
| 18.185.080 | Public hearing notices. |
| 18.185.090 | Notice to surrounding property owners. |
| 18.185.100 | Posting of signs for rezoning requests, special use permits, and conditional use permits. |
| 18.185.110 | Public hearing process. |
| 18.185.120 | Continuances of applications. |
| 18.185.130 | Consideration of text amendments, rezoning requests, special use permits and conditional use permits – Process. |
| 18.185.140 | Protest petition procedures. |
| 18.185.150 | Criteria for considering applications. |
| 18.185.160 | Adequate public facilities and services. |
| 18.185.170 | Lesser change table. |
| 18.185.180 | Rezoning applications – Submission requirements. |
| 18.185.190 | Special use permit and conditional use permit applications – Submission requirements. |
| 18.185.200 | Limitation on successive applications. |
| 18.185.210 | Site plan approval. |
| 18.185.220 | Site plan approval criteria. |
| 18.185.230 | Agreement not to protest formation of a benefit district. |
| 18.185.240 | Site plans and final development plans – Contents and submission requirements. |
| 18.185.250 | Preliminary development plan – Submission requirements. |
| 18.185.260 | Consideration of preliminary development plans. |
| 18.185.270 | Substantial changes. |
| 18.185.280 | Consideration of final development plans. |
| 18.185.290 | Abandonment of final development plan. |
| 18.185.300 | Conditional approvals. |
| 18.185.310 | Written findings. |
| 18.185.320 | Final decision when ordinance required. |
| 18.185.330 | Revocation of special use permits and conditional use permits. |
| 18.185.340 | Appeals of final decisions. |

18.185.010 Initiation – Who may apply.

- A. Application for a zoning text amendment may be filed only by the Governing Body or Planning Commission.
- B. An application for rezoning to a conventional zoning district may be filed by the Governing Body, the Planning Commission, the landowner, or the landowner's agent.
- C. An application for an appeal to the Board of Zoning Appeals may be filed by any person aggrieved, or by any officer of the City or any governmental agency or body affected by any decision of an official administering the provisions of this title.
- D. All other applications provided for in this chapter may only be filed by the landowner or the landowner's agent.
- E. All applications shall be made on forms prescribed by the City and available in the Community Development Department.

18.185.020 Application fees.

Fees for all applications provided for in this chapter shall be established by the Governing Body by resolution.

18.185.030 Application – Proof of ownership and/or authorization of agent.

- A. Where an application has been filed by, or on behalf of, a landowner, an affidavit of ownership shall be submitted to the City.

- B. Where an application has been filed by an agent of a landowner, an affidavit of the landowner establishing the agent's authorization to act on behalf of the landowner shall also be submitted.
- C. The affidavits required by this section shall be on forms prescribed by the City or in such form as is acceptable to the Community Development Director, and shall be submitted at the time of filing the application.

18.185.040 Preapplication conference.

A preapplication conference with City staff may, at the discretion of the Community Development Director, be required prior to submission of any application for a rezoning request, special use permit, conditional use permit, preliminary development plan or preliminary plat. The purpose of this conference shall be to: acquaint the applicant with the procedural requirements of this title; provide for an exchange of information regarding the proposed development plan and applicable elements of this title, the Community Development Plan and other development requirements; advise the applicant of any public sources of information that may aid the application; identify policies and regulations that create opportunities or pose significant restraints for the proposed development; review any proposed concept plans and consider opportunities to increase development benefits and mitigate undesirable project consequences; and permit staff input into the general design of the project.

18.185.050 Submission of technical studies.

- A. The Community Development Director may require applicants for rezoning requests, special use permits, conditional use permits, preliminary development plans, site plans or preliminary plats to submit such technical studies as may be necessary to enable the Planning Commission or Governing Body to evaluate the application. Examples of technical studies that may be required shall include, but not be limited to, traffic studies, engineering studies, geologic or hydro-geologic studies, flood studies, environmental impact assessments, noise studies, market studies, or economic impact reports. The persons or firms preparing the studies shall be subject to the approval of the Community Development Director. The costs of all studies shall be borne by the applicant. Any decision of the Community Development Director to require any such study or to disapprove the persons or firms selected by the applicant to perform the study may be appealed to the Planning Commission. The decision of the Planning Commission on any such appeal shall be final.
- B. Notwithstanding the fact that the Community Development Director did not require submission of any technical studies in support of the application, either the Planning Commission or the Governing Body may require the submission of such studies prior to taking action on the application. In such case, the persons or firms selected to perform the studies shall be subject to the approval of the entity requesting that the studies be performed. Any decision of the Planning Commission or the Governing Body to require that studies be performed or to disapprove the persons or firms selected by the applicant to perform the studies shall be final.

18.185.060 When an application is deemed complete.

No application shall be deemed complete until all items required to be submitted in support of the application have been submitted subject to the provisions of this chapter.

