

ORDINANCE NO. 2695

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF GARDNER, KANSAS BY AMENDING SECTIONS OF TITLE 17 OF THE GARDNER MUNICIPAL CODE.

WHEREAS, the City of Gardner, Kansas initiated changes to Sections of Title 17 entitled "Land Development Code", by action of City Staff as presented to the Planning Commission on the 26th day of January, 2021 and action of the Planning Commission on the 22nd day of February, 2021; and

WHEREAS, a public hearing on the herein changes to the Land Development Code was properly noticed and held before the Planning Commission of the City of Gardner, Kansas, on the 22nd day of February, 2021; and

WHEREAS, said Planning Commission has recommended that the herein amendments to the Land Development Code of the City of Gardner, Kansas be approved.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: Chapter 17.01.030(C) is hereby amended to read as follows:

17.01.030(C) - Establishment of Districts – Annexed Land

C. Annexed Land

1. **Zoning Classification at the Time of Annexation.** Upon annexation, the City shall initiate a petition to rezone an annexed property to the zoning district most similar to the zoning classification in effect under the prior jurisdiction. Alternatively, an annexed property owner may request that the aforementioned city initiated rezoning petition be deferred and may initiate an application to rezone an annexed property to an appropriate district(s) associated with a development plan / plat for the property.
2. **Zoning Classification and Regulations After Annexation**
 - a. Any owner of land within the area annexed may apply for rezoning under the laws and procedures of the City, and as granted by KSA 12-756 and 12-757, after the effective date of annexation.
 - b. If property annexed before the effective date of this Title is rezoned to a City zoning district, all zoning requirements and regulations of the City take effect, and the regulations of the prior zoning jurisdiction terminate, within the annexed area.
3. **Enforcement.** The City may secure civil remedies for violations of prior zoning jurisdiction regulations to the same extent that it may secure civil remedies for violations of this ordinance pursuant to GMC 17.01.050.

SECTION TWO: Chapter 17.01.060(E) is hereby amended to read as follows:

17.01.060 – Nonconformances – Nonconformances Created by Annexation

- E. Nonconformances Created by Annexation.** All nonconformances created as a result of the application of the corresponding zoning district at the time of annexation (per GMC 17.01.030 (C) (1)) shall be allowed to remain in place. Improvements to property, in support of the use of the property at the time of annexation, will be reviewed on a case-by-case basis and may allow for:
1. An expansion of the nonconforming structure(s) or site condition(s) to which the improvement / investment is not greater than 50 percent of the appraised value of the property or applicable structure.
 2. An expansion of the nonconforming structure(s) or site condition(s) that is in closer conformance, than the condition that existed at the time of annexation, with the applicable zoning district requirements but not necessarily full compliance, to which the improvement / investment is not greater than 50 percent of the appraised value of the property or applicable structure.

Such case-by-case determinations shall be made by the Director with appeals of such determinations going to the Planning Commission.

SECTION THREE: Chapter 17.01.060(F) is hereby amended to read as follows:

17.01.060 – Nonconformances – Nonconforming Lots

F. Nonconforming Lots. Any lots platted legally prior to the adoption or amendment of this Code, but which could not be platted under the current requirements of this Code, may continue to exist, provided they comply with all other applicable standards. Any difficulties meeting these standards caused by the nonconformance of the lot may be used as criteria in granting any discretionary relief to these standards. A nonconforming lot shall not be used, conveyed, transferred, subdivided, nor have its boundaries altered in any manner, except for government purpose, that would compound or further increase the nonconforming characteristics of the lot. Such nonconforming lots may be combined, per the applicable plat procedure, provided this merger does not increase the degree of any nonconformity, and any such newly combined lot that does not meet current lot standards will continue to be a legal nonconforming lot even though it was not platted legally prior to the adoption of this Code.

SECTION FOUR: Chapter 17.01.060(G) is hereby amended to read as follows:

17.01.060 – Nonconformances – Signs

G. Signs. Existing signs which were lawful at the time, but made nonconforming by adoption or amendment to this Code, shall be legal, provided they are maintained in good condition. Nothing in this Code shall prohibit the ordinary maintenance repair of a nonconforming sign or replacement of a broken part of a nonconforming sign. Replacement of copy, content or message may be considered ordinary maintenance.

1. A legal nonconforming sign shall not be:
 - a. Changed to another type or shape of nonconforming sign;
 - b. Physically changed to expand or extend the size of the sign or to replace significant materials of the sign or sign structure;
 - c. Continued after more than six months of abandonment or vacancy of the property;
 - d. Reestablished after any removal of the sign that is not part of ordinary maintenance; or
 - e. Continued if a substantial part of the property or building is redeveloped, including more than 25 percent of the property or building by area or by value.
2. Nonconforming signs that are destroyed or damaged by 50 percent or more of their value shall not be rebuilt or repaired except in conformance with this Code.

