



# CITY OF WESTWOOD, KANSAS

## CITY COUNCIL MEETING

4700 RAINBOW BLVD. WESTWOOD, KS 66205

Thursday, April 11, 2024 at 7:00 PM

### AGENDA

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Welcome to your Westwood City Council meeting. This meeting may be attended remotely via Zoom:

**Access Online:** <https://us02web.zoom.us/j/89908289796>

**Access by Phone:** (312) 626-6799 / **Webinar ID:** 899 0828 9796

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*[Note: This agenda is subject to changes, additions, or deletions at the discretion of the Governing Body]*

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#### CITY COUNCIL WORK SESSION AGENDA - 6:00 PM

- I. **CALL TO ORDER**
  - II. **WORK SESSION ITEMS/DISCUSSION OF UPCOMING MATTERS**
    - A. City Code recodification review: Chapters 8 and 10 - 16
  - III. **ADJOURNMENT TO REGULAR MEETING**
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#### REGULAR MEETING AGENDA - 7:00 PM

- I. **CALL TO ORDER**
- II. **APPROVAL OF THE AGENDA**
- III. **PUBLIC COMMENT**

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda, or about items on the regular agenda for which the Governing Body, at its discretion, accepts public comment. Public comment should be limited to 2-3 minutes and, unless the topic of public comment is before the Governing Body as part of its agenda, no action will be taken by the Governing Body on public comment items. Please state your name and address for the record. Persons attending virtually online will be able to make public comment by using the "raise hand" function on Zoom.
- IV. **PRESENTATIONS AND PROCLAMATIONS**
  - A. Update from Northeast Johnson County Chamber of Commerce (Deb Settle, Executive Director)
  - B. Proclamation of Donate Life Month

C. Proclamation of Arbor Day

**V. CONSENT AGENDA**

All items listed below are considered to be routine by the Governing Body and will be enacted in one motion (roll call vote). There will be no separate discussion of these items unless a member of the Governing Body so requests, in which event the item will be removed from the consent agenda and considered separately following approval of the consent agenda.

A. Consider approval of March 14, 2024 City Council meeting minutes

B. Consider approval of Appropriations Ordinance 761

**VI. MAYOR'S REPORT**

**VII. CITY COUNCILMEMBER REPORTS**

**VIII. STAFF REPORTS**

A. Administrative Report (City Administrator Leslie Herring)

B. Public Works Report (Public Works Director John Sullivan)

C. Police Department Report (Police Chief Curt Mansell)

D. Treasurer's Report (City Treasurer Michelle Ryan)

E. City Attorney Report (Ryan Denk)

**IX. OLD BUSINESS**

**X. NEW BUSINESS**

A. Consider Ordinance 1041 approving a Franchise Agreement with Kansas Gas

B. Consider Resolution No. 127-2024 approving a 5-year Johnson County CARS program

**XI. ANNOUNCEMENTS/GOVERNING BODY COMMENTS**

**XII. EXECUTIVE SESSION**

A. Consultation with the City Attorney on matters relating to real property located at and around 5000 Rainbow Blvd. which would be deemed privileged in the attorney-client relationship under K.S.A. 75-4319(b)2

**XIII. ADJOURNMENT**

**UPCOMING MEETINGS**

Regular meetings of the Westwood City Council are held at 7:00 PM on the second Thursday of each month. The next regular meeting of the Westwood City Council will be held Thursday, May 9, 2024 at 7:00 PM at Westwood City Hall. The City Calendar may be accessed at [www.westwoodks.org](http://www.westwoodks.org). To receive further updates and communications, please see or sign up for the following:

**Westwood Buzz Email:** <https://bit.ly/3wA4DWx>

**Facebook:** [City of Westwood Kansas-Government](#)  
[Westwood, KS Police Department](#)



# 2024 Recodification Review

City Council Work Session: 3/14/24 (Chapters 1 – 7, 9)

City Council Work Session: 4/11/24 (Chapters 8, 10 – 16)

# Recodification Process

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Recodification is the process by which all adopted ordinances (and modern, current State and Federal laws, where applicable) are integrated into a City's Codebook so that the Codebook reflects the current and comprehensive laws of the City.

- In January 2023, the City engaged CivicPlus (which acquired Municode) to begin the 12 – 18-month process of recodifying the City Code, which has not been done since 2008.
- In addition to recodification services, this scope of service includes the digitization and integration of the City Code into the City's website for transparency, convenience, and easy updating when new ordinances are approved.
- Five weeks ago, City staff received the full Code with legal review notes and embarked on internal review of the documents.
- Over the past month, the City Administrator, City Clerk, Building Official, Public Works Director, and Police Chief have met weekly to review and annotate the Code chapters in preparation for Governing Body review and final legal review with the City Attorney and CivicPlus legal counsel.
- Following integration of the Governing Body's input and changes to the Code chapters, City staff will meet with CivicPlus to resolve any outstanding questions or issues so that CivicPlus can prepare proofs for staff and Governing Body review prior to creation of the ordinance document for formal adoption.

# Chapter 1: Administration

- Note: This chapter was reviewed in depth in 2022.
- Add: Municode missed adding in Charter Ord. 19 establishing the role of City Administrator.
- Move: Governing Body expense reimbursement rules to Governing Body Handbook; update Governing Body Handbook accordingly (Art. 2)



## Chapter 2: Animal Control and Regulation

- Note: This chapter was reviewed at some level of detail in 2022.
- Under Review: Animal control officer duties and authority being reviewed against interlocal agreement with City of Mission. (Art. 1)
- Flagged for Council Direction: Should the City continue its pet registration program? (Art. 2)



## Chapter 3: Beverages

- Note: This chapter was last modified in 2021.
- Change: Fee for caterer's liquor license and temporary event liquor license from being established administratively to being set out in the master fee schedule adopted by resolution of the Governing Body.





# Chapter 4: Buildings and Construction

- Note: Articles 1 – 10 of this chapter were completely revised in 2021. Article 11 was completely revised in 2022.
- Note: Staff intends to recommend adoption of 2024 ICC code sections following review by Johnson County Building Officials Association this year.
- Under Review: If there is no legal reason requiring the City to have a Board of Building Code Appeals, staff recommends consideration for transfer of authority to an existing body, possibly Planning Commission. Staff will review with the City Attorney.



# Chapter 5: Business Regulations

- Note: Chapter last reviewed in 2022 to add short term rental regulations. (Art. 11)
- Move: Occupation fee amounts from City Code to master fee schedule adopted by the City Council by resolution. (Art. 1)
- Add: Application fee for solicitor's license, to be included in master fee schedule. (Art. 2)
- Change: Drive-in Businesses to Businesses with Curbside Service. (Art. 3)
- Delete: Requirement that massage therapists maintain a City-issued ID card. (Art. 4)
- Change: license required for amusement devices to allow amusement devices but to prohibit gambling devices. (Art. 5)
- Revise: Wrecker and Tow Services to reflect the City's use of the County's tow rotation system. (Art. 6)
- Delete: Water Conditioning Contractors article. (Art. 7)



# Chapter 6: Elections

- Note: This chapter was last revised in 2021 with the adoption of Ord. 1019.
- Revise: Chapter to reflect Ord. 1019.



# Chapter 7: Fire

- Under Review: City staff has asked CFD2 to review this chapter and indicate if revisions are recommended.



## Chapter 8: Health & Welfare

- Under Review: City staff will seek to learn during legal review whether the City is legally required to have a Board of Health; if not, staff recommends discontinuing and assigning that Board's duties under this chapter as appropriate. (Art. 1)
- Change: Staff recommends allowing for approved native grasses to not be considered a nuisance (Art. 3)
- Change: Staff recommends allowing for food waste in composting systems (Art. 3)
- Change: Process for handling complaints to reflect current organizational structure and roles (Arts. 3, 7, 10, 11, 12, & 15)



# Chapter 8: Health & Welfare, Cnt'd.

- Change: Staff recommends allowing the City to abate hazardous trees on private property that may not meet the definition of dead or diseased (Art. 4)
- Under Review: Staff recommends removing prescriptive rules and regs relating to solid waste services to allow for flexibility in contract negotiation and market changes (Art. 5)
- Change: Staff recommends explicitly disallowing the placement of waste containers where they would impede pedestrian or vehicular traffic (Art. 5)
- Under Review: For processes where City can abate and charge costs to property owner, staff recommends decreasing the amount of time to attempt service from two years to two weeks, if permitted by law (Arts. 3, 7, & 15)



## Chapter 8: Health & Welfare, Cnt'd.

- Change: Staff recommends requiring at least one (1) off-street parking space for every house (Art. 10)
- Change: Staff recommends including shutters in list of exterior appurtenances so staff can enforce property maintenance when they are in disrepair (Art. 12)
- Change: Staff recommends changing the clearance height for trees, bushes, and other vegetation from 12 feet over streets to 14 feet (the Code currently requires a clearance of 8 feet over sidewalks, which staff isn't recommending changing)(Art. 12)



# Chapter 9: Municipal Court

- Add: Allowance for remote/virtual court appearance under certain circumstances.
- Change: Judge's salary is set by contract, not by ordinance.
- Change: Court Clerk's salary is no longer set by ordinance.
- Change: Court costs to be set out in master fee schedule adopted by resolution of the Governing Body.





# Chapter 10: Police

- Change: Various areas to reflect current organizational structure
- Change: Fee structure for repeated false alarms (in Westwood, businesses are the main culprit)(Art. 4)



# Chapter 11: Public Offenses

- Note: An update to the Uniform Public Offense Code (UPOC) is adopted by the Governing Body annually (Art. 1)



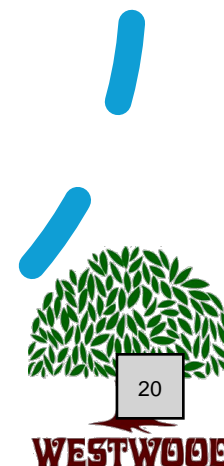
# Chapter 12: Public Property

- Change: Process for permits to reflect current organizational structure and roles (Art. 1)
- Flagged for Council Direction: Should the City continue to have a process to permit camping on public property? (Art. 1)
- Under Review: Legal advice being sought on whether the City has to continue to allow concealed carry in City parks (Art. 2)
- Change: Various areas to reflect current organizational structure (Art. 3)



# Chapter 13: Public Rights-of- Way

- Note: City staff does not recommend any substantive changes to this chapter but does have the noted legal questions, which will be resolved during the meeting between Municode and staff.



## Chapter 14: Traffic

- Change: Staff recommends the Council consider prohibiting parking completely – not just for more than two (2) hours – between midnight and 6 AM; this would aid the Police Department in their ability to enforce the overnight parking restrictions currently in place (Notably, the City’s restriction of overnight parking has been in place since Oct. 1953) (Art. 2)
- Change: Staff recommends updating the list of who should be notified of a parade (Art. 3)



# Chapter 15: Surface Water Management

- Note: City staff does not recommend any substantive changes to this chapter but does have the noted housekeeping items for Municode.



# Chapter 16: Zoning

- Note: This chapter was reviewed in depth in 2021 and substantive changes were made in February 2022.
- Note: City staff recommends housekeeping cleanup during the recodification.
- Note: Amendments to the Zoning Ordinance are required to go through Planning Commission first, for recommendation to the City Council for adoption.



CHAPTER 8.

**HEALTH AND WELFARE**

- Article 1. Board of Health
- Article 2. General Provisions
- Article 3. Health Nuisances
- Article 4. Weeds and Nuisance Plants
- Article 5. Refuse Disposal
- Article 6. Swimming Pools
- Article 7. Junked Motor Vehicles on Private Property
- Article 8. Environmental Releases
- Article 9. Fair Housing Code
- Article 10. Minimum Housing Code
- Article 11. Dangerous and Unfit Structures
- Article 12. Minimum Property Preservation Code
- Article 13. Rat Control
- Article 14. Insurance Proceeds Fund
- Article 15. Environmental Code
- Article 16. Environmental Sanitary Code
- Article 17. Smoking Regulations

ARTICLE 1. BOARD OF HEALTH

**8-101. CREATED.**

There is hereby established the Westwood Board of Health, which may also be referred to as the "Board" or "Board of Health." <sup>1</sup>

(Code 1993; Code 2008, § 8-101; Ord. 722, Sec. 1)

**8-102. MEMBERSHIP.** <sup>2</sup>

The board of health of the city shall consist of not more than five (5) persons who shall be qualified residents of the city. The board shall be appointed by the mayor with consent of the governing body. Members shall hold their office for a term of one year and until their successors are appointed.

The following shall serve as ex-officio members of the board: the city council public safety committee chairperson, property maintenance official, a representative from the city

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<sup>1</sup> **Legal analysis: 8-101. CREATED.** Revise to allow for shorthand designations of said board.

<sup>2</sup> **Legal analysis: 8-102. MEMBERSHIP.** Please advise of any changes to the board of health membership provisions.



clerk's department and a police department representative.  
(Code 2008, § 8-102; Ord. 722, Sec. 2)

### **8-103. OFFICERS.**

There shall be a chairperson elected by a majority vote of the board for a term of one year, or until his or her successor takes office. The chairperson's duties shall include scheduling and conducting regular meetings and serving as the liaison to the Westwood city council. An ex-officio member shall be designated to serve as secretary to the board and shall be responsible for minutes, agenda, and records.  
(Code 1993; Code 2008, § 8-103; Ord. 722, Sec. 3)

### **8-104. DUTIES.**

The duties of the board of health shall be:

- (a) Continuously review and insure the applicability of all health and environment city codes and ordinances, and forward recommendations for revision to the governing body.
- (b) Conduct a regularly scheduled review of service requests for environmental and health ordinance action. The board shall be supplied with a monthly summary report on such requests for their review.  
(Code 2008, § 8-104; Ord. 722, Sec. 4)

## **ARTICLE 2. GENERAL PROVISIONS**

### **8-201. JOHNSON COUNTY SANITARY CODE.**

The certain code known as the "Johnson County Sanitary Code of 2004" and all future amendments and supplements thereto, adopted by the Johnson County Commissioners of Johnson County, Kansas, is hereby incorporated herein by reference and made part of this chapter, save and except such portions as are hereinafter deleted or amended.  
(Code 1993; Code 2008, § 8-201; Ord. 639)

### **8-202. SAME; CONFLICTING PROVISIONS.**

In the event of conflicting provisions between the sanitary code incorporated in section 8-201, and the Code of the City of Westwood, the Code of the City of Westwood shall control.  
(Code 1983; Code 2008, § 8-202)

### **8-203. PUBLIC OFFICER. <sup>3</sup>**

The Property Maintenance Official ("Public Officer") or his or her designee shall be charged with the administration and enforcement of this chapter unless otherwise designated.  
(Code 1993; Code 2008, § 8-203)

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<sup>3</sup> **Legal analysis: 8-203. PUBLIC OFFICER.** Please advise whether Property Maintenance Official is still the current title for this position.

## ARTICLE 3. HEALTH NUISANCES

### 8-301. NUISANCES UNLAWFUL; DEFINED.

It shall be unlawful for any person to maintain or permit any nuisance within the city as defined, without limitation, as follows:

- (a) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other offensive or disagreeable thing or substance thrown or left or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure or lot whether vacant or occupied;
- (b) All dead animals not removed within 24 hours after death;<sup>4</sup>
- (c) Any place or structure or substance which emits or causes any offensive, disagreeable or nauseous odors;
- (d) All stagnant ponds or pools of water;
- (e) All overgrown grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;<sup>5</sup>
- (f) Abandoned iceboxes, freezers or refrigerators kept on the premises under the control of any person, or any icebox, freezer or refrigerator not in actual use unless the door, opening or lid thereof is unfastened and removed therefrom;
- (g) All articles or things whatsoever caused, kept, maintained or permitted by any person to the injury, annoyance or inconvenience of the public or of any neighborhood;
- (h) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public ground so as to obstruct the same, except as permitted by the laws of the city.  
(Code 1993; Code 2008, § 8-301)  
~~(K.S.A. 21-4106:4107)~~ (K.S.A. 21-6204)<sup>6</sup>

### 8-302. COMPLAINTS; INQUIRY AND INSPECTION.

The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance

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<sup>4</sup> **Legal analysis: 8-301. NUISANCES UNLAWFUL; DEFINED, (b).** Please advise whether "removed" means removed from premises, removed from city limits, etc. Also, whether the city would like to include an exception for the burial of household pets on the pet owner's private property.