18.185.070 Application submission deadlines.

The Community Development Director or the Planning Commission may administratively provide for submission deadlines for materials required in support of any application provided for in this chapter. Compliance with such deadlines shall generally be required in order to have the application placed on an agenda to be heard by the Planning Commission. At the discretion of the Planning Commission Chairman, nonagenda items may be brought before the Planning Commission for consideration; provided, that the Planning Commission in its sole discretion may refuse to hear nonagenda items. The Planning Commission may consider items not on the agenda if a majority of the Commission members vote approval to do so.

18.185.080 Public hearing notices.

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

18.185.090 Notice to surrounding property owners.

Unless otherwise specifically provided in this chapter, whenever notice to surrounding property owners is required for consideration of an application, such notice shall be given as follows: notices shall be mailed at least 20 days prior to the hearing, thus notifying such property owner of the opportunity to be heard. Notice shall be mailed to all owners of record of land within 200 feet of the property subject to the application. If the subject property is located adjacent to unincorporated property outside the City's limits, then the area of notification shall be extended to include all unincorporated land within 1,000 feet of the subject property. Such mailed notice shall be given by first class mail and shall be in letter form stating the time and place of the hearing, a general description of the proposal, a general street location of the property subject to the proposed change, and a statement explaining that the public may be heard at the public hearing. In cases of applications for which protest petitions may be submitted, the notice shall also contain a statement explaining that property owners required to be notified by this section shall have the opportunity to submit a protest petition, in conformance with this title, to be filed with the office of the City Clerk within 14 days after the conclusion of the public hearing. Mailed notices shall be addressed to the owners of the property, as provided by the applicable department of Johnson County, and not to mere occupants thereof. When the notice has been properly addressed and deposited in the mail, failure to receive mailed notice shall not invalidate any action taken on the application.

18.185.100 Posting of signs for rezoning requests, special use permits, and conditional use permits.

In the case of rezoning requests, conditional use permits and special use permits, the applicant shall place a sign on the property informing the general public that a public hearing will be held at a specific time and place concerning proposed changes in use. The sign shall be furnished by the City to the applicant, and the applicant shall maintain the sign for at least the 20 days immediately preceding the date of the public hearing. The sign shall be firmly affixed and attached to a wood or metal backing or frame and placed within five feet of the street right-of-way line in a central position on the lot, tract, or parcel of land so that the sign is free of any visual obstructions surrounding the sign. If a lot, tract, or parcel of land is larger than five acres, a sign as required herein shall be placed so as to face each of the streets abutting thereto. The applicant shall file an affidavit with the Secretary of the Planning Commission at the time of the public hearing verifying that the sign has been maintained and posted as required by this title and applicable resolutions. Failure to submit the affidavit prior to the hearing may result in a continuance of the hearing. The sign may be removed at the conclusion of the public hearing and must be removed at the end of all proceedings on the application or upon withdrawal of the application.

18.185.110 Public hearing process.

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

- A. The purpose of a public hearing is to allow the applicant and all other interested parties a reasonable and fair opportunity to be heard, to present evidence relevant to the application.
- B. An accurate written summary of the proceedings shall be made for all public hearings.
- C. The Governing Body, Planning Commission, and Board of Zoning Appeals may adopt rules of procedure for public hearings by resolution or bylaws.

- D. If an item which is subject to a public hearing is continued or otherwise carried over to a subsequent date and the public hearing has been opened, then the public hearing shall not be deemed concluded until the date on which the hearing is formally closed and the Planning Commission has taken action on the application. No additional notices shall be required once the public hearing is opened.

18.185.120 Continuances of applications.

- A. Any applicant or authorized agent shall have the right to one continuance of a public hearing before the Planning Commission or Board of Zoning Appeals; provided, that a written request therefor is filed with the Secretary of the Planning Commission or Board of Zoning Appeals at least two business days prior to the date of the scheduled hearing. In any event, the applicant shall cause written notice of the rescheduled public hearing date to be sent to surrounding property owners in the same manner and in accordance with the same time schedule as required for notice of the original hearing.
- B. The Planning Commission, Board of Zoning Appeals, or the Governing Body may grant a continuance of an application for good cause shown. The record shall indicate the reason such continuance was made and any stipulations or conditions placed upon the continuance. All motions to grant a continuance shall state the date on which the matter is to be heard. A majority vote of those members of the official body present at the meeting shall be required to grant a continuance. The Planning Commission or Board of Zoning Appeals shall not continue an application for more than six months from the published public hearing date.

18.185.130 Consideration of text amendments, rezoning requests, special use permits and conditional use permits – Process.