SECTION FIVE: Chapter 17.01.060(H) is hereby added to read as follows:

17.01.060 – Nonconformances – Burden of Proof

H. Burden of Proof. The burden shall be on the applicant to establish entitlement to continuation of nonconforming situations or completion of nonconforming projects

SECTION SIX: Chapter 17.02.010 is hereby amended to add or amend the following definitions:

17.02.010 – Definitions

A

Accessible in reference to a lot, means one or both of the following: 1) having a driveway (or an area for a driveway) that provides vehicular access to an existing street; and/or 2) having a public or private access easement that provides vehicular access, or shared vehicular access, to an existing street while meeting all applicable access location and design standards.

ADA Ready refers to a building that is more easily retrofitted for future ADA compliance including features such as: 1) Zero level entry, 2) Bathrooms large enough to achieve ADA compliance, and 3) Hallways and doorways that are framed for ADA compliant widths.

B

Block means a piece or parcel of land entirely surrounded by public highways / streets, other than alleys, or bounded by the presence or a combination of other features such as parks / open spaces, cemeteries, railroad or other utility rights-of-way, exterior boundaries of a subdivision or other existing development, shorelines, and/or corporate boundaries. In cases where the platting is incomplete or disconnected, or the development pattern proposed as the result of curvilinear streets, cul-de-sacs or other features creates a scenario which does not meet the definition of a block, the Director shall determine the outline of the block.

L

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. For the purposes of the Land Development Code xeriscaping features and direct pedestrian walks from front entries to public sidewalks are considered to be part of the landscape area.

P

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 (per Table 9-6 GMC 17.09.040 (B)).

S

Small Format Home(s) generally refers to housing types which are smaller than 1,500 square feet. Such homes may be traditional stick-built, manufactured, mobile, modular, or tiny houses, but do not include recreational vehicles or travel trailers.

Street Tree means a tree placed in the public right-of-way along the street which may be in front or behind a sidewalk, or within a designated landscape tract or easement adjacent to a public roadway. Typical location is identified as Frontage (A) in Figure 8-1 of GMC section 17.08.030.

T

Tree, Street see *Street Tree* above.

The remainder of the definitions in Chapter 17.02.010 shall remain unchanged.

SECTION SEVEN: Chapter 17.03.050(A) is hereby amended to read as follows:

17.03.050 - Conditional Use Permit - Applicability

- A. **Applicability.** A conditional use permit provides flexibility for different uses within a zoning district and allows the potential for additional uses under certain conditions. Due to the varying design and operational characteristics of the use or due to conditions in the area where the use is proposed, these uses are not generally appropriate in that district, but may be considered through a case-specific review to determine the compatibility in a specific context and location.

Conditional use permits may be initiated by the owners or authorized agents of any property affected. In addition to the general requirements in Table 3-1 and GMC 17.03.010, the following requirements are specific to conditional use applications.

SECTION EIGHT: Chapter 17.03.050(C) is hereby amended to read as follows:

17.03.050 - Conditional Use Permit – Effect of Decision

- C. **Effect of Decision.** Approval of a conditional use permit by the Governing Body shall authorize the applicant to apply for a building permit and other applicable permits, and establish the conditional use. Approval shall be valid for a period of time determined through the review process and the Governing Body provided, that approvals for communication facilities for wireless services shall be for a term of

not less than 10 years. Any application not acted upon according to the approval and conditions within 1 year of approval shall be void; although the Governing Body may grant a one-time one year extension if justified. Any amendment to a conditional use permit shall require the same process as the original approval.

SECTION NINE: Chapter 17.03.080(A) is hereby amended to read as follows:

17.03.80 - Administrative Adjustments – Applicability

A. Applicability. The administrative adjustment process is intended to provide flexibility for application of specific standards to sites where it is clear that an alternative approach with minor or de minimis modifications of the standards will equally or better meet the purpose, intent or design objectives of these regulations. Specifically it applies to:

1. Altering a building standard, such as setback, area or height.
2. Reducing a site design standard, such as a landscape requirement, parking quantity or location, open space requirement or dimension.
3. Deviating from any building design standard, where an alternative “equal or better” standard is proposed by the applicant.
4. In any of these cases the adjustment cannot create conflicts with any other applicable standard.