<sup>5</sup> **Legal analysis: 8-301. NUISANCES UNLAWFUL; DEFINED, (e).** Revised for clarity. Also please advise whether the city has or plans to enact any kind of policy or program allowing for native/prairie habitat areas, pollinator gardens, etc.

<sup>6</sup> **Legal analysis: 8-301. NUISANCES UNLAWFUL; DEFINED.** Change this and all subsequent statutory history notes into the standard state law reference format. Also update statutory citation.

exists and describing the same and where located, or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings. <sup>7</sup>  
(Code 1993; Code 2008, § 8-302)

### **8-303. RIGHT OF ENTRY.**

The public officer may request access and entry upon private property as permitted by law at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.  
(Code 2008, § 8-303)

### **8-304. ORDER OF VIOLATION.**

(a) The city, or its authorized representative, shall serve upon the owner, any agent of the owner of the property, any tenants, or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-301 an order stating the violation. The order shall be served on the owner, agent and any tenants of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then service may be made by mailing the order by certified mail, return receipt requested, to the last known address of the owner. <sup>8</sup>

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.  
(Code 2008, § 8-305)  
(K.S.A. 12-1617e)

### **8-305. SAME; CONTENTS.**

The order shall state the condition(s) which is (are) in violation of section 8-301. The order shall also inform the person, corporation, partnership or association that

(a) He, she or they shall have 10 days from the receipt of the order to abate the condition(s) in violation of section 8-301; provided, however, that the governing body [or its designee named in section 8-304] shall grant one or more extensions of the 10 day

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<sup>7</sup> **Legal analysis: 8-302. COMPLAINTS; INQUIRY AND INSPECTION.** Please advise as to whether this report is to subsequently be submitted to a particular department.

<sup>8</sup> **Legal analysis: 8-304. ORDER OF VIOLATION, (a).** Clarify whether this is to take place after a review of the report completed in Section 8-302.

period if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions in violation of section 8-301; or,

(b) He, she or they have 10 days from the receipt of the order, plus any additional time granted under subsection (a), to request a hearing before the governing body or its designated representative of the matter as provided by section 8-308;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-306 and/or abatement of the condition(s) by the city as provided by section 8-307.

(Code 2008, § 8-35)

### **8-306. FAILURE TO COMPLY; PENALTY.**

Should the person, corporation, partnership, association or other entity fail to comply with the order to abate the nuisance or request a hearing the public officer may file a complaint in the municipal court of the city against such person, corporation, partnership, association or other entity and upon conviction of any violation of provisions of section 8-301, be fined in an amount not to exceed \$500.00 or be imprisoned not to exceed 180 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. (Code 1993; Code 2008, § 8-306)

### **8-307. ABATEMENT.**

In addition to, or as an alternative to prosecution as provided in section 8-306, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been served pursuant to section 8-304 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-305, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in section 8-309. A copy of the resolution shall be served upon the person in violation in one of the following ways:

(a) Personal service upon the person in violation;

(b) Certified mail, return receipt requested; or

(c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

(d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section

article during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. <sup>9</sup>  
(Code 2008, § 8-309)

### **8-308. HEARING.**

If a hearing is requested within the 10 day period as provided in section 8-305, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in section 8-307.  
(Code 1993; Code 2008, § 8-308)

### **8-309. COSTS ASSESSED.**

If the city abates or removes the nuisance pursuant to section 8-307, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

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<sup>9</sup> **Legal analysis: 8-307. ABATEMENT.** Revise for clarity. As previously written, this article could have allowed for a 24-month non-receipt period under section 8-304(b), and another 24-month non-receipt period under section 8-307(d), for a potential 4 years before abatement could occur. Please advise if the suggested revision fails to reflect the city's intention behind these provisions.

(Code 2008, § 8-309)

### **8-310. DEPOSITS ON PUBLIC GROUND PROHIBITED.**

It shall be unlawful for any person, firm or corporation to cause or to permit any offal, manure, rubbish or filth or permit any decaying animal or vegetable matter, or any foul or nauseous substance to be discharged out of or flow from the premises occupied by him or to throw upon or permit the same to be thrown upon, deposited or left in any stream or pond within the city or in or upon any street, alley, public square, vacant lot or other place in the city.

(Code 1970, 7-203; 1993; Code 2008, § 8-310)

### **8-311. COMPOST PILES; DEFINITIONS.**

Compost pile and/or compost bed. - Any accumulation or stack or a quantity heaped together of any mixture of material containing decayed organic matter and primarily used for fertilizing and conditioning of land.

(Code 1993; Code 2008, § 8-311; Ord. 637, Sec. 1)

### **8-312. SAME; PROHIBITED CONTENTS.**

No compost bed or pile shall be allowed in any yard, other than the rear yard, and shall contain no food waste.

(Code 1993, 8-312; Code 2008, § 8-312; Ord. 637, Sec. 2)

### **8-313. SAME; ODORS.**

No compost bed or pile shall be allowed to emit or cause any foul, unhealthful or disagreeable odors in the neighborhood in which said bed and pile exists.

(Code 1993; Code 2008, § 8-313; Ord. 637, Sec. 3)

## **ARTICLE 4. WEEDS AND NUISANCE PLANTS**

### **8-401. WEEDS AND PLANTS TO BE REMOVED.**

It shall be unlawful for any owner, agent, lessee, tenant, or other person occupying or having charge or control of any premises to permit weeds to remain upon said premises or any area between the property lines of said premises and the centerline of any adjacent street or alley, including but not specifically limited to sidewalks, streets, alleys, easements, rights-of-way and all other areas, public or private. All weeds as hereinafter defined are hereby declared a nuisance and are subject to abatement as hereinafter provided.

(Code 1993; Code 2008, § 8-401)

### **8-402. DEFINITIONS.**

Weeds and Nuisance Plants - as used herein, means any of the following:

(a) Brush and woody vines shall be classified as weeds, excluding ornamental plantings placed for ornamental purposes;

- (b) Weeds and grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
- (c) Weeds which bear or may bear seeds of a downy or wingy nature.
- (d) Weeds which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which either may or does constitute a menace to health, public safety or welfare;
- (e) Weeds and grasses on or about residential property which, because of its height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed 8 inches in height, excluding ornamental plants such as pampas grass.
- (f) Volunteer trees growing on utility easements.  
(Code 1993; Code 2008, § 8-402)

#### **8-403. PUBLIC OFFICER; NOTICE TO REMOVE.**

- (a) The **Property Maintenance Official**, or designee, is the public officer charged with the administration and enforcement of this article. The public officer or authorized assistant shall give written notice to the owner, occupant or agent of such property by mail or by personal service, or by posting on the property, to cut or destroy weeds; provided, however, that if the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified, return receipt requested, to the last known address of the owner. Such notice shall only be given once per calendar year.
- (b) The notice to be given hereunder shall state:
  - (1) that the owner, occupant or agent in charge of the property is in violation of the city weed control law;
  - (2) that the owner, occupant or agent in control of the property is ordered to cut or destroy the weeds within 10 days of the receipt of the notice;
  - (3) that the owner, occupant or agent in control of the property may request a hearing before the governing body or its designated representative within five days of the receipt of the notice or, if the owner is unknown or a nonresident, and there is no resident agent, 10 days after notice has been published by the city clerk in the official city newspaper;
  - (4) that if the owner, occupant or agent in control of the property does not cut or destroy the weeds or fails to request a hearing within the allowed time the city or its authorized agent will cut or destroy the weeds and assess the cost of the cutting or destroying the weeds, including a reasonable administrative fee, against the owner, occupant or agent in charge of the property;
  - (5) that the owner, occupant or agent in control of the property will be given an opportunity to pay the assessment, and if it is not paid within 30 days of such notice, it will be added to the property tax as a special assessment;



(6) that no further notice will be given during the current calendar year prior to the removal of weeds from the property; and,

(7) that the public officer should be contacted if there are questions regarding the order.

(c) If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title to such property is provided notice as required by this article.

(Code 2008, § 8-403)

#### **8-404. ABATEMENT; ASSESSMENT OF COSTS.**

(a) If the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the time periods specified in section 8-403, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.

(b) If the city abates or removes the nuisance pursuant to this section, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section.

(c) The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

(Code 2006; Code 2008, § 8-404) **10**

(K.S.A. 12-1617f)

#### **8-405. RIGHT OF ENTRY.**

The public officer, and the public officer's authorized assistants, employees, contracting agents or other representatives are hereby expressly authorized to enter upon private

<sup>10</sup> **Legal analysis: 8-404. ABATEMENT; ASSESSMENT OF COSTS.** This section and 8-501 both have a history note to "Code 2006." These are the only sections referencing this code. Please advise whether this is merely a typo, or if there is another version of the code that should be referenced/history noted throughout.



property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds pursuant to section 8-403.  
(Code 1993; Code 2008, § 8-405)

#### **8-406. UNLAWFUL INTERFERENCE.**

It shall be unlawful for any person to interfere with or to attempt to prevent the public officer or the public officer's authorized representative from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute an code violation.  
(Code 1993; Code 2008, § 8-406)

#### **8-407. NOXIOUS WEEDS.**

(a) Nothing in this article shall affect or impair the rights of the city under the provisions of ~~Chapter 2, Article 13 of the Kansas Statutes Annotated~~ the Noxious Weed Act (K.S.A. 2-1313a et seq.), relating to the control and eradication of certain noxious weeds.

(b) For the purpose of this article, the term noxious weeds shall mean kudzu (*Pueraria lobata*), field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium arvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esula*), burragweed (*Franseria tomentosa* and *discolor*), pignut (*Hoffmannseggia densiflora*), musk (nodding) thistle (*Carduus nutans* L.), poison ivy, poison oak, Johnson grass (*Sorghum halepense*), and *Sericea lespedeza*.  
(Code 2008, § 8-407)  
(K.S.A. 2-1314)

#### **8-408. DEAD OR DISEASED TREE REMOVAL.**

The city shall remove or cause to be removed any dead or diseased tree immediately, whether on public or private property, if such tree is deemed to pose an imminent or urgent threat to life, property, or public safety. Diseased trees are defined as those trees that may constitute a hazard to life and property, or harbor insects or disease which represent a potential threat to other trees within the city. The parks and recreation committee or their designee will notify in writing the owners of such trees. Removal is the responsibility of the owners of such trees and shall be accomplished within 30 days of notification; however, if in the opinion of the city's representative, a tree poses an immediate threat to life and safety, the tree shall be removed within the time specified by that representative. In the event of an emergency tree removal, notification shall be served by a police officer to the resident of the property. In the event of failure to remove by the owner, the city shall have the authority to remove such trees and the city clerk is authorized to charge the cost of removal on the owner's property tax notice.  
(Code 2008, § 8-408)

### **ARTICLE 5. REFUSE DISPOSAL**

#### **8-501. DEFINITIONS.**

As used in this article, the following terms shall have the following meanings:

- (a) Garbage - is the animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking or serving of meat, produce or other foods and shall include unclean containers.
- (b) Solid Waste - is all garbage, refuse, waste tires, and other discarded materials including, but not limited to solid, semisolid, sludges, liquid and contained gaseous waste materials, excluding hazardous wastes, recyclables, yard waste or the waste of domestic animals.
- (c) Yard waste - is all grass clippings, leaves, tree limbs, weeds and other plant or vegetation waste (excluding vegetation or plant materials that are garbage).
- (d) Refuse - is all trash, garbage, yard waste, and any other waste substance or product thrown out or discarded.
- (e) Recycling or Recyclable material - is newspapers, magazines, junk mail, office paper, telephone books, corrugated cardboard, chipboard cardboard, brochures, aluminum beverage cans, steel (tin) food/beverage cans, #1 through #7 plastic containers plastic containers, excluding those having previously contained household hazardous materials and automotive oils and fluids. Unacceptable plastics shall also include but not necessarily be limited to expanded polystyrene ("Styrofoam").
- (f) Bulky Item Refuse - includes appliances, beds, chairs, mattresses, box springs, hot water tanks, washers, dryers, refrigerators, tubs and other items not normally considered regular residential refuse.  
(Code 1970, 7-413; Code 2006; Code 2008, § 8-501; Ord. 283, Sec 2; Ord. 325; Ord. 830, Sec. 1; Ord. 894; Ord. 903; Ord. 913)

#### **8-502. REFUSE: ACCUMULATION PROHIBITED.**

It shall be unlawful for any householder or business establishment to accumulate refuse except in a closed container and it shall be unlawful to fail to dispose of the same so that refuse shall not be scattered about the city, or become a nuisance, or fire hazard, or constitute a menace to the public health or safety, or become unsightly or constitute a violation of any ordinance of the city, and no material shall be burned.

(Code 1970, 7-401; Code 1993; Code 2008, § 8-502; Ord. 894; Ord. 903; Ord. 913)

#### **8-503. HAULING REFUSE: VEHICLES; LITTERING.**

It shall be unlawful to haul garbage, trash, or solid waste materials of any kind over the streets or public ways of the city, except in a vehicle so closed and covered as to prevent the loss of or escape of any refuse during transit, or except in closed and covered containers which will prevent the loss of or escape of any refuse during transit.

(Code 1970, 7-406; Code 1993, 8-504; Ord. 894; Code 2008, § 8-5; Ord. 894; Ord. 903; Ord. 913)

#### **8-504. LITTERING.**

It shall be unlawful to deposit, leave, throw, place or abandon any garbage, trash, refuse,

paper, bottles, cans or other solid waste material on public property or on the property of another except to deposit said materials in containers or receptacles designated for that purpose.

(Code 1993, 8-505; Code 2008, § 8-504; Ord. 512, Sec. 1; Ord. 894; Ord. 903; Ord. 913)

### **8-505. TRASH, GARBAGE, REFUSE: BACKYARDS; OCCUPANTS' DUTIES.**

The space in the rear of any business lot, house, or mercantile establishment between the rear of the building and the alley line, shall be kept clean and clear of all the matter set out in section 8-504 of this article. The occupant or occupants of the ground floor are hereby charged with the duty of keeping the said space clean, except such refuse or filth deposited by other occupants of the premises who must remove the same.

(Code 1970, 7-408; Code 1993, 8-506; Code 2008, § 8-505; Ord. 894; Ord. 903; Ord. 913)

### **8-506. TRASH, GARBAGE, REFUSE: ADJACENT ALLEYS.**

The owner of the ground floor, or the occupant thereof, is hereby charged with the duty of keeping the alley in the rear of the premises, or adjacent thereto, clean and free from the matter set out in section 8-504 of this article.

(Code 1970, 7-409; Code 1993, 8-507; Code 2008, § 8-506; Ord. 894; Ord. 903; Ord. 913)

### **8-507. INTERFERING WITH CONTAINERS.**

No unauthorized person shall interfere with solid waste or recyclable material containers in any manner or remove the same or remove the contents thereof or place anything in any solid waste or recyclable material receptacle of another person.

(Code 1970, 7-414; Code 1993, 8-508; Code 2008, § 8-507; Ord. 283, Sec. 4; Ord. 894; Ord. 903; Ord. 913)

### **8-508. RULES AND REGULATIONS. <sup>11</sup>**

(a) The city shall provide for solid waste and recyclable material collection from residences within the city by contract. Solid waste and recyclable material will be collected from each residence one day a week. Notice of the collection day shall be given to the citizens in advance.

(b) Residents of the city shall be provided one (1) sixty-five (65) gallon cart for disposal of solid waste.