- A. Public Hearing Required. Consideration of zoning text amendments, rezoning requests, special use permits, and conditional use permits shall require a public hearing before the Planning Commission following publication notice as provided in GMC [18.185.080](#) through [18.185.100](#).
- B. Action by Planning Commission. A vote either for or against a zoning text amendment, rezoning request, special use permit, or conditional use permit by a majority of all of the Planning Commissioners present and voting shall constitute a recommendation of the Planning Commission. If a motion for or against the zoning text amendment, rezoning request, special use permit, or conditional use permit fails to receive a majority vote of the Planning Commission, the Planning Commission may entertain a new motion. A tie vote of the Planning Commission on any motion shall be deemed to be a failure of the Planning Commission to make a recommendation. The Planning Commission's recommendation to approve or disapprove shall be submitted to the Governing Body for action, accompanied by an accurate written summary of the hearing proceedings. A recommendation to approve a zoning text amendment shall be submitted in the form of an ordinance.
- C. Governing Body Action upon Planning Commission Recommendation of a Zoning Text Amendment, Rezoning Request, Special Use Permit, or Conditional Use Permit. The Governing Body may (1) approve such recommendations by the adoption of the same by ordinance or resolution; (2) override the Planning Commission's recommendation by a two-thirds majority vote of the membership of the Governing Body; or (3) return the same to the Planning Commission for further consideration, together with a statement specifying the basis for the Governing Body's failure to approve or disapprove.
- D. Applications returned to Planning Commission. Upon receipt of an application returned by the Governing Body, the Planning Commission may resubmit its original recommendation giving the reasons therefor or submit a new or amended recommendation. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after the receipt of the Governing Body's report, the Governing Body may consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly.

- E. Reconsideration by Governing Body. Upon receipt of the Planning Commission's recommendation after reconsideration, the Governing Body, by a simple majority thereof, may take such action as it deems appropriate, including approval, disapproval or amendment of the application and adoption as amended, or the Governing Body may return the same to the Planning Commission for further consideration. Unless the Governing Body returns the application to the Planning Commission for further consideration or continues its consideration of the matter to another date, the Governing Body's action on the application shall constitute a final decision.

18.185.140 Protest petition procedures.

- A. A protest against any rezoning request, conditional use permit, or special use permit shall be filed in the City Clerk's office not later than 4:00 p.m. on the fourteenth day following the date of the conclusion of the Planning Commission's public hearing held pursuant to the publication notice. For the purposes of calculating the 14-day period, weekends and holidays shall be counted. However, if the last day is a nonbusiness day for City offices, then the filing deadline shall be 4:00 p.m. on the next regular business day.
- B. In order to be considered a "valid" protest, a protest petition must be timely filed and duly signed and verified by the owners of record of 20 percent of the total area required to be notified, excepting public streets and rights-of-way and the subject property, located within or without the corporate limits of the City, in accordance with GMC [18.185.090](#).
- C. Verification of the genuineness and correctness of the signatures on the protest petition, either individually or collectively, shall be made by the Community Development Director.
- D. Once a valid protest petition has been filed with the City, it may not be withdrawn unless every person that signed the original petition signs a verified affidavit which states and fully explains the rights being waived by the withdrawal of the protest petition. Such affidavits of withdrawal must be filed with the City Clerk on or before the last regular business day preceding the Governing Body meeting for which the protest applies.
- E. Adoption Where Protest Filed. Where a valid protest petition has been filed, an ordinance approving the rezoning request, conditional use permit, or special use permit shall not be passed except by the affirmative vote of at least three-quarters of the members of the Governing Body.

18.185.150 Criteria for considering applications.

In considering any application for rezoning request, conditional use permit, or special use permit, the Planning Commission and the Governing Body may give consideration to the criteria stated below, to the extent they are pertinent to the particular application. In addition, the Planning Commission and Governing Body may consider other factors which may be relevant to a particular application.

- A. The conformance of the proposed use to the Community Development Plan and other adopted planning policies.
- B. The character of the neighborhood including, but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space, and floor-to-area ratio (commercial and industrial).
- C. The zonings and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zonings and uses.
- D. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.
- E. The length of time the property has remained vacant as zoned.
- F. The extent to which approval of the application would detrimentally affect nearby properties.
- G. The extent to which the proposed use would substantially harm the value of nearby properties.

- H. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.
- I. The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution, or other environmental harm.
- J. The economic impact of the proposed use on the community.
- K. The gain, if any, to the public health, safety, and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.
- L. The recommendation of professional staff.