SECTION TEN: Chapter 17.03.080(B) is hereby amended to read as follows:

17.03.080 - Administrative Adjustments – Specific Procedures and Allowances

B. Specific Procedures and Allowances. Applications for administrative adjustments shall follow the same procedures required for a site plan and design review or administrative site plan, whichever is applicable. In administrative site plan cases where the Director is the decision authority, administrative adjustments may be granted by the Director. In the case of site plan and design review where the Planning Commission is the decision authority, administrative adjustments may be granted only by the Planning Commission.

1. Administrative Site Plan cases:
 - a. Altering a building standard, such as setback, area or height by up to 10% of the stated percent (e.g. the stated percent is 30% then the adjustment allowed is up to 3 percentage points) or numeric (e.g. the stated number is 30 then the adjustment allowed is up to 3) standard respectively.
 - b. Reducing a site design standard, such as a landscape requirement, parking quantity or location, open space requirement or dimension by up to 10% of the stated percent (e.g. the stated percent is 30% then the adjustment allowed is up to 3 percentage points) or numeric (e.g. the stated number is 30 then the adjustment allowed is up to 3) standard respectively.
 - c. Deviating from any building design standard, where an alternative “equal or better” standard is proposed by the applicant.
2. Site Plan and Design Review cases:
 - a. Altering a building standard, such as setback, area or height by up to 20% of the stated percent (e.g. the stated percent is 30% then the adjustment allowed is up to 6 percentage points) or numeric (e.g. the stated number is 30 then the adjustment allowed is up to 6) standard respectively.
 - b. Reducing a site design standard, such as a landscape requirement, parking quantity or location, open space requirement or dimension by up to 20% of the stated percent (e.g. the stated percent is 30% then the adjustment allowed is up to 6 percentage points) or numeric (e.g. the stated number is 30 then the adjustment allowed is up to 6) standard respectively.
 - c. Deviating from any building design standard, where an alternative “equal or better” standard is proposed by the applicant.

SECTION ELEVEN: Chapter 17.05.030(A), Table 5-2 relating to Manufactured/Mobile/ Micro Home Community and Temporary Use is hereby amended to read as follows:

17.05.030 General Use Standards – Permitted Uses

Table 5-2: Use Table																
	Residential Districts							Nonresidential Districts								
	A	RE	R-1	R-2	R-3	R-4	R-5	RM-P	C-O	CO-A	C-1	C-2	C-3	M-1	M-2	REC
RESIDENTIAL DWELLINGS																
Manufactured/Mobile/Micro Home Community								P*								
Temporary Use (See Section 17.05.050 Y)	T*								T*	T*	T*	T*	T*	T*	T*	T*

The remainder of Chapter 17.05.030(A), Table 5-2 shall remain unchanged.

SECTION TWELVE: Chapter 17.05.050(Y) is hereby amended to read as follows:

17.05.050 - Specific Use Standards – Temporary Use

Y. Temporary Use. Where temporary are permitted (as indicated in Table 5-2), all of the following standards shall be met:

1. A temporary use meeting the standards of this section shall be permitted by the Director of Community Development or designee upon review of a plot plan or site plan in accordance with standards.
2. The temporary use shall be comparable in scale, impact and type of use to an otherwise allowed use in the district.
3. All temporary structures shall meet the required minimum setback for the building type located on the property, or (in the case of vacant property) the required minimum setback for one of the permitted building types in that zoning district.
4. No portion of the temporary use, or accessory activities associated with the temporary use, shall be located within 30 feet of the property line of an existing residence or a residentially zoned district except for the following:
 - a. *Temporary Offices at Residential Construction / Development Sites may be placed within* a residentially zoned district (see item 8 below) subject to applicable setbacks and separation distances.
5. The use, considering expected attendance, duration, hours of operation, and peak times, shall not create any traffic problems considering access to the site, parking on the site or on adjacent streets, or travel patterns on surrounding streets.
6. The hours of operation shall be between 7:00 a.m. and midnight, except as may be further limited through administrative review based on the specific use and the context of the proposed location.
7. Any use where typical visits are longer than two hours, or an event where a significant component is on-site consumption of food and beverages, shall provide adequate sanitary facilities. Such facilities shall generally be based on one station per 100 persons expected in a peak hour.
8. The duration of the temporary event / use shall be limited as follows (does not apply to Food and Beverage – Mobile uses):
 - a. Special events – no more than seven days.
 - b. General merchandise sales or services – no more than seven days.
 - c. Seasonal sales – no more than 90 days.
 - d. Temporary Offices at Construction / Development Sites –
 1. May be used on the site of a construction / development project if they are removed upon completion of the project. A temporary use permit and building permit is required