(c) Residents of the city shall leave their solid waste at the curb side in the sixty-five (65) gallon containers provided to residents which solid waste shall be in plastic bags or the like. Additional or overflow residential solid waste that is not able to be placed in the sixty-five (65) gallon container must be placed in plastic bags with a total weight not to

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<sup>11</sup> **Legal analysis: 8-508. RULES AND REGULATIONS.** Please advise as to any changes regarding the waste collection procedures.

exceed forty (40) pounds each and must display an approved overflow waste sticker available from the City at a cost set administratively by the City. (Code 2008; Ord. 894; Code 2008; Ord. 903; Ord 913; Ord. 921)

(d) On a twice a month basis, on the same day as regular residential refuse collection, during the first and third collection day of each month, refuse collection shall additionally include the collection of bulky item refuse. <sup>12</sup>

(e) The weekly refuse collection shall not include collection of rocks, dirt, construction trash or rubbish or other construction materials or hot coals, hot ashes or other household hazardous waste materials, automobile parts, tires, batteries and items that cannot reasonably be transported or carried by two individuals and shall only provide for collection of yard waste and bulky item refuse as provided herein.

(f) During the growing season ( March 15th through January 15th), the City shall provide for the removal of yard waste. Each resident shall be responsible for leaving such yard waste at the curb side of their residence. All yard waste must be placed in biodegradable paper bags, rigid containers marked with "YW", or appropriately bundled in bundles not exceeding four (4') feet in length or eighteen (18") inches in diameter and tied with twine or string only. No single bag, container, or bundle of yard waste shall exceed sixty-five (65) pounds in weight. Yard waste set outs are limited to a combined total of eight (8) bags, containers or bundles per week. Additional yard waste set outs in excess of eight (8) must have an appropriate sticker attached available from the City at a cost set administratively by the City.

(g) Residents of the City shall leave their recycling materials at the curb side at the time of the weekly refuse collection in the sixty-five (65) gallon recycling cart provided by the City to residents which is labeled for recycling use. Additional or overflow recycling materials may be placed in paper bags/sacks placed adjacent to the recycling bin. (Code 2008 ; Code 2008, § 8-508; Ord. 894; Ord. 903; Ord. 913)

### **8-509. SERVICE CHARGE**

The city shall assess a refuse collection service charge in the form of an assessment or charge against each real estate household within the city in an amount determined yearly by the governing body ~~beginning with the year 1992, and the assessment or charge is continued each year thereafter until terminated or changed by the governing body.~~<sup>13</sup> (Code 1993, 8-510; Code 2008, § 8-509; Ord. 755, Sec. 3; Ord. 894; Ord. 903)

**8-510 Repealed.** (Ord.894; Code 2008; Ord. 903; Ord 913) <sup>14</sup>

### **8-511. PLACEMENT.**

<sup>12</sup> **Legal analysis: 8-508. RULES AND REGULATIONS.** Please advise as to any limit on the number of bulky items per residence that can be placed for collection.

<sup>13</sup> **Legal analysis: 8-509. SERVICE CHARGE.** Delete dated language as no longer needed.

<sup>14</sup> **Legal analysis: 8-510 Repealed.** For this section, we can leave as is, mark as "reserved" to save the place for potential future provisions, or move 8-511 Placement down to section 8-510.

No refuse or recyclable material shall be placed for collection more than 24 hours before the designated collection date, and all containers shall be removed from the curbside within 12 hours after each collection date. However, yard waste may be stored in appropriate containers outside, but behind the front facade of the house, prior to the next pick up date. All other refuse or recyclable material must be stored in the residence or garage, in a secured shed or undercroft of a porch, or out of sight or screened from view of persons not on the property. All refuse or recyclable material except yard waste shall be stored in tight, sealed containers of sufficient durability and security to prevent odors from spreading and to keep animals from getting into the container.  
(Code 2008, § 8-511; Ord. 830, Sec. 2; Ord. 894; Ord. 903; Ord 913 )

## ARTICLE 6. SWIMMING POOLS

### 8-601. ENCLOSURES.

(a) This article shall be applicable to all existing and hereafter constructed swimming pools and family pools, other than indoor pools, which contain 12 inches or more of water in depth at any point. No person in possession of land within the city, either as owner, purchaser, lessee, tenant or licensee, upon which is situated a swimming pool or family pool, having a depth of 24 inches or more of water at any point, shall fail to provide and maintain a fence or wall as provided in section 8-602 of this article. <sup>15</sup>

(b) The provisions of this Article shall not apply to temporary pools, such as inflatable pools for children. Such pools are only permitted for no more than five (5) consecutive days at a time.

(c) This article shall permit only permanent in-ground pools, permanently installed spas, hot tubs, Jacuzzi's, whirlpools, and the like, except as stated above.  
(Code 2008, § 8-601; Ord. 422, Sec. 3)

### 8-602. SAME; DIMENSIONS.

Every outdoor swimming pool or family pool shall be completely surrounded by a fence or wall or both six feet in height, which shall be so constructed as not to have openings, holes or gaps larger than four inches in any dimension except for doors and gates. Spas, hot tubs and the like need not be fenced, provided they are locked and secured when not in use. Any pool which is 24 inches or less in depth need not be fenced or secured. A dwelling house or accessory building may be used as part of an enclosure.  
(Code 1993; Code 2008, § 8-602; Ord. 422, Sec. 1)

### 8-603. SAME; GATES.

All gates or doors opening through an enclosure required by this article shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed and locked at all times when not in actual use, except that the door of any dwelling which

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<sup>15</sup> **Legal analysis: 8-601. ENCLOSURES.** Revise to clarify, as the first sentence states that the entire article applies to outdoor pools with over 12" of water, but that only those with 24" of water require enclosure. In the alternative, separate these two sentences into separate subsections.

forms a part of the enclosure need not be so equipped.  
(Code 1993; Code 2008, § 8-603; Ord. 422, Sec. 2)

## **ARTICLE 7. JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY**

### **8-701. FINDINGS OF GOVERNING BODY.**

The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the city because they:

- (a) Serves as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
  - (b) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;
  - (c) Are a ready source of fire and explosion;
  - (d) Encourage pilfering and theft;
  - (e) Constitute a blighting influence upon the area in which they are located;
  - (f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.
- (Code 1993; Code 2008, § 8-701; Ord. 744, Sec. 1)

### **8-702. DEFINITIONS.**

As used in this article, unless the context clearly indicates otherwise:

- (a) Inoperable - means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed;
  - (b) Vehicle - means, without limitation, any automobile, truck, tractor or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.
- (Code 1993; Code 2008, § 8-702; Ord. 744, Sec. 2)

### **8-703. NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS.**

It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

- (a) A motor vehicle nuisance is any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of city ordinance; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable;

- (1) Absence of a current registration plate upon the vehicle;
  - (2) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
  - (3) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.
  - (4) Absence of any indication of movement over a 60-day period.
- (b) The provisions of this article shall not apply to:
- (1) Any motor vehicle which is enclosed in a garage or other building;
  - (2) To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
  - (3) To any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.  
(Code 2008, § 8-703; Ord. 744, Sec. 3)

#### **8-704. PUBLIC OFFICER.**

The Property Maintenance Official, or designee, shall be the public officer charged with the administration and enforcement of this article.  
(Code 2008, § 8-704)

#### **8-705. COMPLAINTS; INQUIRY AND INSPECTION.**

The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings. <sup>16</sup>  
(Code 1993; Code 2008, § 8-705; Ord. 744, Sec. 4)

#### **8-706. RIGHT OF ENTRY. <sup>17</sup>**

The public officer may obtain access and entry upon private property within reasonable hours and as provided by law, for the purpose of making inquiry and inspection to determine if a nuisance exists.

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<sup>16</sup> **Legal analysis: 8-705. COMPLAINTS; INQUIRY AND INSPECTION.** Please advise as to whether this report is to subsequently be submitted to a particular department.

<sup>17</sup> **Legal analysis: 8-706. RIGHT OF ENTRY.** Revised to avoid potential constitutional issues.



(Code 2008, § 8-706)

### **8-707. ORDER OF VIOLATION.**

(a) The city shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-703 an order stating the violation. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

**18**

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(Code 2008, § 8-707)

(K.S.A. 12-1617e)

### **8-708. SAME; CONTENTS.**

The order shall state the condition(s) which is (are) in violation of section 8-703. The notice shall also inform the person, corporation, partnership or association that

(a) He, she or they shall have 10 days from receipt of the order to abate the condition(s) in violation of section 8-703; or

(b) He, she or they have 10 days from receipt of the order to request a hearing before the governing body or its designated representative of the matter as provided by section 8-712;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by section 8-709 and/or abatement of the condition(s) by the city as provided by section 8-710.

(Code 1993; Code 2008, § 8-708; Ord. 744, Sec. 7)

### **8-709. FAILURE TO COMPLY; PENALTY.**

Should the person fail to comply with the notice to abate the nuisance or request a hearing, the public officer may file a complaint in the municipal court of the city against

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**18 Legal analysis: 8-707. ORDER OF VIOLATION.** Clarify whether this is to take place after a review of the report completed in Section 8-302.



such person and upon conviction of any violation of provisions of section 8-703, be fined in an amount not to exceed \$500.00 or be imprisoned not to exceed 180 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

(Code 1993; Code 2008, § 8-709; Ord. 744, Sec. 8)

**8-710. ABATEMENT.**

In addition to, or as an alternative to prosecution as provided in section 8-709, the public officer may seek to remedy violations of this article in the following manner. If a person to whom an order has been sent pursuant to section 8-707 has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in section 8-708, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution.

The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in section 8-713. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;
- (b) Service by certified mail, return receipt requested; or
- (c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

(d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this ~~section~~ article during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. **19**

(Code 2008, § 8-710)

**8-711. DISPOSITION OF VEHICLE; RECOVERY OF VEHICLE.**

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**19 8-710. ABATEMENT, (d).** Revised for clarity, as in previous nuisance article, so as to not allow for 48 months before abatement may occur.

(a) Disposition of any motor vehicle removed and abated from private property pursuant to this article shall be as provided by K.S.A. Supp. 8-1102, as amended.

(b) Any person attempting to recover a motor vehicle impounded as provided in this article, shall show proof of valid registration and ownership of the motor vehicle before the motor vehicle shall be released. In addition, the person desiring the release of the motor vehicle shall pay all reasonable costs associated with the impoundment of the motor vehicle, including transportation and storage fees, prior to the release of the motor vehicle.

(Code 2008, § 8-711)

### **8-712. HEARING.**

If a hearing is requested within the 10 day period as provided in section 8-708, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the matter provided in section 8-710.

(Code 1993; Code 2008, § 8-712; Ord. 744, Sec. 10)

### **8-713. COSTS ASSESSED.**

If the city abates or removes the nuisance pursuant to section 8-710, the city shall give notice to the owner or his or her agent by personal service or by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

(Code 2008, § 8-713)

## **ARTICLE 8. ENVIRONMENTAL RELEASES**

**8-801. DEFINITIONS.**

(a) Emergency Action. - Includes all exigent activities conducted in order to prevent or mitigate harm to the public health and safety and the environment from a release or threatened release of any material into or upon land, water or air.

~~(b) Person. - Includes any individual, corporation, association, partnership, firm, trustee, legal representative, or any combination thereof.~~ **20**

(c) Recoverable Expenses. - Includes those expenses of the city that are reasonable, necessary and allocable to an emergency action. Recoverable expenses shall not include normal budgeted expenditures that are incurred in the course of providing what are traditionally city services and responsibilities, such as routine firefighting protection. Expenses allowable for recovery may include, but are not limited to:

(1) Disposable materials and supplies consumed and expended specifically for the purpose of the emergency action.

(2) Compensation of employees for the time and efforts devoted specifically to the emergency action.

(3) Rental or leasing of equipment used specifically for the emergency action (e.g., protective equipment or clothing, scientific and technical equipment).

(4) Replacement costs for equipment owned by the city that is contaminated beyond reuse or repair, if the equipment was a total loss and the loss occurred during the emergency action (e.g., self-contained breathing apparatus irretrievably contaminated during the response).

(5) Decontamination of equipment contaminated during the response.

(6) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts or specialists not otherwise provided for by the city).

(7) Other special services specifically required for the emergency action.

(8) Laboratory costs of analyzing samples taken during the emergency action.

(9) Any costs of cleanup, storage, or disposal of the released material.

(10) Costs associated with the services, supplies and equipment procured for a specific evacuation of persons or property.

(11) Medical expenses incurred as a result of response activities.

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<sup>20</sup> **Legal analysis: 8-801. DEFINITIONS, (b) Person.** Delete as covered by general provisions in Chapter 1.

(12) Legal expenses that may be incurred as a result of the emergency action, including efforts to recover expenses pursuant to this article.

(d) Release. - Means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or upon land, water or air, of any material.

(e) Threatened Release. - Means any imminent or impending event potentially causing but not resulting in a release, but causing the city to undertake an emergency action. (Code 1993; Code 2008, § 8-801; Ord. 741, Sec. 1)

### **8-802. STRICT LIABILITY.**

Any person causing or responsible for a release or threatened release resulting in an emergency action shall be strictly liable to the city for the recoverable expenses resulting from the emergency action. There shall be a rebuttable presumption that any person owning or controlling property causing a release or threatened release is responsible for such release or threatened release.

(Code 1993; Code 2008, § 8-801; Ord. 741, Sec. 2)

### **8-803. RECOVERY OF EXPENSES.**

(a) Itemization of Recoverable Expenses. - City personnel and departments involved in an emergency action shall keep an itemized record of recoverable expenses resulting from an emergency action. Promptly after completion of an emergency action, the appropriate city department shall certify those expenses to the city clerk.

(b) Submission of Claim. - The city shall submit a written itemized claim for the total expenses incurred by the city for the emergency action to the responsible person and a written notice that unless the amounts are paid in full to the city within 30 days after the date of the mailing of the claim and notice, the city may file a civil action seeking recovery for the stated amount.

(c) Lien on Property. - The city may cause a lien in the amount of recoverable expenses to be placed on any real property located within the city owned by the person causing or responsible for the emergency action.

(d) Civil Suit. - The city may bring a civil action for recovery of the recoverable expenses against any and all persons causing or responsible for the emergency action. (Code 1993; Code 2008, § 8-803; Ord. 741, Sec. 3)

### **8-804. CONFLICT; STATE LAWS.**

Nothing in this article shall be construed to conflict with state or federal laws requiring persons causing or responsible for releases or threatened releases from engaging in remediation activities and/or paying the cost thereof.

(Code 1993; Code 2008, § 8-804; Ord. 741, Sec. 4)

## **ARTICLE 9. FAIR HOUSING CODE**

**8-901. FAIR HOUSING.**

- (a) It shall be unlawful for any person to refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable or deny, real property to any person because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.
- (b) It shall be unlawful for any person to discriminate against any person in the terms, conditions or privileges of sale or rental of real property, or in the provision of services or facilities in connection therewith, because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.
- (c) It shall be unlawful for any person to make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application, with respect to the sale or rental of real property that indicates any preference, limitation, specification or discrimination based on race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status, or an intention to make any such preference, limitation, specification, or discrimination.
- (d) It shall be unlawful for any person to represent to any person because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status that any real property is not available for inspection, sale or rental when such real property is in fact so available.
- (e) It shall be unlawful for any person for profit, to induce or attempt to induce any person to sell or rent any real property by representative regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.
- (f) It shall be unlawful for any person to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization or other service, organization or facility relating to the business of selling or renting real property, or to discriminate against him or her in the terms or conditions of such access, membership or participation, because of race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status.
- (g) It shall be unlawful for any person to discriminate against any person in his or her use or occupancy of real property because of the race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status of the people with whom such person associates.
- (Code 2008, § 8-901; Ord. 756, Sec. 1; Ord. No. 1004, § 2(8-901), 10-10-2019)

**8-902. SEXUAL ORIENTATION OR GENDER IDENTITY.**

The provisions of Chapter 5, Article 10 of the City code (Prohibited Discrimination in Employment, Housing, or Public Accommodations as to Sexual Orientation or Gender Identity), as they relate to housing, are hereby incorporated herein by this reference.

(Ord. No. 1004, § 2(8-902), 10-10-2019)

**8-903. ENFORCEMENT.**

To the extent of state and federal legal processes to address allegations of discrimination based on race, religion, color, gender, national origin, ancestry, disability, marital status, military status, or familial status, the City may decline to accept a complaint under this article and defer to the appropriate state or federal agency in which such complaints may be filed.