18.185.160 Adequate public facilities and services.

- A. In order to prevent the premature development of land which might pose a threat to the health, safety, or general welfare of the community at large or the occupants of land in the particular area of the City, it shall be the policy of the City that no application for special use permit, conditional use permit, site plan, preliminary or final development plan, or preliminary or final plat shall be approved unless public facilities and services are available, or will be provided as a condition of the application, which are adequate to serve the development.
- B. At the time of submittal of a site plan, final development plan, or final plat application, the applicant shall submit proof that an adequate road network; storm water drainage system; and water, sewer, fire, gas and electric services are presently available to the subject property. If adequate public facilities and services are not presently available at the time of submittal of application for a site plan, final development plan, or final plat, or are not planned for the near future to appropriately serve the proposed development as determined by the affected utility company or agency, the site plan, final development plan, or final plat may be denied.
- C. When adequate public facilities or services are not in place or scheduled to be constructed in the near future of the consideration of the application, the City may make approval of the application subject to adequate facilities being provided as described in subsection (D) of this section. In determining whether such conditional approval is appropriate, the Planning Commission and the Governing Body shall consider the following factors:
 - 1. The nature, extent, and estimated cost of the required facilities or services;
 - 2. The proposed method of providing the adequate facilities;
 - 3. The extent to which other property owners would be required to share in the costs of the improvements; and
 - 4. Any public amenities to be provided by the development, such as the donation or dedication of land or improvements for public facilities or services including, but not limited to, water, sewers, or streets.
- D. An applicant may propose to provide adequate facilities as described in subsection (B) of this section by providing the facilities or services at their own expense or by agreeing with the City to fund all or part of the costs of such improvements. The intent of either method shall be to offset fairly and equitably the costs of the improvements or any higher net public costs resulting from the impact of the development. In any computations of additional net public costs, the differences between otherwise anticipated public costs and development impact costs, and otherwise anticipated public revenue and development impact revenues shall be considered, among other factors. The Planning Commission or Governing Body may require expert determination and analysis of public costs and revenues and the development's impact thereon.
- E. In the event that an application does not establish adequacy of facilities and services pursuant to the criteria set forth in subsection (B) of this section, and the applicant does not propose to provide the adequate facilities and services, approval of the application may occur only upon express findings that, due to the nature of the proposed development, the occupants of the

development will not be endangered and the inadequacy of a particular facility or service will not pose a threat to the health, safety, or general welfare of nearby properties or the community at large. In cases where a prior development application has established the adequacy of public facilities, or where the adequacy of public facilities is evident based upon the location of the property, the Planning Commission may waive the requirement that the applicant provide assurances of any or all public facilities or services as part of the application process.

18.185.170 Lesser change table.

The Planning Commission may recommend and the Governing Body may adopt a change in zoning which is a lesser change (more restrictive) than the one requested for the entire property or a portion of the property; provided, that the more restrictive district is in the same residential, commercial, or industrial grouping as the district for which the change was requested. The adoption of a lesser district shall only be approved with the consent of the applicant. A change to a planned district may not be approved if the application is for a conventional district. Applications for District A (Agricultural) or REC (Recreational) may not be changed to another category unless a new application is filed. A planned district shall be equally restrictive to its equivalent district. The Governing Body may refer any such application back to the Planning Commission for further consideration if, in its judgment, it deems such referral advisable and in the best interest of the public and the applicant.

LESSER CHANGE TABLE

Most Restrictive → → → → → Least Restrictive
RESIDENTIAL RE, R-1, R-2, R-3, R-4, R-5
COMMERCIAL C-O, CO-A, C-1, C-2, C-3
INDUSTRIAL M-1, M-2

18.185.180 Rezoning applications – Submission requirements.

The Planning Commission shall adopt by resolution a document outlining submission requirements for rezoning applications. This document shall require a legal description, adequate information to provide notice to surrounding property owners (pursuant to GMC 18.185.090), and shall list additional documents and information required to be submitted in support of the application. The Community Development Director or designee may also require additional technical studies not listed on the application pursuant to GMC [18.185.050](#). The Community Development Director or designee shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

18.185.190 Special use permit and conditional use permit applications – Submission requirements.

The Planning Commission shall adopt by resolution a document outlining submission requirements for special use permit and conditional use permit applications. This document shall require a site plan, a legal description, adequate information to provide notice to surrounding property owners (pursuant to GMC 18.185.090), and shall list additional documents and information required to be submitted in support of the application. The Community Development Director or designee may also require additional technical studies not listed on the application pursuant to GMC [18.185.050](#). The Community Development Director or designee shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

18.185.200 Limitation on successive applications.

- A. No application for rezoning request, special use permit, or conditional use permit by a landowner or a landowner's agent shall be accepted if any application for substantially the same property has been filed and advertised for public hearing within the preceding 12 months.
- B. For purposes of subsection (A) of this section, the preceding 12-month period shall be determined as follows:
 - 1. If there was final action (either approval or denial) on the prior application, the 12-month period shall run from the date of such action.

2. If the prior application was withdrawn after being advertised for public hearing, the 12-month period shall run from the date the application was withdrawn.
- C. The Community Development Director shall determine if an application concerns “substantially the same property” as a prior application. The landowner may appeal any such determination to the Planning Commission.
- D. The Governing Body may waive the limitation in this section for good cause shown.

18.185.210 Site plan approval.

- A. The purpose and intent of requiring site plan approval is to encourage the compatible arrangement of buildings, off-street parking, lighting, landscaping, pedestrian walkways and sidewalks, ingress and egress, and drainage on the site and from the site, any or all of these, in a manner that will promote safety and convenience for the public and will preserve property values of surrounding properties.
- B. After the effective date of the ordinance codified in this title, no property which has a conventional zoning district classification or which requires approval of a site plan may be developed or significantly redeveloped without a site plan which has been submitted to and approved by the Planning Commission, or the Community Development Director indicating that site will conform to the current applicable requirements of City code. “Significant redevelopment” means alterations or changes to property in such manner that one or more of the following is applicable:
 1. The development results in the construction of a building, structure, or addition that increases the gross square footage of the existing development by more than 25 percent.
 2. The estimated construction costs of all improvements to the development exceed 25 percent of the most recent appraised fair market value of the existing property as determined by the County Appraiser.
 3. The construction or paving of a parking lot or facility which covers ground previously not used as a parking lot or facility, or the construction or paving of any parking lot or facility which does not conform to City pavement.
 4. The intensification of property by a change of use which increases off-street parking requirements pursuant to Chapter [18.160](#) GMC.
- C. Approved site plans are valid for two years. The Planning Commission may grant time extensions up to one additional year. The property owner may appeal disapproval or conditions of approval of a site plan by the Planning Commission to the Governing Body by filing a notice of appeal with the Community Development Director within 10 days following the Planning Commission’s decision. An approved site plan shall be required prior to the issuance of a building permit; provided, that single-family and two-family (duplex) units, and accessory buildings are hereby expressly exempted.
- D. Modifications to a valid site plan may be approved administratively by the Community Development Director if the changes proposed do not significantly deviate from the approved site plan. The following changes are not considered significant changes to the site plan:
 1. An increase in floor area or number of dwelling units not exceeding five percent.
 2. Substitution of landscape materials; provided, that the new materials are the same general size and type.
 3. Minor changes to elevation, building materials, parking lot design, screening fences or walls, building location, etc., that would improve the site or are needed because of circumstances not foreseen at the time the site plan was approved by the Planning Commission.

18.185.220 Site plan approval criteria.

The Planning Commission shall review the site plan to determine if it demonstrates a satisfactory quality of design in the individual buildings and in its site, the appropriateness of the building or buildings to the

intended use, and the aesthetic integration of the development into its surroundings. Satisfactory design quality and harmony will involve among other things:

- A. The site is capable of accommodating the building(s), parking areas and drives with appropriate open space.
- B. The plan is consistent with good land planning, good site engineering design principles, and good landscape architectural principles.
- C. An appropriate use of quality materials and harmony and proportion of the overall design.
- D. The architectural style should be appropriate for the project in question and compatible with the overall character of the neighborhood.
- E. The siting of the structure on the property, as compared to the siting of other structures in the immediate neighborhood.
- F. The bulk, height and color of the proposed structure as compared to the bulk, height and color of other structures in the immediate neighborhood.
- G. Landscaping to City standards shall be required on the site and shall be in keeping with the character or design of the site.
- H. Ingress, egress, internal traffic circulation, off-street parking facilities and pedestrian ways shall be so designed as to promote safety and convenience, and shall conform to approved City standards.
- I. The plan represents an overall development pattern that is consistent with the Community Development Plan, the official street map, and other adopted planning policies.
- J. Right-of-way for any abutting thoroughfare has been dedicated pursuant to the provisions of GMC Title [17](#).

18.185.230 Agreement not to protest formation of a benefit district.

As an alternative to the construction of a public improvement pursuant to a site plan or final development plan requirement, the Governing Body may accept from the applicant an executed agreement not to protest formation of a benefit district for improvements including, but not limited to, streets, sidewalks, and utilities. An executed agreement not to protest formation of a benefit district for improvements shall contain provisions whereby the applicant, and all successors in title to the applicant, are bound not to protest inclusion of the legally described property in a properly constituted benefit district, pursuant to K.S.A. 12-6a01 et seq., and amendments thereto, for the required improvement. An executed agreement not to protest formation of a benefit district for improvements shall be recorded at the register of deeds.

18.185.240 Site plans and final development plans – Contents and submission requirements.

The Planning Commission shall adopt by resolution a document outlining submission requirements for site plan and final development plan applications. This document shall require a specific number of copies of the site plan or final development plan, outline what information must be shown on the plan, and shall list additional documents or information required to be submitted in support of the application. The Community Development Director or designee may also require additional technical studies not listed on the application, pursuant to GMC [18.185.050](#). The Community Development Director or designee shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

18.185.250 Preliminary development plan – Submission requirements.

The Planning Commission shall adopt by resolution a document outlining submission requirements for preliminary development plan applications. This document shall require a specific number of copies of the preliminary development plan, outline what information must be shown on the plan, require a legal description, require adequate information to provide notice to surrounding property owners (pursuant to GMC 18.185.090), and list additional documents or information required to be submitted in support of the application. The Community Development Director or designee may also require additional technical studies not listed on the application, pursuant to GMC [18.185.050](#). The Community Development Director

or designee shall have the authority to refuse or table incomplete applications until the required information is submitted. Any application that has been tabled for more than 60 days shall be considered to have been withdrawn.

18.185.260 Consideration of preliminary development plans.

When property is requested to be rezoned to a planned zoning district, the preliminary development plan shall be considered and approved as part of the rezoning application. When property has been approved for rezoning to a planned zoning district, changes in the preliminary development plan may be made only after approval of a revised preliminary development plan. Changes in the preliminary development plan which are not substantial or significant may be approved by the Community Development Director, and disapproval of such changes by the Community Development Director may be appealed to the Planning Commission. Substantial or significant changes in the preliminary development plan may only be approved after rehearing by the Planning Commission and Governing Body; such rehearing shall be subject to the notice and protest provisions set forth in GMC [18.185.080](#) through [18.185.100](#).