(Ord. No. 1004, § 2(8-903), 10-10-2019)

**8-904. DEFINITIONS.**

Except to the extent they are in conflict with the definitions set forth in Chapter 5, Article 10 of the City code (Prohibited Discrimination in Employment, Housing, or Public Accommodations as to Sexual Orientation or Gender Identity), the definitions contained within the Kansas Acts Against Discrimination (K.S.A. 44-1001 et seq.), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.), and the Discrimination Against Military Personnel Act (K.S.A. 44-1125 et seq.), and amendments thereto, shall apply to this article.

(Ord. No. 1004, § 2(8-904), 10-10-2019)

**ARTICLE 10. MINIMUM HOUSING CODE**

**8-1001. TITLE.**

This article shall be known as the "Minimum Standard for Housing and Premises Code," and will be referred to herein as "this code."

(Code 2008, § 8-1001)

**8-1002. GENERAL.**

Buildings used in whole or in part as a home or residence of a single family or person and every building used in whole or in part as a home or residence of two or more persons or families living in separate apartments and all premises, either residential or non-residential, shall conform to the requirements of this code.

(Code 2008, § 8-1002)

**8-1003. DECLARATION OF POLICY.**

The governing body declares the purpose of this code is to protect, preserve, and promote the physical and mental health of the people, investigate and control communicable diseases, regulate privately and publicly-owned structures or dwellings, and all premises for the purpose of sanitation and public health, general appearance, and protect the safety of the people and promote the general welfare by legislation which shall be applicable to all dwellings, structures and premises now in existence or hereafter constructed or developed and which legislation:

- (a) Establishes minimum standards for basic equipment and facilities for light,

ventilation and heating, for safety from fire, for the use and location and amount of space for human occupancy, and for safe and sanitary maintenance;

(b) Establishes standards concerning unsightly and blighted buildings and premises, both residential and non-residential structures.

(c) Determines the responsibilities of owners, operators and occupants.

(d) Provides for the administration and enforcement thereof.  
(Code 2008, § 8-1003)

#### **8-1004. DEFINITIONS.**

The following definitions shall apply to the enforcement of this code:

(a) Basement - shall mean a portion of a building located partly underground, but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground.

(b) Cellar - shall mean a portion of a building located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

(c) Dwelling - shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants: provided, that temporary housing hereinafter defined shall not be regarded as a dwelling.

(d) Dwelling Unit - shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, or intended to be used for living, sleeping, cooking and eating.

(e) Habitable Dwelling - shall mean any structure or part thereof that shall be used as a home or place of abode by one or more persons.

(f) Habitable Room - shall mean a room designed to be used for living, sleeping, eating or cooking purposes, excluding bathrooms, toilet rooms, closets, halls and storage places, or other similar places, not used by persons for extended periods.

(g) Infestation - shall mean the presence, within or around a dwelling, of insects, rodents, or other pests.

(h) Multiple Dwelling - shall mean any dwelling containing more than two dwelling units.

(i) Occupant - shall mean any person, over one year of age, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.

(j) Operator - shall mean any person who has charge, care, owns, or has control of a premise or of a building or structure or part thereof, in which dwelling units or rooming units are let.

(k) Owner - shall mean any person, firm, or corporation, who jointly or severally along with others, shall be in actual possession of, or have charge, care and control of any structure or dwelling unit or premises within the city as owner, employee, or agent of the owner, or as trustee or guardian of the estate or person of the title holder, and such person shall be deemed and taken to be the owner or owner of such property within the true intent and meaning of this code and shall be bound to comply with the provisions of this article to the same extent as the record owner and notice to any such person shall be deemed and taken to be a good and sufficient notice as if such person or persons were actually the record owner or owner of such property.

~~(l) Person shall mean and include any individual, firm, corporation, association or partnership.~~ <sup>21</sup>

(m) Plumbing - shall mean and include all of the following supplied facilities and equipment: gas or fuel pipes, gas or fuel burning equipment, water pipes, garbage disposal units, waste pipes, ~~water closets~~ flush toilets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents, heating, ventilation and air conditioning, and any other similar supplied fixtures, together with all connections to water, sewer, gas or fuel lines. <sup>22</sup>

(n) Premise - shall mean any lot or land area, either residential or non- residential, not covered by a structure and which is subject to a city tax in part or in whole.

(o) Public Officer - shall mean the Property Maintenance Official.

(p) Rooming House - shall mean any dwelling, or that part of a dwelling containing one or more rooming units in which space is let by the owner or operator to more than two (2) persons who are not husband and wife, son or daughter, mother or father, or sister or brother of the owner or operator.

(q) Rooming Unit - shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

(r) Refuse. - For the purpose of this article refuse shall include garbage, and trash.

(1) Garbage - shall mean any accumulation of animal, fruit or vegetable waste matter that attends the preparation of, use of, cooking of, delivering of, or storage of meats, fish, fowl, fruit or vegetable.

(2) Trash (Combustible). - For the purpose of this article combustible trash shall mean waste consisting of papers, cartons, boxes, barrels, wood and excelsior, tree branches, yard trimmings, wood furniture, bedding and leaves, or any other combustible materials.

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<sup>21</sup> **Legal analysis: 8-1004. DEFINITIONS, (l) Person.** Delete as covered by general provisions in Chapter 1.

<sup>22</sup> **Legal analysis: 8-1004. DEFINITIONS, (m) Plumbing.** Revise to modernize language.



(3) Trash (Non-Combustible). - For the purpose of this article non- combustible trash shall mean waste consisting of metals, tin cans, glass, crockery, other mineral refuse and ashes and street rubbish and sweepings, dirt, sand, concrete scrap, or any other non-combustible material.

(s) Structure - shall mean anything constructed or erected on the ground or attached to something having a location on the ground.

(t) Supplied - shall mean paid for, furnished, or provided by or under the control of, the owner or operator.

(u) Temporary Housing - shall mean any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, house or building or another structure, or to any utilities system on the same premises for more than 30 consecutive days.

(v) Words - Meanings. - Whenever the words "dwelling," "dwelling unit," "rooming house," "rooming unit," "premises," are used in this article, they shall be construed as though they were followed by the words "or any part thereof."  
(Code 2008, § 8-1004)

**8-1005. DUTY OF OCCUPANT OR OWNER OF OCCUPIED OR UNOCCUPIED BUILDING AND ITS PREMISES OR VACANT PREMISES.**

(a) It shall be the duty of the owner of every occupied or unoccupied dwelling, building and premises or vacant premise, including all yards, lawns and courts to keep such property clean and free from any accumulation of filth, rubbish, garbage, or any similar matter as covered by sections 8-508 and 8-509.

(b) It shall be the duty of each occupant of a dwelling unit to keep in clean condition the portion of the property which he or she occupies and of which he or she has exclusive control, to comply with the rules and regulations, to place all garbage and refuse in proper containers. Where care of the premise is not the responsibility of the occupant then the owner is responsible for violations of this code applicable to the premise.

(c) If receptacles are not provided by the owner, then the occupant shall provide receptacles as may be necessary to contain all garbage and trash.

(d) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his or her dwelling unit is the unit primarily infested.

(e) Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a vermin- proof or reasonably insect-proof condition, extermination shall be the responsibility of the owner and operator.

(f) Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units,

extermination thereof shall be the responsibility of the owner.  
(Code 2008, § 8-1005)

### **8-1006. REGULATIONS FOR THE USE AND OCCUPANCY OF DWELLINGS.**

No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the following requirements. The following requirements are hereby declared essential to the health and safety of the occupants of such dwelling or dwelling unit:

- (a) **Basement or Cellar.** - The basement or cellar of any dwelling shall be reasonably dry and ventilated and shall be kept free from rubbish accumulation.
- (b) **Bathing Facilities.** - Every dwelling unit shall contain within a room which affords privacy to a person in the room, a bathtub or shower in good working condition and properly connected to an approved water and sewer system.
- (c) **Drainage.** - All courts, yards or other areas on the premises of any dwelling shall be so graded and drained that there is no pooling of the water thereon. Properly constructed wading and swimming pools and fish ponds are excepted from this section.
- (d) **Entrances.** (1) There shall be for each dwelling unit a normally used separate access either to a hallway, stairway, or street, which is safe and in good repair.  
(2) A secondary exit to the ground shall be available in case of fire through windows, porch roofs, ladders or any combination that is free of hazard or egress.
- (e) **Floor Area.** - Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof. The floor space shall be calculated on the basis of total habitable room area, inside measurements. No floor space shall be included in determining habitable room area over which the ceiling is less than seven feet above the floor for the purpose of this subsection.
- (f) **Garbage and Trash Receptacles.** - Every dwelling and every dwelling unit shall be provided with such receptacles, **not exceeding 32 gallon capacity**, as may be necessary to contain all garbage and trash and such receptacles shall at all times be maintained in good repair.
- (g) **Heating.** - Every dwelling and every dwelling unit shall be so constructed, insulated, and maintained and be provided by owner or occupant with heating units so that it is capable of reaching an air temperature of 70 degrees Fahrenheit under ordinary winter conditions. The chimney of the dwelling or dwelling unit shall be maintained in good order, and the owner of the approved heating equipment shall maintain it in good order and repair.
- (h) **Kitchen Sink.** - In every dwelling unit containing two or more rooms, there shall be at least one kitchen sink with public water under pressure and connected to the public sewer, or if that sewer system is not available, to a sewage disposal system approved by

the city health department.

(i) Lavatory Facilities. - Every dwelling unit shall contain within its walls a lavatory basin in good working condition and properly connected to an approved water and sewer system and located in the same room as the required flush ~~water-closet~~ toilet or as near to the room as practicable. <sup>23</sup>

(j) Lighting. - Every habitable room shall have a ceiling electric outlet and a duplex outlet in wall or floor, or at least two wall or floor outlets.

(k) Lighting of Toilets and Bathrooms. - Every toilet and every bathroom in every dwelling shall have at least one electric light in either the ceiling or on the wall.

(l) Plumbing. - All plumbing, water closets and other plumbing fixtures in every dwelling or dwelling unit shall be maintained in good working order.

(m) Privies. - All pit privies, privy vaults, "dry hopper" sewer-connected privies and frost-proof closets are hereby banned. Portable toilets used for special events are not included in this provision.

(n) Toilet Facilities. - There shall be at least one flush ~~water-closet~~ toilet in good working condition for each dwelling unit, which flush ~~water-closet~~ toilet shall be located within the dwelling and in a room which affords privacy. <sup>24</sup>

(o) Ventilation. - Every habitable room in a dwelling or dwelling unit shall contain a window or windows openable directly to the outside air and the total area of such window or windows shall be not less than five percent of the floor area of such room. An approved system of mechanical ventilation or air conditioning may be used in lieu of openable windows. Such system shall be capable of providing not less than four air changes per hour, except that in toilet compartments such system shall provide a complete air change every five minutes and be automatically put in operation when the toilet compartment light is in the "on" position.

(p) Water Heating Facilities. - Every dwelling shall have supplied water heating facilities which are installed in an approved manner and are maintained and operated in a safe and good working condition and are properly connected with the hot water lines to the kitchen sink, lavatory and bathtub or shower.

(q) Windows and Doors. - Every window and exterior door shall be reasonably weather-tight, lockable, and rodent-proof and shall be kept in good working condition and good repair.

(Code 2008, § 8-1006)

**8-1007. MAINTENANCE AND REPAIR; DWELLINGS.**

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<sup>23</sup> **Legal analysis: 8-1006. REGULATIONS FOR THE USE AND OCCUPANCY OF DWELLINGS, (i).** Revise to modernize language.

<sup>24</sup> **Legal analysis: 8-1006. REGULATIONS FOR THE USE AND OCCUPANCY OF DWELLINGS, (n).** Revise to modernize language.

Every dwelling and every part thereof shall be maintained in good repair by the owner or agent and be fit for human habitation. The roof shall be maintained so as not to leak and all rainwater shall be drained therefrom so as not to cause dampness in the walls or ceilings. All floors, stairways, doors, porches, windows, skylights, chimneys, toilets, sinks, walls, and ceilings shall be kept in good repair and usable condition.  
(Code 2008, § 8-1007)

### **8-1008. DESIGNATION OF UNFIT DWELLINGS.**

The designation of dwellings or dwelling units as unfit for human habitation and placarding of such unfit dwellings or dwelling units shall be carried out in compliance with the following requirements:

- (a) The Public Officer may determine, or five citizens may petition in writing, that any dwelling unit is unfit for human use or habitation if he, she or they find that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the neighborhood, or which shall have a blighting influence on properties in the area.
- (b) Such Conditions may include the following without limitation:
  - (1) Defects therein increasing the hazards of fire, accident, or other calamities.
  - (2) Lack of:
    - (i) Adequate ventilation.
    - (ii) Light.
    - (iii) Cleanliness.
    - (iv) Sanitary facilities.
  - (3) Dilapidation.
  - (4) Disrepair.
  - (5) Structural defects.
  - (6) Overcrowding.
  - (7) Inadequate ingress and egress.
  - (8) Unsightly appearance that constitutes a blight to the adjoining property, the neighborhood or the city.
  - (9) Air Pollution.
- (c) Placarding - Order to Vacate. Any dwelling or dwelling unit condemned as unfit for

human habitation, and so designated and placarded by the public officer shall be vacated within a reasonable time as so ordered.

(d) Notice of Violation. Procedures as outlined in section 8-1012 are applicable hereto.

(e) Compliance Required before Reoccupancy. No dwelling or dwelling unit which has been condemned and placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by, the public officer.

(1) The public officer shall remove such placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated.

(2) It shall be unlawful for anyone to let, lease, occupy or permit the occupancy, whether for a consideration or not, of any dwelling so posted, and any violation of this provision shall constitute a public offense within the meaning of this code.

(3) It shall be unlawful for any person to deface or remove the placard from any dwelling or dwelling unit which has been condemned as unfit for human habitation and placarded as such, except the public officer as herein provided, and any violation of this provision shall constitute a public offense within the meaning of this code.

(Code 2008, § 8-1008)

### **8-1009. DESIGNATION OF BLIGHTED PREMISES (RESIDENTIAL AND NON-RESIDENTIAL).**

The designation of unsightly and blighted premises and elimination thereof shall be carried out in compliance with the following requirements.

(a) The Public Officer may determine, or five citizens may petition in writing, that if the appearance of a premise is not commensurate with the character of the properties in the neighborhood or otherwise constitutes a blight to the adjoining property or the neighborhood or the city for such reasons as, but not limited to:

(1) Dead trees or other unsightly natural growth.

(2) Unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation, inadequate drainage.

(3) Violation of any other law or regulations relating to the use of land and the use and occupancy of the buildings and improvements.

(b) Notice of Violation. Procedures as outlined in section 8-1012 are applicable hereto. (Code 2008, § 8-1009)

### **8-1010. DESIGNATION OF BLIGHTED BUILDINGS AND PREMISES (NON-RESIDENTIAL).**

(a) Certain Blighted Conditions covered in sections 8-1008 and 8-1009 concerning buildings and premises which are on the tax roll of the city are applicable to all non-

residential buildings and premises.

(b) Notice of Violation. Procedures of notification shall follow those prescribed in section 8-1012.

(Code 2008, § 8-1010)

### **8-1011. INSPECTION OF BUILDINGS AND STRUCTURES, AND PREMISES.**

(a) For the Purpose of Determining Compliance with the provisions of this code, the public officer or his or her authorized representative is hereby authorized to make inspections to determine the condition, use, and occupancy of dwellings, dwelling units, rooming units, and the premises upon which the same are located. This requirement is applicable to existing dwellings or buildings.

(b) The Public Officer is not limited by the conditions in the above paragraph (a) where new construction or vacant premises are involved and may make such inspections at any appropriate time.

(c) The Owner, Operator, and Occupant of every dwelling, dwelling unit, and rooming unit shall give the public officer, or his or her authorized representative, during reasonable hours, free access to such dwelling, dwelling unit, and rooming unit, and its premises, for the purpose of such inspection, examination and survey after identification by proper credentials.

(d) Every Occupant of a dwelling shall give the owner thereof, or his or her authorized agent or employee, access to any part of such dwelling, or its premises, at all reasonable times, for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this code or with any rule or regulation adopted and promulgated, or any order issued pursuant to the provisions of this code.

(Code 2008, § 8-1011)

### **8-1012. NOTICE OF VIOLATIONS; PROCEDURES.**

(a) Informal Discussion. Whenever the public officer or his or her authorized representative determines that there has been a violation of any provision of this code, the public officer will attempt to arrange with the alleged violator an informal discussion of violations, and whether repair and correction is justified.

(b) Formal Hearing. If a satisfactory solution to the violations, either by correction, demolition or removal, is not forthcoming, then a legal notice of a formal hearing will be issued according to the following procedures:

(1) Shall be in writing.

(2) Shall list the violations alleged to exist or to have been committed.

(3) Shall provide a reasonable time, but not less than 30 days in any event for the correction of the violations particularized.

(4) Shall be addressed to and served upon the owner of the property, the operator of

the dwelling, and the occupant of the dwelling unit or the rooming unit concerned, if the occupant is or may be responsible for violation.

(5) If one or more persons whom the notice is addressed cannot be found or served after diligent effort to do so, service may be made upon such person or persons by posting a notice in a conspicuous place in or about the dwelling affected by the notice, in which event the public officer or his or her authorized representative shall include in the record a statement as to why such posting was necessary.

(6) Delivery shall be by certified mail, return receipt requested, or by personal service. If service is made by certified mail, the public officer or his or her authorized representative shall include in the record a verified statement giving details regarding the mailing. In the event other methods of service are unavailing, service may be made by posting or publication.  
(Code 2008, § 8-1012)

### **8-1013. PUBLIC OFFICER: AUTHORITY.**

For the purpose of protecting the city against unsightly or blighted premises, ~~also~~ and to protect the health, welfare, and safety of the inhabitants of dwellings or dwelling units, the public officer referred heretofore is hereby authorized, with the consent and prior knowledge of the governing body, to enforce provisions of this code and of other laws which regulate or set standards affecting buildings and premises. <sup>25</sup>  
(Code 2008, § 8-1013)

### **8-1014. GOVERNING BODY; AUTHORITY.**

The governing body is hereby authorized:

- (a) To Informally Review all alleged violations as provided in section 8- 1012(a) prior to notification prescribed in section 8-1012(b).
- (b) To Take Action as prescribed in section 8-1012(b).
- (c) To Hear Appeals where there is opposition to any order, requirement, decision or determination by the public officer in enforcement of this code as outlined in section 8-1018.
- (d) Discretionary Authority may be exercised in specific cases where variance from the terms of the code:
  - (1) Will not adversely affect the public health, safety or welfare of inhabitants of the city;
  - (2) Is in harmony with the spirit of this code;
  - (3) Where literal enforcement of the code will result in unnecessary hardship.

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<sup>25</sup> **Legal analysis: 8-1013. PUBLIC OFFICER: AUTHORITY.** Revise for clarity.

(Code 2008, § 8-1014)

**8-1015. ORDER TO CORRECT AND/OR REPAIR, REMOVE OR DEMOLISH.**

At the time of the placarding and order to vacate specified by section 8-1008(c) hereof, the public officer shall also issue and cause to be served upon the owner a notice advising of the option of removal or demolition in lieu of correction and/or repair following the procedures as outlined in section 8-1012.

(Code 2008, § 8-1015)

**8-1016. DEMOLITION BY PUBLIC OFFICER; PROCEDURE AND COSTS.**

(a) Failure to Comply with the order under section 8-1015 hereof for the alteration or improvement of such structure, the public officer, with the consent and prior knowledge of the governing body, may cause such condemned structure to be removed or demolished and the premises improved to eliminate the conditions outlined in section 8-1009 of the code.

(b) The Cost of Demolition by a Public Officer shall be a lien upon the property upon which the cost was incurred and such lien, including as a part thereof an allowance of his or her costs and necessary attorney's fees, may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property or shall be assessed as a special assessment upon the lot or parcel of land on which the structure was located and the city clerk at the time of certifying other city taxes, shall certify the unpaid portion of the aforesaid costs and the county clerk shall extend the same on the tax rolls against the lot or parcel of land.

(c) If the Structure is Removed or Demolished by the Public Officer he or she shall offer for bids and sell the structure or the materials of such structure. The proceeds of such sale shall be credited against the cost of the removal or demolition and, if there is any balance remaining, it shall be paid to the parties entitled thereto after deduction of costs or judicial proceedings, if any, including the necessary attorney's fees incurred therein, as determined by the court, if involved.

(Code 2008, § 8-1016)

**8-1017. CONFLICT OF LAWS; EFFECT OR PARTIAL INVALIDITY.** <sup>26</sup>

(a) Conflicts between the provisions of this code with a provision of any zoning, building, fire, safety, or health ordinance or code of the city, existing on the effective date of this article, the provision shall prevail which establishes the higher standard.

(b) Conflicts between this article with a provision of any other ordinance or code of the city existing on the effective date of this article which establishes a lower standard, the provisions of this article shall be deemed to prevail and such other laws or codes are hereby declared to be repealed to the extent that they may be found in conflict with this code.

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<sup>26</sup> **Legal analysis: 8-1017. CONFLICT OF LAWS; EFFECT OR PARTIAL INVALIDITY.** Revise to include original effective date, or otherwise update for clarity.



(Code 2008, § 8-1017)

**8-1018. GOVERNING BODY; APPEALS.**

(a) Any person, firm, or corporation considering themselves aggrieved by the decision of the public officer and who desires to present a formal protest to the governing body shall in writing, request a hearing before the governing body within 10 days after receiving notice of the decision from the public officer, as provided in section 8-1012(b). Such protest and request for a hearing shall be filed with the office of the city clerk.

(b) Upon receipt of a protest and request for a hearing, the city clerk shall notify in writing the governing body of such appeal.

(c) The governing body shall, within 30 days of receipt of protest and request for a hearing, determine a date for the hearing.

(d) Notice of the date for the hearing shall be sent to the appellant at least 10 days before the hearing.

(e) Except where an immediate hazard exists as described in section 8- 1012 of this code, the filing of a protest and request for a hearing before the governing body as specified in subsection (a) shall operate as a stay of the enforcement of the public officer's order until such time as the governing body has reached a decision on the matter.

(Code 2008, § 8-1018)

**8-1019. RIGHT OF PETITION.**

After exhausting the remedy provided in section 8- 1018, any person aggrieved by an order issued by the public officer and approved by the governing body after a hearing on the matter, may within 30 days from the date which the order became final petition the district court of the county in which the property is located to restrain the public officer from carrying out the provisions of the order.

(Code 2008, § 8-1019)

**ARTICLE 11. DANGEROUS AND UNFIT STRUCTURES**

**8-1101. PURPOSE.**

The governing body has found that there may exist within the corporate limits of the city structures which are unfit for human use or habitation because of dilapidation, defects increasing the hazards of fire or accidents, structural defects or other conditions which render such structures unsafe, unsanitary or otherwise inimical to the general welfare of the city, or conditions which provide a general blight upon the neighborhood or surrounding properties. It is hereby deemed necessary by the governing body to require or cause the repair, closing or demolition or removal of such structures as provided in this article.

(Code 1993, 4-301; Code 2008, § 8-1101)

(K.S.A. 12-1751)

**8-1102. DEFINITIONS.**

For the purpose of this article, the following words and terms shall have the following meanings:

- (a) Enforcing officer - means the city building official or his or her authorized representative.
- (b) Structure - shall include any building, wall, superstructure or other structure which requires location on the ground, or is attached to something having a location on the ground.  
(Code 1993, 4-302)  
(K.S.A. 12-1750)

### **8-1103. ENFORCING OFFICER; DUTIES.**

The enforcing officer is hereby authorized to exercise such powers as may be necessary to carry out the purposes of this article, including the following:

- (a) Inspect any structure which appears to be unsafe, dangerous or unfit for human habitation;
- (b) Have authority to enter upon premises at reasonable hours for the purpose of making such inspections. Entry shall be made so as to cause the least possible inconvenience to any person in possession of the structure. If entry is denied, the enforcing officer may seek an order for this purpose from a court of competent jurisdiction;
- (c) Report all structures which he or she believes to be dangerous, unsafe or unfit for human habitation to **the governing body**;
- (d) Receive petitions as provided in this article.  
(Code 1993, 4-303; Code 2008, § 8-1103)

### **8-1104. PROCEDURE; PETITION.**

Whenever a petition is filed with the enforcing officer by at least five residents charging that any structure is dangerous, unsafe or unfit for human habitation, or whenever it appears to the enforcing officer on his or her own motion that any structure is dangerous, unsafe or unfit for human habitation, he or she shall, if his or her preliminary investigation discloses a basis for such charges, report such findings to the **governing body**.  
(Code 1993, 4-304; Code 2008, § 8-1104)

### **8-1105. SAME; NOTICE.**

**The** governing body upon receiving a report as provided in this chapter, shall by resolution fix a time and place at which the owner, the owner's agent, any lien holder of records and any occupant of the structure may appear and show cause why the structure should not be condemned and ordered repaired or demolished.  
(Code 1993, 4-305; Code 2008, § 8-1105)  
(K.S.A. 12-1752)

**8-1106. SAME; PUBLICATION.**

(a) The resolution shall be published once each week for two consecutive weeks on the same day of each week. At least 30 days shall elapse between the last publication and the date set for the hearing.

(b) A copy of the resolution shall be mailed by certified mail within three days after its first publication to each owner, agent, lien holder and occupant at the last known place of residence and shall be marked "deliver to addressee only."

(Code 1993, 4-306; Code 2008, § 8-1106)

(K.S.A. 12-1752)

**8-1107. SAME; HEARING, ORDER.**

(a) If, after notice and hearing, the governing body determines that the structure under consideration is dangerous, unsafe or unfit for human use or habitation, it shall state in writing its findings of fact in support of such determination and shall cause the resolution to be published once in the official city newspaper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will cause the structure to be razed and removed.

(b) If the repair, alteration, or improvement of the structure can be made at a cost which shall not exceed 50 percent of the fair market value of the structure, the owner of the property shall, within the time specified in the order, repair, alter or improve the structure to render it safe and fit for use or human habitation, or shall vacate and close the structure until such time as he has complied with the order.

(c) If the repair, alteration or improvement of the structure cannot be made at a cost of 50 percent or less of its fair market value, the owner shall, within the time specified in the order, remove or demolish the structure.

(Code 1993, 4-307; Code 2008, § 8-1107)

**8-1108. DUTY OF OWNER.**

Whenever any structure within the city shall be found to be dangerous, unsafe or unfit for human use or habitation, it shall be the duty and obligation of the owner of the property to render the same secure and safe or to remove the same.

(Code 1993, 4-308; Code 2008, § 8-1108)

**8-1109. SAME; FAILURE TO COMPLY.**

(a) If, within the time specified in the order, the owner fails to comply with the order to repair, alter, improve or vacate the structure, the enforcing officer may cause the structure to be repaired, altered, improved, or to be vacated and closed.

(b) If, within the time specified in the order, the owner fails to comply with the order to remove or demolish the structure, the enforcing officer may cause the structure to be removed and demolished.

(Code 1993, 4-309; Code 2008, § 8-1109)

### **8-1110. SAME; MAKE SITE SAFE.**

Upon removal of any structure, the owner shall fill any basement or other excavation located upon the premises and take any other action necessary to leave the premises in a safe condition. If the owner fails to take such action, the enforcing officer may proceed to make the site safe.

(Code 1993, 4-310; Code 2008, § 8-1110)

### **8-1111. ASSESSMENT OF COSTS.**

(a) The cost to the city of any repairs, alterations, improvements, vacating, removal or demolition by the enforcing officer, including making the site safe, shall be reported to the city clerk.

(b) The city shall give notice to the owner of the structure by restricted mail of the cost of removing the structure and making the premises safe and secure. The notice shall also state that payment of the cost is due and payable within 30 days following receipt of the notice.

(c) If the costs remain unpaid after 30 days following receipt of notice, the city clerk may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of removing the structure and making the site safe. Any proceeds in excess of that required to recover the costs shall be paid to the owner of the premises upon which the structure was located.

(d) If the proceeds of the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901—3910 and amendments thereto, are insufficient to recover the above stated costs, or if there is no salvage, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments against the lot or parcel of land on which the structure was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs to the county clerk and who shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full.

(e) If there is no salvage material, or if the monies received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901—3910 and amendments thereto, are insufficient to pay the costs of the work and the costs of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants.

(Code 2008, § 8-1111)

(K.S.A. 12-1755)

### **8-1112. IMMEDIATE HAZARD.**

When in the opinion of the governing body any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, the governing body may direct the enforcing officer to erect barricades or cause the property to be vacated, taken down, repaired, shored or otherwise made safe without delay. Such action may be taken without prior notice to or hearing of the owners, agents, lien holders and occupants. The cost of any action under this section shall be assessed against the property as provided in section 4-611.

(Code 1993, 4-312; Code 2008, § 8-1112)

(K.S.A. 12-1756)

### **8-1113. APPEALS FROM ORDER.**

Any person affected by an order issued by the governing body under this article may, within 30 days following service of the order, petition the district court of the county in which the structure is located for an injunction restraining the enforcing officer from carrying out the provisions of the order pending final disposition of the case.

(Code 1993, 4-313; Code 2008, § 8-1113)

### **8-1114. SCOPE OF ARTICLE.**

Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition to and supplemental to the powers conferred by the constitution, any other law or ordinance. Nothing in this article shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise or to exercise those powers granted specifically by K.S.A. 12-1750 through 12-1756.

(Code 1993, 4-314; Code 2008, § 8-1114)

## **ARTICLE 12. MINIMUM PROPERTY PRESERVATION CODE**

### **8-1201. PURPOSE.**

The general purpose of this article is to protect the public health, safety and the general welfare of the people of the City. These general objectives include, among others, the following specific purposes:

- (a) To protect the character and stability of residential and commercial areas within the City by legislation which shall be applicable to all dwellings and buildings now in existence or here after constructed.
- (b) To provide minimum standards for the maintenance of EXTERIORS OF ALL existing

buildings, and to thus prevent the creation of blight. **27**

- (c) To provide minimum standards for the maintenance of the interiors of all rented or leased dwelling units.
- (d) To preserve the property value of land and buildings throughout the City.
- (e) To provide determinable minimum maintenance standards for dwellings and non-residential structures and to thus facilitate private enforcement of legal rights and remedies.
- (f) To provide mechanisms for the enforcement and administration of the code to ensure that the above purposes are accomplished.  
(Code 2008, § 8-1201; Ord. 792, Sec. 4-40)

### **8-1202. DEFINITIONS.**

For the purpose of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:

- (a) Accessory Structure - A subordinate structure located on the same lot as the main structure, or a portion of the main structure the use of which is clearly incidental to, and customarily found in connection with, the main structure or principal use of the land.
- (b) Building - Any structure used or intended for supporting or sheltering any use or occupancy.
- (c) Commercial Area - Any area, whether or not zoned in a non-residential zone, which is occupied primarily by such non-residential uses as retail, office, warehouse, wholesaling, or manufacturing businesses.
- (d) Building Code - The building code of the city of Westwood currently in use.
- (e) Deterioration - The condition of a building or part thereof, characterized by evidence of physical decay or neglect, excessive use, or lack of maintenance.
- (f) Dwelling - Any building or portion thereof containing one (1) or more dwelling units, but not including motels, hotels, rooming or boarding houses, institutions, or convalescent or nursing homes.
- (g) Dwelling Unit - A building or portion of a building which is exclusively arranged, occupied, or intended to be occupied as living quarters for one family; a separate, independent living quarter consisting of one or more connected rooms with Permanently installed bathroom and kitchen facilities.
- (h) Enforcement Official - The official designated herein or otherwise charged with the

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**27 Legal analysis: 8-1201. PURPOSE, (b).** Please confirm that the phrase "exteriors of all" is intended to remain in all caps.

responsibilities of administering this article or his authorized representatives.

(i) Exterior Appurtenance - Objects which are added to a structure for aesthetic or functional purposes. These include but are not limited to screens, awnings, trellises, television antennae, storm windows and storm doors.