18.185.270 Substantial changes.

- A. For purposes of this section, "substantial or significant changes" in the preliminary development plan shall mean any of the following:
1. Increases in the density or intensity of residential uses by more than five percent.
 2. Increases in the total floor areas of all nonresidential buildings covered by the plan by more than 10 percent.
 3. Increases of lot coverage by more than five percent.
 4. Increases in the height of any buildings by more than 10 percent.
 5. Changes of architectural style which will make the project less compatible with surrounding uses.
 6. Changes in ownership patterns or stages of construction that will lead to a different development concept.
 7. Changes in ownership patterns or stages of construction that will impose substantially greater loads on streets and other public facilities.
 8. Decreases of any peripheral setbacks by more than 25 percent.
 9. Decreases of areas devoted to open space by more than five percent or the substantial relocation of such areas.
 10. Changes of traffic circulation patterns that will affect traffic outside of the project boundaries.
 11. Modifications or removal of conditions or stipulations to the preliminary development plan approval.
- B. The determination of whether a proposed revised preliminary development plan contains "substantial or significant changes" shall be made by the Community Development Director within five business days following the filing of the application. The determination of the Community Development Director may be appealed to the Planning Commission, whose decision shall be final.
- C. In determining whether to approve an application for a revised preliminary development plan, the Planning Commission or Governing Body shall apply the criteria set forth in GMC [18.185.220](#). In the event that the application for the revised preliminary development plan is denied, the previously approved preliminary development plan will remain in effect.

18.185.280 Consideration of final development plans.

- A. No property which has a planned zoning district classification or which requires approval of a final development plan may be developed or significantly redeveloped without a final development

plan having been submitted to and approved by the Planning Commission indicating that the site will conform to the current applicable requirements of City code. Final development plans for planned zoning districts which contain no modifications or additions from the approved preliminary development plan shall be approved by the Planning Commission if the Commission determines that the landscaping and screening plan is adequate and that all other submission requirements have been satisfied.

- B. A final development plan which contains modifications from the approved preliminary development plan, but is in substantial compliance with the preliminary plan, may be approved by the Planning Commission without a public hearing; provided, that the Commission determines that the landscaping and screening plan is adequate and that all other submission requirements have been satisfied. For purposes of this section, lack of “substantial compliance” shall have the same meaning as “substantial or significant changes” as set forth in GMC [18.185.270](#). Any determination made by the Planning Commission under this subsection shall be appealable to the Governing Body by the applicant within 10 days of the date of the Planning Commission determination.
- C. In the event of a determination that the proposed final development plan is not in substantial compliance with the approved preliminary development plan, the application may not be considered except at a public hearing, following publication notice and notice to surrounding property owners as provided in GMC [18.185.080](#) through [18.185.100](#).
- D. Revisions to approved final development plans which are insignificant in nature may be approved administratively by the Community Development Director. In no event may revisions to approved final development plans be approved administratively if the proposed revised final plan contains “substantial or significant changes” as defined in GMC [18.185.270](#).
- E. The Business and Economic Development Director or designee may accept final development plans submitted concurrently with the preliminary development plan. The Planning Commission may approve a final development plan prior to the approval of a preliminary development plan by the Governing Body with the conditions on the final development plan approval that it is consistent with the approved preliminary development plan and subject to the preliminary development plan being approved by the Governing Body.

18.185.290 Abandonment of final development plan.

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

18.185.300 Conditional approvals.

When approving any application, the approving authority may stipulate that the approval is subject to compliance with certain specified conditions including, but not limited to, time of performance requirements, limitation on hours of operation, participation in transportation systems management programs, or participation in improvement districts or other programs for financing public facilities, etc.

18.185.310 Written findings.

Unless otherwise specifically provided in this title, written findings are not required for a final decision on any application. However, any decision may be expressly made subject to the subsequent adoption of written findings and, in such cases, the decision shall not be considered final until such findings are adopted. When an appeal of any quasi-judicial decision has been filed in the District Court of Johnson County pursuant of K.S.A. 12-760 or 60-2101(d) in cases where written findings have not been adopted, written findings shall be adopted by the approving authority within 45 days of service of the appeal on the City and thereafter shall be certified to the District Court as part of the administrative record. The 45-day

time period for adoption and certification of findings may be extended with the permission of the District Court.