(j) Extermination - The control and elimination of insects, rodents or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food, by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the enforcement officials of this City.

(k) Family - Any number of people occupying a single dwelling unit living together as a single housekeeping unit, related by blood, marriage or formal adoption plus not more than two (2) additional people not so related, except that foster children shall be considered as formally adopted. A family may also include up to but not more than three (3) unrelated people. In excess of three (3) unrelated people living together shall not be considered a family. However, nothing herein shall preclude or prohibit any living arrangement otherwise protected by or provided for by state or federal law.

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

(m) Garbage - Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

(n) Gutter - A trough attached to an eave to carry off water.

(o) Habitable Building - Any structure OR part thereof that shall be used as a home or place of abode by one (1) or more persons.

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

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

(r) Interior Maintenance Standards - Standards of maintenance of the inside elements and occupancy of rented or leased dwelling units only where the owner does not reside.

(s) Minimum Standards - The least quality admissible by this article.

(t) Multiple-family Dwelling - A building or portion thereof designed or altered for occupancy by two (2) or more families living independently of each other in separate dwelling units.

- (u) Occupant - Any person living and sleeping in a dwelling unit or having actual possession of said dwelling or rooming unit.
- (v) Openable Area - That part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.
- (w) Operator - Any person who has charge, care or control of a building, or part thereof, which is let or offered for occupancy.
- (y) Owner - Any person who, alone, jointly or severally with others, is in actual possession of, or has charge, care or control of, any building, dwelling or dwelling unit within the City as owner, employee or agent of the owner, or as trustee or guardian of the estate or person of the title holder; and such person shall be bound to comply with the provisions of this article to the same extent as the owner.
- (z) Person - A corporation, firm, partnership, association, organization and any other group acting as a unit as well as any individual. It shall also include an executor, administrator, trustee, receiver or other representative appointed according to law. Whenever the word "person" is used in any section of this article prescribing a penalty or fine, as to Partnerships or associations, the word shall include the partners or members thereof, and as to corporations shall include the officers, agents or members thereof who are responsible for any violation of such section.
- (aa) Premises - A lot, plot or parcel of land or any part thereof, including the buildings or structures thereon.
- (bb) Provided - Any material furnished, supplied, paid for or under the control of the owner.
- (cc) Public Hall - A hall, corridor or passageway for egress from a dwelling not within the exclusive control of one (1) family or dwelling unit.
- (dd) Public Nuisance - Includes the following:
- (1) The physical condition or use of any premises regarded as a public nuisance at common law or by other provisions in the Westwood Municipal Code; or
  - (2) Any physical condition, use or occupancy of any premises or its appurtenances, considered an attractive nuisance to children, including but not limited to abandoned wells, swimming pools, shafts, basements, excavations, unsafe fences or structures, etc., or
  - (3) Any premises designated as unsafe for human habitation or use; or
  - (4) Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or un-secure as to endanger life, limb or property; or
  - (5) Any premises which are unsanitary, or which are littered with rubbish or garbage, or which have an uncontrolled growth of weeds; or



(6) Any structure or building that is in a state of dilapidation, deterioration or decay; faulty construction; open, vacant or abandoned; damaged by fire to the extent as to not provide shelter, in danger of collapse or failure and is dangerous to anyone on or near the premises.

(ee) Repair - To restore to a sound and acceptable state of operation, serviceability. Repairs shall be expected to last approximately as long as would be the replacement by new items.

(ff) Replace - To remove an existing item or portion of a system and to construct or install a new item of similar or improved quality as the existing item when new. Replacement will ordinarily take place when the item is beyond repair.

(gg) Rubbish - Non-putrescible solid wastes consisting of both combustible and noncombustible wastes.

(hh) Smoke Detector - A device which detects visible or invisible particles of combustion and shall be either the ionization chamber or the photoelectric type device.

(ii) Structure - Anything constructed or erected with a fixed location on the ground, or attached to something with a fixed location on the ground. Structures include, but are not limited to buildings, walls, fences, poster panels, above ground storage tanks, and similar uses. Excluded are sidewalks, pavement and public improvements such as utility poles, street light fixtures, and street signs.

(jj) Substandard - All structures which do not conform to the minimum standards established by this article or any other ordinance.

(kk) Supplied - Paid for, installed, furnished or provided by or under the control of the owner operator.

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

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

(Code 2008, § 8-1202; Ord. 792, Sec. 4-40.1)

### **8-1203. APPLICABILITY.**

Every building or premises shall conform to the requirements of this article, irrespective of when such building or premises shall have been constructed altered or repaired. But nothing in this article shall be construed to require existing buildings or premises to comply with the requirements of the current building code, electrical code, plumbing code, or mechanical code; provided, however, that, after the effective date of the ordinance from which this article was derived, repairing, reconditioning or remodeling of existing

buildings shall be completed as required by this article. **28**

(a) Landlord-Tenant Relations. - Nothing in this ordinance or its enforcement shall be construed in any way to affect landlord-tenant relations nor shall relieve the tenant of any express or implied contractual obligations with the landlord. Further, should the enforcement official order the maintenance or repair of an element of a structure, the property owner shall not remove said element unless the enforcement official has first determined that the removal of said element would not increase the rate of deterioration of said structure.

(Code 2008, § 8-1203; Ord. 792, Sec. 4-40.2)

#### **8-1204. INTERPRETATION.**

(a) Scope - This article establishes minimum standards for principal buildings and accessory buildings and does not replace or modify standards otherwise established for the construction, replacement or repair of buildings except such as are in conflict with the provisions of this article. In any case where a provision of this article is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the City existing on the effective date of this article, the provision which establishes the higher standard for the promotion and protection of the safety and health of the people shall prevail. It is not the intention of this article to require reconstruction or replacement of existing facilities or structures in sound condition of repair in order to meet specific requirements of any of the above-mentioned codes unless there is an existing or probable health or safety hazard to the occupants or any residents of the City. **29**

~~(b) Severability - If any section, subsection, paragraph, sentence, clause or phrase of this article should be declared invalid for any reason whatsoever, such decisions shall not affect the remaining portions of this article, which shall remain in full force and effect. **30**~~  
(Code 2008, § 8-1204; Ord. 792, Sec. 4-40.3)

#### **8-1205. MINIMUM STANDARDS FOR EXTERIORS OF ALL BUILDINGS.**

(a) Applicability - It shall be unlawful for any person to occupy as owner- occupant or to let or hold out to another for occupancy any building for the purpose of carrying on a business, living, sleeping, cooking or eating which is not safe, sanitary and fit for human occupancy and which does not comply with the particular requirements of the following paragraphs of this section.

(b) Foundation, Exterior Walls and Roofs - The foundation, exterior walls and roof shall be substantially watertight and weather-tight as can be determined from a ground level inspection, and protected against rodents, and shall be kept in sound condition and repair. The foundation elements shall adequately support the building at all points. Every exterior wall shall be maintained in a sound condition of repair and shall be free of any other

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<sup>28</sup> **Legal analysis: 8-1203. APPLICABILITY.** For language regarding effective date of ordinance, either remove as no longer needed, or provide ordinance date to include in this provision.

<sup>29</sup> **Legal analysis: 8-1204. INTERPRETATION, (a) Scope.** Again, include date of ordinance or revise language to clarify.

<sup>30</sup> **Legal analysis: 8-1204. INTERPRETATION, (b) Severability.** Delete as covered by general provisions in Chapter 1.

condition which admits rain or excessive dampness to the interior portions of the building. All exterior surface materials must be treated, painted in a workmanlike manner, or otherwise maintained in a sound condition. Peeling paint, damaged or deteriorating exterior surfaces shall be repaired as soon as Possible. Building debris and excess paint shall be removed within thirty (30) days from initiating any construction or painting. Any person requiring additional time to conclude construction or painting may make application to the Property Maintenance Officer for an extension of time. Roofs shall be adequate to prevent rainwater from causing excessive dampness in the walls. All cornices, rustications, quoins, moldings belt courses, lintels, sills, oriel windows, pediments, gutters and similar projections shall be kept in good repair and free from defects which make them hazardous and dangerous.

(c) **Windows, Doors, and Hatchways** - Every window, door and basement hatchway shall be kept in sound condition and repair. Every window shall be fully supplied with window panes which are without dangerous cracks or holes. Every window sash shall be in good condition and fit reasonably tight within its frame. Every window, other than a fixed window, shall be capable of being easily opened and shall be held in position by window hardware and shall be equipped with window screens. Every door, door hinge and door latch shall be in functional condition. Knobs and/or handles shall be properly installed on all doors. Every door, when closed, shall fit reasonably well within its frame. All sliding doors shall have guides to prevent falling out of track. Every window, exterior door guides and frames shall be constricted and maintained in such relation to the adjacent wall construction as to completely exclude rain and excessive dampness substantially to exclude wind from entering the dwelling. Every basement hatchway and window shall be so constructed, screened or maintained as to prevent the entrance of rodents, insects, rain and surface drainage water into the building.

(d) **Exterior Appurtenances** - Exterior appurtenances, including but not limited to screens, awnings, trellises, television antennae, chimneys, storm windows, gutters, eaves, storm doors, fences, and retaining walls shall be installed in a safe and secure manner, and shall be maintained in good repair and must meet the requirements of all other portions of the City code.

(e) **Stairways and Porches.** - Every stairway outside of the building or dwelling and every porch shall be kept in safe condition and sound repair. Every flight of stairs and every porch floor shall be free of deterioration. Every stairwell and every flight of stairs which is four (4) or more risers high and every porch which is four (4) or more risers high shall have handrails or railings located on one

(1) side of same. Every rail and balustrade shall be firmly fastened and maintained in good condition. No flight of stairs shall have settled or have pulled away from supporting or adjacent structures so as to create a safety hazard. No flight of stairs shall have rotting, loose or deteriorating supports. The treads and risers of every flight of stairs shall be uniform in width and height. Every porch shall have a sound floor. No porch shall have rotting, loose or deteriorating supports.

(f) **Driveways, Sidewalks, and Patios** - Driveways, sidewalks and patios shall be maintained in good repair and free of safety hazards. Cracks in concrete or asphalt surfaces causing a vertical off-set in excess of one inch shall be repaired or replaced so as to prevent accident or injury. All driveways, sidewalks, and patios shall be made of

concrete, asphalt, brick or other dust-free, hard surface.

(g) Yards - All areas which are not covered by lawn or vegetation shall be treated to prevent dust or the blowing or scattering of dust particles into the air. All trees, bushes or vegetation located on private property which overhang a public thoroughfare shall be properly trimmed to a minimum under clearance of eight feet over sidewalks or **twelve** feet over streets to avoid obstruction of the view and movement of vehicles and pedestrians. Hazardous trees and shrubs shall be promptly removed or trimmed to remove the hazard. All dead and diseased trees and shrubs shall be promptly removed. As part of the removal of any growth or vegetation all stumps shall be removed or ground to at least six inches below grade.

(h) Infestation - Each building and dwelling and all exterior appurtenances on the premises shall be adequately protected against insects, rats, mice, entrance of insects, rats, mice, termites and other infestation. Building defects which permit the entrance of insects, rats, mice, termites and other infestation shall be corrected by the owner.

(i) Plantings - No tree shall be planted less than three feet from any foundation or building line. No bush or shrub shall be planted or permitted to grow in such a fashion that it shall touch or come in contact with any building or part thereof. Further, no tree shall be permitted to grow along fence lines. However, any tree having a height of over five feet as of the date of enactment of this ordinance which has been planted within three feet from any foundation or building line shall be permitted to remain, but upon removal of the tree for any reason, no replanting may take place except in conformity with this article. **31**

(j) Address Numbers - Each building shall display approved address numbers in a position to be clearly visible from the street. Numbers shall be a minimum of four (4) inches high.

(Code 2008, § 8-1205; Ord. 792, Sec. 4-41)

### **8-1206. MINIMUM STANDARDS FOR INTERIORS OF RENTED OR LEASED DWELLING UNITS.**

(a) Applicability - It shall be unlawful, in addition to the Preceding section, for any person to rent, lease, or hold out to another for occupancy for the purpose of living, sleeping cooking or eating any dwelling unit which is not safe, sanitary and fit for human occupancy and which does not comply with the particular requirements of the following paragraphs of this Section.

(b) Interior Cellars, etc., to be Maintained Free From Dampness. - In every rented or leased dwelling unit, cellars, basements and crawl spaces shall be maintained reasonably free from dampness to prevent conditions conducive to decay or deterioration of the structure.

(c) Interior Structural Members. - The supporting structural members of every rented

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<sup>31</sup> **Legal analysis: 8-1205. MINIMUM STANDARDS FOR EXTERIORS OF ALL BUILDINGS, (i).** Revise to include ordinance date, or otherwise update language.

or leased dwelling unit shall be maintained structurally sound, showing no evidence of deterioration which would render them incapable of carrying the imposed loads in accordance with the provisions of the building code.

(d) Interior Stairs - All interior stairs of every rented or leased dwelling unit shall be maintained in sound condition and good repair by replacing treads and risers that evidence excessive wear or are broken, warped or loose. Every inside stair shall be so constructed and maintained as to be safe to use and capable of supporting a load as required by the provisions of the building code.

(e) Interior Handrails - Every inside staircase or stairway in a rented or leased dwelling unit consisting of five (5) or more steps shall be equipped with a handrail which shall be kept in sound conditions and good repair.

(f) Bathroom and Kitchen Floors - Every toilet, bathroom and kitchen floor surface in a rented or leased dwelling unit shall be constructed and maintained with a material approved for the location and maintained so as to permit such floor to be easily kept in a clean and sanitary condition.

(g) Interior Sanitation - The interior of every rented or leased dwelling or dwelling unit shall be maintained in a clean and sanitary condition free from any accumulation of rubbish or garbage as specified in this division. Trash, garbage and other refuse shall be property kept inside temporary storage facilities as required in the Code of the City of Westwood.

(h) Interior Insect and Rodent Harborage - Rented or leased dwellings or dwelling units shall be kept free from insect and rodent infestation, and where insects or rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health, as specified in this division. After extermination, property precautions shall be taken to prevent re-infestations.

(i) Interior Walls, Ceilings and Floors. - Every rented or leased dwelling or dwelling unit floor, interior wall and ceiling shall be kept in sound condition and good repair; and constructed of a building material recognized for that purpose.

(j) Interior Sanitary Facilities - The following minimum sanitary facilities in all rented or leased dwelling units shall be supplied and maintained in sanitary, safe working condition:

(1) Toilet - Every dwelling unit, except, as otherwise permitted by subsection (3) of this section shall contain a room, separate from the other habitable rooms of the dwelling unit, which affords privacy to a person within such room, and which is equipped with a flush toilet and a lavatory basin: Provided that, such lavatory basin may be located outside such room if it is convenient to such room.

(2) Bathtub or Shower - Every dwelling unit, except as otherwise permitted by subsection (3) of this section shall contain a room; separate from the other habitable rooms of the dwelling unit, which affords privacy to a person within such room and which is equipped with a bathtub or shower.

(3) Shared Toilet, Lavatory Basin, Bathtub, or Shower - The occupants of two (2)

dwelling units in the same dwelling may share a single flush toilet, a single lavatory basin and a single bathtub or shower if:

(i) Neither of the two (2) dwelling units contains more than three (3) rooms: Provided that, for the purposes of this subsection, a kitchenette or an efficiency kitchen with not more than sixty (6) square feet of floor area shall not be counted as a room: and that <sup>32</sup>

(ii) The habitable area of each such dwelling unit shall equal not more than three hundred fifty (350) square feet of floor area: and that

(iii) Such flush toilet, lavatory basin, and bathtub or shower is located so that the occupants of neither dwelling unit are required to pass through any rooms of the other dwelling unit to reach the facilities: and that

(iv) Such dwelling units are in the same dwelling and are arranged so that the occupants of neither dwelling unit are required to go out of doors to reach the facilities.

(4) Kitchen Sink - Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to an approved water and sewer system.

(5) Stove and Refrigerator - Every dwelling unit shall contain proper and safe connections for the installation of a stove and refrigerator.

(6) Shelf and Storage Space for Food - Every room which is used partially or exclusively for cooking shall contain adequate shelf and storage space for the preparation and storage of food.

(k) Interior Water and Sewer System - Every kitchen sink, lavatory basin, bathtub or shower and toilet required under the provisions of this Article shall be properly connected to either a public water and sewer system. All sinks, lavatories, bathtubs and showers shall be supplied with hot and cold running water. <sup>33</sup>

(l) Interior Water Heating Facilities - Every rented or leased dwelling unit shall be supplied with water heating facilities which are installed in an approved manner, properly maintained, and properly connected with hot water lines to the fixtures required to be supplied with hot water under the provisions of this Article. Water heating facilities shall be capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub, shower, and laundry facility or other similar units, at a temperature of not less than one hundred thirty (130) degrees Fahrenheit at any time needed.

(m) Interior Heating Facilities - Every rented or leased dwelling unit shall be served with

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<sup>32</sup> **Legal analysis: 8-1206. MINIMUM STANDARDS FOR INTERIORS OF RENTED OR LEASED DWELLING UNITS, (j)(3)(i).** Please confirm that the intended square footage was to be sixty and not six. Revise accordingly.

<sup>33</sup> **Legal analysis: 8-1206. MINIMUM STANDARDS FOR INTERIORS OF RENTED OR LEASED DWELLING UNITS, (k).** There appears to be some missing language after the phrase "...to either a public water and sewer system." Please advise and revise accordingly.

heating facilities which are installed in an approved manner, are maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms; bathrooms, and toilet rooms located therein to a temperature of at least seventy (70) degrees Fahrenheit at a distance of three (3) feet above floor level; under ordinary winter conditions.

- (n) Interior Trash Storage Facilities - Every rented or leased dwelling unit shall have adequate trash storage facilities whose type and location are in accordance with § 8-501 et seq. of the Code of the City of Westwood.
- (o) Interior Garbage Storage or Disposal Facilities - Every rented or leased dwelling or dwelling unit shall be supplied with a garbage disposal facility which meets the city standards, which may be any adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit for the use of the occupants of each dwelling unit, or an approved garbage can or cans or approved garbage bags.
- (p) Interior Functioning, and Maintenance of Facilities and Equipment - Every supplied facility, piece of equipment or utility which is required under this Article shall be so constructed and installed that it will function safely and effectively and shall be maintained in satisfactory working condition.
- (q) Interior Plumbing Systems and Fixtures - In rented or leased dwelling units, water lines, plumbing fixtures, vents, drains, plumbing stack and waste and sewer lines shall be properly installed, connected and maintained in working order and shall be kept free from obstructions, leaks, and defects and capable of performing the function for which they are designed. All repairs and installations shall be made in accordance with the provisions of the Building Code or Plumbing Code of the City.
- (r) Interior Heating Equipment - Every heating, cooking, and water heating device located in a rented or leased dwelling unit shall be properly installed, connected and maintained, and shall be capable of performing the function for which it was designed in accordance with the provisions of the Building Code.
- (s) Interior Ceiling Heights - Minimum - At least one-half of the floor area of each habitable room of each rented or leased dwelling unit shall have a ceiling heights of seven (7) feet or more; and the floor area of that part of any room where the ceiling height is five (5) feet or less, shall not be deemed as part of the floor area in computing the total area of that room for the purposes of this article.
- (t) Interior Ceiling Heights - Public Halls and Stairways - Every public hall or stairway shall have a minimum vertical clearance of six (6) feet eight (8) inches at all places; provided that the enforcement officer may waive this requirement if the construction of the dwelling is such as to make this requirement impractical. Where a waiver is granted the owner or operator shall post a written warning of low clearance which shall be easily visible, and which shall be approved by the enforcement officer.
- (u) Interior Required Space in Dwelling Units - Every rented or leased dwelling unit shall contain one hundred fifty (150) square feet or more, of floor space for the first occupant thereof and at least one hundred (100) square feet of additional floor space for each additional occupant thereof. The floor space shall be calculated on the basis of total

habitable room area. Provided that, an infant under the age of twelve (12) months shall not be deemed an occupant for the purposes of this Section. This Section is not applicable to rooming houses.

(v) Interior Occupancy of Dwelling Units Below Grade - No rented or leased dwelling unit Partially below grade shall be used for living purposes unless: Floors and walls are watertight; total window area, total openable area, and ceiling height are in accordance with this article, provided that, this provision can be waived by the enforcement officer; required minimum window area of every habitable room is entirely above the grade of the ground adjoining such window area, Provided this provisions can be waived by the enforcement officer; and no basement or cellar, or part thereof, shall be used or leased for human occupancy or habitation if subject to flooding. For the purposes of this Article, a basement or cellar shall be deemed to be subject to flooding if at any time there has been more than one-inch of water over the floor, and if the condition or conditions which caused the flooding to occur have not be subsequently corrected.

(w) Interior Natural Light in Habitable Rooms in Rented or Leased Dwelling Units - (1) Every habitable room shall have at least one window of approved size facing directly to the outdoors or to a court or other methods and devices that will provide the equivalent minimum performance requirements

(2) The minimum total window area, measured between stops, for every habitable room shall be eight (8) percent of the floor area of such room. In a basement or cellar a three (3) square foot window area shall be deemed sufficient. Whenever walls or other portions of a structure face a window of any room and such obstructions are located less than three (3) feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors nor to a court, and shall not be included as contributing to the required minimum total window area for the room.

(3) In the application of this Article the standard for light for all habitable rooms shall be based on two hundred fifty (250) foot candles of illumination on the vertical plan adjacent to the exterior of the light transmitting device and shall be adequate to provide an average illumination of six (5) foot candles over the area of the room at a height of thirty (30) inches above the floor level.

(x) Interior Light in Non-habitable work Space - Every laundry, furnace room, and all similar non-habitable work spaces located in a rented or leased dwelling unit shall have one supplied electric light fixture available at all times.

(y) Interior Light in Common Halls and Stairways - Every inside stairway in every rented or leased dwelling, other than one-family and two-family dwellings shall be adequately lighted at all times with an illumination of at least five (5) candlepower per square foot in the darkest portion of the normally traveled stairs and passageways.

(z) Every rented or leased dwelling shall be serviced by electricity. Further, every electrical outlet and fixture, and all electrical wiring required by this Section shall be properly installed, maintained in good and safe working condition, and shall be connected to the source of electricity in a safe manner. Every electrical outlet and fixture shall be installed, maintained and connected to the source of electric power in accordance with the



provisions of the building code or electrical code of the city. For the purposes of this Section, a two (2) plug electric convenience outlet shall be deemed to be a single outlet. Every dwelling, unless otherwise specified, shall be electrically equipped as follows:

- (1) Every habitable room shall contain two (2) or more wall-type electric convenience outlets or one or more wall-type electric convenience outlets and one (1) electric ceiling or wall light fixture.
- (2) Every toilet room, bathroom, laundry room, and furnace room shall contain one or more ceiling or wall-type electric light fixtures.
- (3) Every public hall, public stairway, basement and porch in an apartment house shall contain sufficient ceiling or wall-type electric light fixtures to comply with the Code of the City of Westwood.
- (4) A separate electrical circuit shall be required as set forth in the building and electrical codes and requirements of the City of Westwood for every eight (8) electrical convenience outlets for alterations, repairs and additions.
- (5) In dwellings utilizing electric heat and/or an electric cooling unit in which the source of heat is wholly or partially operated by a centrally located electrical unit, a separate electrical circuit will be required for each device.
- (6) All electrical wiring shall be according to the codes of the City of Westwood.
  - (aa) Correction of Interior Defective Electric System - Where it is found, in the opinion of the enforcement officer, that the electrical system in a rented or leased dwelling constitutes a hazard to the occupants of the building by reason of inadequate service, improper fusing, insufficient outlets, improper wiring or installation, deterioration or damage, it shall be corrected to eliminate the hazard.
  - (bb) Adequate Interior Ventilation - Every room in every rented or leased dwelling shall have at least one window which can be easily opened or such other device as will adequately ventilate the room. The total openable window area in every room shall be equal to at least forty-five (45) per cent of the minimum window area size required in the Code of the City of Westwood, except that no openable window shall be required in bathrooms or toilet compartments equipped with an approved ventilation system.
  - (cc) Interior Ventilation and Light in Bathroom and Toilet - Every bathroom and toilet compartment in every rented or leased dwelling unit shall comply with the light and ventilation requirements for habitable rooms as required by the Code of the City of Westwood except that no window shall be required in bathrooms or toilet compartments equipped with an approved ventilation system. The enforcement officer may waive this requirement if the construction or use of the dwelling is such as to make this requirement impractical.
  - (dd) Interior Storage of Flammable Liquids Prohibited - No rented or leased dwelling, dwelling unit or rooming unit shall be located within a building containing any establishment handling, dispensing or storing flammable liquids with a flash point of one hundred ten (110) degrees Fahrenheit or lower.

(ee) Interior Cooking and Heating Equipment - All cooking and heating equipment, components, and accessories in every heating, cooking and water heating device shall be maintained free from leaks and obstructions and kept functioning properly so as to be free from fire, health and accident hazards. All installations and repairs shall be made in accordance with the provisions of the Building Code or other laws or ordinances of the City applicable thereto.

(ff) Interior Maintenance of Private Areas - Every occupant of a rented or leased dwelling shall maintain in a clean and sanitary condition that part of the dwelling and its premises which he or she occupies and controls. The occupant shall keep such premises free of litter, trash, garbage, salvage material, junk and building materials, unless properly stored. The occupant shall keep such premises reasonable free of breeding, harboring and feeding places for rodents and insects. The occupant shall also keep such premises free of noxious weeds.

(gg) Disposal of Trash - Every occupant of a rented or leased dwelling shall dispose of his or her trash in a clean and sanitary manner by placing it in trash containers. Every dwelling shall have adequate trash storage facilities in accordance with § 8-501 et seq. of the Code of the City of Westwood.

(hh) Disposal of Garbage - Every occupant of a rented or leased dwelling shall dispose of his or her garbage in a clean and sanitary manner by placing it in garbage disposal facilities or garbage storage containers; provided that, if garbage disposal facilities are not supplied, it shall be the responsibility of the owner to supply proper garbage storage containers which may include garbage bags, for all units in rooming houses and apartment houses. Every dwelling unit offered for rent shall have adequate storage facilities, which shall be constructed to repel animals, for the deposit of garbage bags until the date of pickup. The type and location of these containers must conform to § 8-501 of the Code of the City of Westwood. It shall be the responsibility of the owner or his agent to see that garbage bags are deposited at curbside as required in said Code.

(ii) Interior Use and Operation of Supplied Plumbing Fixtures - Every occupant of a rented or leased dwelling or part thereof shall keep the supplied plumbing fixtures therein clean and sanitary and shall be responsible for the exercise of reasonable care in their proper use and operation.

(jj) Extermination of Interior Pests.

(1) Generally - Buildings shall be kept free from insect and rodent infestation, and where insects or rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.

(2) Extermination From Buildings - Every owner of a dwelling or apartment shall be responsible for the extermination of insects, rodents, vermin or other pests whenever infestation exists in two (2) or more of the dwelling units or in the shared or public parts of the structure.

(3) Extermination from Dwelling Units - The occupant of a dwelling unit in a dwelling or

apartment shall be responsible for such extermination within the unit occupied by him whenever his dwelling unit is the only unit in the building that is infested.

(kk) Smoke Detectors, Fire Extinguishers - Operable working smoke detectors shall be installed in each sleeping room and one outside each sleeping room in the immediate vicinity and on each additional story of the dwelling. A fire extinguisher shall be kept in the kitchen.

(ll) The exterior of each leased dwelling shall comply with the requirements of section 8-1205, herein, and leased dwellings shall not be in violation of any other ordinance.

(mm) Occupancy Permit Required in Rented or Leased Dwelling Units Where Compliance With This Ordinance is Not Achieved.

(1) Applicability - This section shall apply only to occupancy of rented or leased dwelling units which have been found to be in noncompliance with this ordinance and when the work ordered pursuant to this ordinance has not been performed.

(2) Scope - Except as otherwise provided, it shall be unlawful for any person or family to occupy or for any owner or agent thereof to permit the occupancy of any rented or leased dwelling, dwelling unit or addition thereof, or part thereof, for any purpose unless compliance with the ordinance is achieved and until an occupancy permit has been issued by the enforcement official. The occupancy permit shall not be issued until all violations of this Article have been brought into compliance except as provided in paragraph (d) hereof. The occupancy permit so issued shall state that the occupancy complies with all of the provisions of this Article.

(3) Fee - The fee for such occupancy permit, including inspection fee shall be twenty-five dollars (\$25.00) for each single-family residence and twenty-five dollars (\$25.00) for apartments for each dwelling unit occupied. The twenty-five dollar (\$25.00) fee shall also cover the first reinspection in the event a reinspection is necessary following the initial inspection. In the event further re-inspections are necessary to secure an occupancy permit or to comply with the terms of a conditional occupancy permit, each such reinspection after the first re-inspections shall require an additional fee of twenty-five dollars (\$25.00) per reinspection. **34**

(4) Conditional Occupancy Permit - A conditional occupancy permit may be issued by the enforcement official if, in his judgment, any deficiencies in structures covered by this Article would not seriously endanger the health or safety of the occupants or the community, and provided that in the case of an owner-non-occupant an affidavit stating that the owner will correct deficiencies within a specified time and thus bring the structure into compliance with the provisions of this Article has been provided. The renter or lessee occupant may occupy the dwelling while repairs are being made, so long as no part of the repair process poses a health or safety risk to said renter or lessee occupant. At such time as the dwelling complies with all the provisions of this Article an occupancy permit will be

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<sup>34</sup> **Legal analysis: (mm) Occupancy Permit Required, (3) Fees.** Please review the occupancy permit fee (\$25.00) and advise as to any changes.

issued as provided above, not to exceed the time limit stated in the affidavit. <sup>35</sup>

(5) Notice of Requirement of Occupancy Permit to be Posted - The enforcement official shall post in a conspicuous place on every noncomplying rented or leased dwelling, a sign specifying that an occupancy permit is required to be issued prior to the occupation or continued occupation of any dwelling unit. Said notice shall remain on the dwelling unit or dwelling until compliance with the Code is achieved as determined by the enforcement official.

(Code 2008, § 8-1206; Ord. 792, Sec. 4-41)

### **8-1207. ACCESSORY STRUCTURES.**

Accessory structures shall not obstruct light and air of doors and windows of any building or dwelling unit, or obstruct a safe means of access to any dwelling unit, or create fire and safety hazards, or provide rat or insect harborage. Accessory structures shall be securely anchored.

(Code 2008, § 8-1207; Ord. 792, Sec. 4-41.1)

### **8-1208. EGRESS.**

(a) General Egress - Every building and dwelling unit shall have a safe and unobstructed means of egress leading to safe and open space outside at the ground level. Passage through such exit shall not lead through any other building or dwelling unit.

(b) Structures With Two and One-Half or More Stories - All buildings or habitable structures of two and one-half (2-1/2) or more stories with dwelling units occupying the higher story shall be provided with two (2) separate usable unobstructed means of egress for each dwelling unit located above the second story.

(Code 2008, § 8-1208; Ord. 792, Sec. 4-41.1)

### **8-1209. ENFORCEMENT.** <sup>36</sup>

(a) Property Maintenance Official. It shall be the duty and responsibility of the Property Maintenance Official and his delegated representatives to enforce the provisions of this article. No order for correction of any violation under this article shall be issued without the approval of the Property Maintenance Official or his delegated representatives. The Property Maintenance Official may grant an extension or extensions of time to correct any violation of this article in an initial amount not to exceed thirty (30) days. No extension of time shall be granted unless the Property Maintenance Official is satisfied that an extension is justified based upon such factors as type and extent of violations, extent to which health and safety to persons or property may be jeopardized due to said violation or violations, weather conditions, and any other extenuating circumstances shall be used in determining any length of time to correct a violation of this article.

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<sup>35</sup> **Legal analysis: (mm) Occupancy Permit Required, (4) Conditional Occupancy Permit.** Revise to avoid potential liability issues.