18.185.320 Final decision when ordinance required.

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

18.185.330 Revocation of special use permits and conditional use permits.

- A. Any special use permit or conditional use permit granted under the authority of this chapter is subject to revocation for any or all of the following reasons:
 1. Noncompliance with any specified applicable performance standard requirements.
 2. Noncompliance with any special conditions imposed at the time of approval of the special use permit or conditional use permit.
 3. Violation of any provisions of the Code pertaining to the use of the land, construction or uses of buildings or structures, or activities conducted on the premises by the permittee or agents of the permittee.
 4. When conditions in the neighborhood have changed to the extent that approval of the permit would be clearly unwarranted if being applied for at the time of revocation.
 5. Violation of any other applicable Code provisions or any state or federal laws or regulations by the permittee or agents of the permittee; provided, that such violations relate to the conduct or activity authorized by the permit or the qualifications of the permittee or its agents to engage in such conduct or activity.
- B. Revocation proceedings may be initiated by a majority vote of the Governing Body.
 1. The Governing Body shall hold a public hearing to consider the revocation of the special use permit or conditional use permit. The City shall give the permittee and landowner notice of the scheduled revocation hearing at least five days prior to the date scheduled for such hearing. If the permittee and landowner are present at the meeting of the Governing Body at which the revocation proceedings are initiated, no further notice shall be required; otherwise, notice shall be given by personal service or certified mail, return receipt requested. If the notice cannot be delivered or is not accepted, notice may be given by publishing a notice of hearing in the official City newspaper and by posting a notice of hearing on the property at least five days prior to the date scheduled for the hearing.
 2. No special use permit or conditional use permit shall be revoked unless a majority of the Governing Body is satisfied by a preponderance of the evidence that grounds for revocation exist. Any motion for the revocation of a special use permit or conditional use permit shall clearly state the grounds for revocation. In addition, when the basis for revocation is "changed conditions," revocation may only occur upon an explicit finding that revocation is necessary for the protection of the public health, safety, and welfare. Adoption of any motion to revoke a special use permit or conditional use permit may be made subject to subsequent adoption of written findings of fact and conclusions of law, at the discretion of the Governing Body.
 3. An appeal of any decision of the Governing Body to revoke a special use permit may be filed in the District Court of Johnson County, Kansas, pursuant to K.S.A. 12-760, or amendments thereto. Any appeal taken shall not suspend the order of revocation during the pendency of the appeal unless so ordered by the District Court.

18.185.340 Appeals of final decisions.

Except where this title provides for an appeal to another quasi-judicial or administrative body, any person, official or agency aggrieved by a final decision on an application provided for in this title desiring to appeal said decision shall file the appeal in the District Court of Johnson County within 30 days of the making of the decision.

Chapter 18.190 BOARD OF ZONING APPEALS

Sections:

[18.190.010](#) Authority.

18.190.010 Authority.

The Board of Zoning Appeals of the City of Gardner, Kansas, is hereby continued in accordance with the provisions of K.S.A. 12-714 and amendments thereof relating to the creation of the Board of Zoning Appeals, and the provisions of K.S.A. 12-715 and amendments thereof authorizing said Board to administer the details of the application of this title and making regulations in accordance with the general rules set forth in said zoning title, including the power to hear and determine appeals to permit exceptions to, or variations from, the zoning regulations in the classes of cases or situations and in accordance with the purpose, conditions, and procedure specified by the Governing Body of the City of Gardner, Kansas, as authorized in K.S.A. 12-715 and amendments thereof; provided, that the word "Board" when used in this title shall be construed to mean the Board of Zoning Appeals.

A. Definitions (as Defined Herein).

1. "Appellant" shall refer to any person, firm, partnership, corporation or other business organization, public official, head of any administrative department, or member of any public board which appeals a decision of the Codes Administrator or any public official of the City of Gardner.
2. "Applicant" shall mean any person, firm, partnership, corporation or other business organization which applies to the Board for a variance or exception.
3. "Exception" shall mean a permission given by the Board, properly authorized by this title and amendments thereto, for an applicant to use his/her property in a manner contrary to the provisions of this title and amendments thereto, provided such use subserves the general welfare and protects community interests.
4. "Variance" shall mean an authorization by the Board granting relief to an applicant in the use of an applicant's property, where, owing to special conditions, a literal enforcement of the provisions of this title and amendments thereto will result in unnecessary hardship to the applicant.

B. Membership, Term, Compensation, Rules of Procedure, and Meeting of the Board of Zoning Appeals.

1. **Membership.** The Board shall consist of five members, all of whom shall be taxpayers and residents of the City of Gardner, Kansas, who will serve at the appointment of the Mayor by and with the consent of the Governing Body; provided, that a member may be removed by the Mayor with the consent of the Governing Body, said consent to be given by resolution of the Governing Body for cause upon written charges filed with the Secretary of the Board; provided, that no removal shall occur until after a public hearing is held to consider the written charges.
2. **Term.** A member shall be appointed to serve a term of three years on the Board from the date of his/her appointment, except where a member is appointed to serve the unexpired term of a vacated membership, in which event the member shall serve for the balance of the unexpired term; provided, that Board members serving on the date of enactment of the ordinance codified in this title will continue to serve until the expiration of the term for which said members have been appointed.
3. **Officers.** The members of the Board shall elect from their membership a Chairman and shall appoint a Secretary, each of whom shall serve for a term of one year from the date of their election or appointment by the Board.

4. Compensation. All members of the Board shall serve without compensation.
 5. Rules of Procedure. The Board shall adopt rules of procedure in accordance with the authority conferred by K.S.A. 12-714 (L. 1965, Ch. 97, Section 4; June 30.) and amendments thereof.
 6. Meetings. Meetings of the Board shall be held at the call of the Chairman; provided, that whenever three or more members of the Board request the Chairman to summon a meeting of the Board, the Chairman shall call a meeting; provided further, that the Secretary of the Board shall keep minutes of its proceedings and official actions, and shall keep records of its examinations and findings, and shall file the same in the office of the Board or such other public place within the City where public records are filed; provided further, that the presence of three members of the Board shall constitute a quorum for transacting business and taking official action; and provided further, that the concurring vote of at least three members of the Board shall be necessary to effect a ruling of the Board.
- C. Board of Zoning Appeals – Powers and Duties – Appeals – Variances and Exceptions. The Board of Zoning Appeals shall administer the details of appeals from or other matters referred to it regarding the application of this title and amendments thereto, including the power to hear and determine appeals to grant variances and exceptions to this title and amendments thereto, as hereinafter provided.

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 this title and amendments thereto. The Board shall have power to hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of said zoning title. Such appeals shall be filed with the Secretary of the Board within 30 days from the date of the decision of the officer administering the said zoning title, which decision is appealed, and such appeal shall specify in writing the grounds for the appeal; provided, that notice of said appeal shall be served upon the person whose decision is being appealed by providing said person with a copy of the appeal; provided further, that, when the officer is notified that his/her decision is being appealed, said officer shall forthwith transmit to the Secretary of the Board a transcript of all proceedings from which the appeal is taken; and provided further, that an appellant, upon filing an appeal with the Secretary of the Board, shall pay a fee in an amount as established by the Governing Body by resolution.

Any person may apply to the Board for variances and exceptions to this title and amendments thereto upon payment to the Secretary of the Board of a fee in an amount as established by the Governing Body by resolution. The Board may grant variances and exceptions to this title and amendments thereto in the manner hereinafter provided.

1. Variance. The Board may grant a variance from the specific terms of the said zoning title and amendments thereto which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this title will result in unnecessary hardship for the applicant; and provided, that the spirit of the said zoning title and amendments thereto shall be observed, the public safety and welfare secured, and substantial justice done for the applicant. Such variance shall not permit any use not permitted by the said zoning title and amendments thereto in such district. An application for a variance may be granted upon a finding by the Board that all of the following conditions have been met:
 - a. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant;
 - b. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

- c. That the strict application of the provisions of the zoning title or which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
 - d. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
 - e. That the granting of the variance desired will not be opposed to the general spirit and intent of the zoning title.
2. Exceptions. The Board may grant exceptions to the provisions of this title and amendments thereto when the Board is specifically authorized to grant such exceptions by the terms of the said zoning title and any amendments thereto. In no event shall exceptions to the provisions of the said zoning title and any amendments thereto be granted when the use or exception contemplated is not specifically listed as an exception in the zoning title. Further, the Board shall not have the power to grant an exception when the conditions of such an exception as established by the Governing Body in this title and amendments thereto are not found to be present.

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, Kansas, to determine the reasonableness of any such order or determination.

- D. Hearing Before Board of Zoning Appeals. An appellant or applicant shall mail on or before 10 days from the date of hearing set for an appeal or application a copy of the same to the owners of record of all real property located within or without the corporate limits of the City and lying within 200 feet of the boundaries of the property which is the subject of the appeal; provided, that such notice shall be mailed certified mail, return receipt requested, postage prepaid in the United States mail; and provided further, that proof of mailing and return receipts as requested shall be filed under oath by the appellant or applicant with the Secretary of the Board five days prior to the date of hearing set for an appeal or application.
- E. Plat to Be Filed with Secretary of Board. The appellant or applicant shall file with the Secretary of the Board on or before 10 days prior to the date of hearing set for an appeal or application, a plat of the land which is the subject of said appeal or application, said plat being drawn to scale and showing the ownership of all real estate lying within 200 feet from the boundaries of appellant's or applicant's real property; provided, that an appellant or applicant shall show on said plat the location of all present and proposed improvements relating to appellant's or applicant's real property.
- F. Time for Hearing an Appeal or Application. When an appeal or application has been filed with the Secretary of the Board, said Secretary shall notify the Chairman who will call a meeting of the Board; provided, that notice of the time, place, and subject of the hearing shall be published in the official newspaper of the City of Gardner, Kansas, once on a date not less than 20 days prior to the date set for the hearing; provided further, that a copy of said publication notice shall be mailed to each party to the appeal within seven days from the date of publication.

Chapter 18.195 PENALTY PROVISIONS

Sections:

[18.195.010](#) Penalty for violations.

18.195.010 Penalty for violations.

The violation of any provisions of this title shall be deemed to be a misdemeanor and any person, firm, association, partnership, or corporation convicted thereof shall be punished by a fine not to exceed an amount established by the Governing Body by resolution; and the City of Gardner, Kansas, shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provisions of this title and to abate nuisances maintained in violation thereof, and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation, or to prevent the occupancy of said building, structure or land. Each day any violation of this title shall continue shall constitute a separate offense.