<sup>36</sup> **Legal analysis: 8-1209. ENFORCEMENT.** Please advise whether the Property Maintenance Official, the public officer, and the enforcement officer as used in this chapter are all the same individual/department. If so, revise to either define as such, or select one title to use throughout the chapter for consistency.

(b) Inspection - Inspections shall be initiated under the following circumstances:

- (1) Where there is extensive deterioration of a building or dwelling;
- (2) When, on the basis of a complaint or personal observation, the enforcement official reasonably suspects that a building or dwelling has code violations and as such constitutes a health and/or safety hazard;
- (3) Where an inspection is a requirement of a specific building or dwelling improvement for which a building permit has been issued the enforcement official is authorized and directed to make inspections to determine whether buildings, dwellings or accessory structures and premises located within the City conform to the requirements of this article. For the purpose of making such inspections, the enforcement official is authorized, at reasonable times, with the consent of the owner thereof, to enter, examine and survey all building, dwellings, and accessory structures and premises;
- (4) On an annual basis;
- (5) Inspections may also take place by obtaining an administrative warrant as provided by law.

(c) Access for Purposes of Inspections - The Property Maintenance Official is authorized to conduct inspections to determine the conditions of all structures and premises governed by this Article in order to safeguard the safety, health and welfare of the public under the provisions of this Article. The Property Maintenance Official is authorized to enter any structure or premises at any reasonable time for the purpose of performing the duties under this Article. The owner, occupant or operator of every structure or premises governed by this Article, or the person in charge thereof shall give the enforcement official free access thereto and to all parts hereof and to the premises on which it is located at all reasonable times for the purpose of such inspection, examination and survey. In the event the owner, operator or occupant shall refuse access to any structure or premises, the enforcement officer may make application to the District Court for a search warrant.

(d) Remedy of Defects - The owner of any building shall remedy the condition specified in such notice within the time designated therein; however, the Property Maintenance Official may, at his discretion, extend the time for compliance with any such notice, in accordance with this Article. Nothing herein, however, shall require the Property Maintenance Official to grant a notice or undertake any administrative action prior to a complaint issuing in the Municipal Court of Westwood, Kansas. It shall not be a defense to any such complaint that the owner of any building has undertaken to remedy the condition specified.

(e) Reinspection - At the time when the defects have allegedly been brought into compliance, the enforcement official shall reinspect the building, dwelling, or accessory structure and its premises. At this time, he shall make a reinspection, taking particular notice whether the violations previously noted have been brought into compliance and whether any hazardous conditions have come into existence in the time which has elapsed since the first inspection.

(f) Noncompliance With Article; Notice To Be Given. - Whenever the enforcement official or his delegated representative finds evidence of a violation of any provisions of this article, he shall declare a code violation and give notice of same to the person or persons responsible hereunder. Such notice shall be in writing and shall include a statement of each of the provisions of this article being violated together with a statement of the corrective action required to cure such violation. Such notice shall specify the period of time within which such remedial action shall be taken, which time shall be a reasonable period of time under all of the circumstances. In the event that the predicated items are not completed in the specified time, such notice shall specify that the owner or his agent has the right to appeal the decision of the enforcement official to the Governing Body within thirty (30) calendar days. Such notice shall be served by delivering a copy to the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in such building as shown by the Land Records ~~Division of the Office of Records and Tax Administration~~ of Johnson County, or, if any such person cannot be found, by sending a copy of the notice by registered or certified mail with return receipt requested, or if same cannot be delivered, by posting a copy of such notice in a conspicuous place in or about the building affected by the notice. The notice shall be deemed served on the date served or received, or ten (10) days after posting as herein provided. **37**

(1) Nothing herein shall preclude or limit the filing of a complaint alleging a violation of this ordinance in Municipal Court, nor shall any administrative action be necessary prior to issuance of such a complaint.

(g) Hearing - In the event the City shall undertake to abate or remedy any violation hereunder, and upon failure to commence the work of reconditioning or demolition within the time specified or upon failure to proceed with the work without unnecessary delay, the enforcement official shall notify the Governing Body, which shall call and have a full and adequate hearing upon the matter, giving at least twenty-one (21) days written notice of the time, place and purpose of the hearing. At that hearing, any party may be represented by counsel, and all parties shall have an opportunity to be heard. After the hearing, if the evidence supports a finding that the building or structure is a code violation or detrimental to the health or safety of any residents of the city, the Board shall issue an order making specific findings of fact, based upon competent and substantial evidence, which shows the building or structure to be a code violation and detrimental to the health or safety of any residents of the City, and ordering the building or structure to be demolished and removed, or repaired. If the evidence does not support a finding that the building or structure is a code violation or detrimental to the health or safety of any residents of the City, no order shall be issued. Notice of any post hearing orders shall be given in the same manner as notice of a noncompliance.

(h) Performance of Work by City; Special Tax Bill - If any order of the Governing body is not obeyed within the time specified by the Board which shall be no less than thirty (30) calendar days, and if appeal of such order is not made as herein authorized, the Enforcement Officer may cause such building or structure to be repaired, vacated or demolished as provided in his Post-hearing order. The Enforcement Officer shall certify the

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<sup>37</sup> **Legal analysis: 8-1209. ENFORCEMENT, (f) Noncompliance/Notice.** According to the Johnson County website, it appears this department is now called the Land Records Division. Revise accordingly.

costs for such repair, vacation or demolition to the City Clerk, who shall cause all such costs to be placed on the tax rolls of the property

(i) Appeal - The decision of the. Governing Body may be appealed within thirty (30) days by a party aggrieved thereby to the District Court of Johnson County.  
(Code 2008, § 8-1209; Ord. 792, Sec. 4-42)

### **8-1210. BUILDINGS UNFIT FOR HUMAN HABITATION.**

(a) Placard on Building. The designation of buildings or dwellings as unfit for human habitation and the procedure for such declaration and placarding of such unfit buildings or dwellings shall be carried out in compliance with the following requirements. Any buildings or dwellings which shall be declared unfit for human habitation and shall be so designated and placarded by the enforcement official when the person responsible has failed to correct the condition set forth in a notice issued in accordance with this ordinance: One which is so damaged, decayed, dilapidated, unsanitary, unsafe, insect infested or rodent infested that it creates a serious hazard to the health or safety of the occupants or the public.

(b) Building to be Vacated - Any building or dwelling condemned as unfit for human habitation and so designated and placarded by the enforcement official, shall be vacated within a reasonable time as ordered by the enforcement official.

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

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

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

(Code 2008, § 8-1210; Ord. 792, Sec. 4-43)

### **8-1211. BROKEN GLASS AND BOARDING UP.**

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

and all affected openings shall be immediately re-glazed by the owner.

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

(c) Specifications - All boarding up of exterior openings shall be accomplished in a neat, workmanlike manner with not less than unpainted three- eighths inch thick, weather resistant plywood cut to fit within the openings, fastened in place as securely as possible. The Property Maintenance Official is authorized to notify the owner or agent of any boarded up building or dwelling not complying with the above requirement of the necessity of immediate compliance, and to order him to ~~replace~~ complete the replacement within ten (10) working days. <sup>38</sup>  
(Code 2008, § 8-1211; Ord. 792, Sec. 4-44.1)

### **8-1212. PROSECUTION OF VIOLATION.**

(a) Prosecution. In case any violation of this article is not remedied within the prescribed time period designated by the enforcement official, he shall request the legal representative of the City to institute an appropriate action or proceeding at law against the person or firm responsible for the failure to comply:

- (1) To restrain, correct or remove the violation or refrain from any further execution of work; building;
- (2) To restrain or correct erection, installation or alteration of such;
- (3) To require the removal of work in violation;
- (4) To prevent the occupation or use of the building, structure or part thereof, erected, constructed, installed or altered in violation of or not in compliance with the provisions of this article or in violation of a plan or specification under which an approval, permit or certificate was issued; and
- (5) To enforce the penalty provision of this article.

(b) Penalty for Violations - Any person who shall violate any provision of this article shall, upon conviction thereof, be subject to the penalties provided for herein. Every day that a violation continues after due notice has been served, in accordance with the terms and provisions hereof, shall be deemed a separate offense.

(c) Remedies Not Exclusive - The authority of the city and its rights and remedies herein shall be in addition to and not to the exclusion of, all other authority, rights, or

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<sup>38</sup> **Legal analysis: 8-1211. BROKEN GLASS AND BOARDING UP, (c) Specifications.** Revise for clarity.



remedies.

(Code 2008, § 8-1212; Ord. 792, Sec. 4-44.2)

### **8-1213. EMERGENCY MEASURES.**

(a) When any dwelling unit has become so damaged by fire, wind or other causes, or has become so unsafe, unhealthful or unsanitary that in the opinion of the enforcement official, life or health is immediately endangered by the occupation of the dwelling unit, the enforcement official is hereby authorized and empowered to revoke without notice any occupancy permit for such dwelling unit and to order and require the occupants to vacate the same forthwith and to order the owner or agent to proceed immediately with the corrective work and repairs required to make the dwelling unit safe and fit for human habitation, whether or not a notice of violation has been given as described in this article and whether or not legal procedures described by City ordinances have been instituted.

(b) In the event the enforcement official determines that there is an immediate danger to the health, safety or welfare of any person, he may take emergency measure to vacate and repair the structure or otherwise remove the imminent danger.

(c) Written notice shall be given to the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in such building or structure as promptly as possible. The cost of any such emergency work shall be collected in the same manner as herein above provided. Notice by posting said notice on the door of the building in question or in any other conspicuous fashion shall be sufficient in the event the owner, occupant, lessee, mortgagee, agent or other person or persons having an interest in such building or structure cannot be located.

(Code 2008, § 8-1213; Ord. 792, Sec. 4-44.3)

### **8-1213. SERIOUS PERSONAL FINANCE EXEMPTION.**

In cases concerning appeals to the Governing Body by any person subject to the requirements of this article where it is claimed strict compliance with the minimum standards contained herein would result in serious personal financial hardship to the applicant for exemption, the Governing Body after hearing may grant, in its sound discretion, an appropriate personal financial exemption or deferment from strict compliance with the provisions of this article. In reaching a decision under this section the Governing Body shall consider the age, size of family, extraordinary debts resulting from catastrophe or illness, lack of employment, source of income, and gross income of the person seeking the serious personal financial exemption, as well as any potential health and safety risk to occupants that may occur should said exemption be granted. <sup>39</sup>

(Code 2008, § 8-1213; Ord. 792, Sec. 4-44.4)

### **8-1214. JUDICIAL REVIEW OF GOVERNING BODY DECISIONS.**

For any decision of the Governing Body upon an order or action taken pursuant to this ordinance, the method of judicial review shall be by a duly verified petition presented to

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<sup>39</sup> **Legal analysis: 8-1213. SERIOUS PERSONAL FINANCE EXEMPTION.** Revise to avoid potential liability issues or the appearance to unsafe practices by the city.

the District Court of Johnson County. Such petition shall be filed with the court within thirty (30) days after the filing of the Governing Body's decision. Such petition shall set forth with Particularity the ground for such review. Any person or persons jointly or severally aggrieved by any decision of the Governing Body shall be entitled to petition for such review.

(Code 2008, § 8-1214; Ord. 792, Sec. 4-44.5)

### **8-1215. PENALTIES.**

(a) Any person convicted of a violation of this article shall be punished for that violation by a fine of not less than twenty-five dollars (\$25.00), but not more than five hundred dollars (\$500.00) or by imprisonment of not more than one hundred eighty (180) days or by both such fine and imprisonment.

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

(c) Whenever the penalty is to be a fine or a fine and imprisonment, the fine shall be no less than the minimum amount set out in the following schedule:

First Offense \$ 250.00

Second Offense \$ 350.00

Third Offense \$ 500.00

Fourth Offense \$ 500.00, plus seven (7) days in jail

In determining the applicable minimum fine, an offense shall be considered a recurring offense only if the defendant has previously pleaded, or been found, guilty of violating the same minimum standard at the same location. <sup>40</sup>

(Code 2008, § 8-1215; Ord. 792, Sec. 4-44.6)

## **ARTICLE 13. RAT CONTROL**

### **8-1301. DEFINITIONS.**

For the purposes of this article, the following words and phrases shall have the following meanings:

(a) Building. - Any structure, whether public or private, that is adapted for occupancy as a residence, the transaction of business, the rendering of professional services, amusement, the display, sale or storage of goods, wares or merchandise or the performance of work or labor, including office buildings, public buildings, stores, theaters,

<sup>40</sup> **Legal analysis: 8-1215. PENALTIES.** Subsection (a) provides a minimum fine of \$25.00. Subsection (c) states the minimum fine for first offense is \$250.00. Please clarify and revise accordingly. Also, please clarify whether there is a distinction between the separate offense of subsection (b) and the recurring offense of subsection (c).

markets, restaurants, workshops and all other houses, sheds and other structures on the premises used for business purposes.

(b) Occupant. The person that has the use of, controls or occupies any business building or any portion thereof, whether owner or tenant. In the case of vacant business buildings or any vacant portion of a business building, the owner, agent or other person having custody of the building shall have the responsibilities of an occupant of a building.

(c) Owner. - The owner of any building or structure, whether individual, firm, partnership or corporation.

(d) Rat harborage. - Any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside a structure of any kind.

(e) Rat-stoppage. - A form of rat-proofing to prevent the ingress of rats into buildings from the exterior or from one building to another, consisting essentially of the closing of all openings in the exterior walls, ground or first floors, basements, roofs and foundations, that may be reached by rats from the ground by climbing or by burrowing, with material or equipment impervious to rat-gnawing.

(Code 2008, § 8-1301)

### **8-1302. BUILDING MAINTENANCE.**

All buildings and structures located within the present or future boundaries of the city shall be rat-stopped, freed of rats and maintained in a rat-stopped and rat-free condition. (Code 2008, § 8-1302)

### **8-1303. NOTICE TO RAT-STOP.**

Upon receipt of written notice from the city, the owner of any building or structure specified therein shall take immediate measures for the rat-stoppage of such building or structure. The work shall be completed in the time specified in the written notice, which shall be within 15 days, or within the time of any written extension thereof that may have been granted by the city.

(Code 2008, § 8-1303)

### **8-1304. FAILURE TO COMPLY.**

If the owner fails to comply with such written notice or extension, then the city is authorized to take such action as may be necessary to completely rat-stop the building or structure at the expense of the owner, and the city clerk shall submit bills for the expense thereof to the owner of the building or structure. If the bills are not paid within 60 days, the city clerk shall certify the amount due to the city treasurer and the charge shall result in a tax levy against the property where the work has been done. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for rat-stoppage.

(Code 2008, § 8-1304)

### **8-1305. REPLACE RAT-STOPPAGE.**

It shall be unlawful for any occupant, owner, contractor, public utility company, plumber or any other person to remove the rat- stoppage from any building or structure for any purpose and fail to restore the same in a satisfactory condition or to make any new openings that are not closed or sealed against the entrance of rats.  
(Code 2008, § 8-1305)

### **8-1306. NOTICE TO ERADICATE RATS.**

Whenever the city notifies in writing the owner of any building or structure theretofore rat-stopped as hereinabove defined, that there is evidence of rat infestation of the building or structure, the owner shall immediately institute appropriate measures for freeing the premises so occupied of all rats. Unless suitable measures for freeing the building or structure of rats are instituted within five days after the receipt of notice, and unless continually maintained in a satisfactory manner, the city is hereby authorized to free the building or structure of rats at the expense of the owner thereof, and the city clerk shall submit bills for the expense thereof to the owner of the building or structure and if the same are not paid, the city clerk shall certify the amount due from the owner to the city treasurer, and the owner shall be promptly billed therefor. The expense thereof shall include the cost of labor, materials, equipment and any other actual expense necessary for the eradication measures.  
(Code 2008, § 8-1306)

### **8-1307. CONDITIONS CONDUCTIVE TO HARBORAGE OF RATS.**

(a) All food and feed kept within the city for feeding animals shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-stopped building.

(b) It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building or premises so that the same shall afford food and harborage for rats.

(c) It shall be unlawful for any person to accumulate or to permit the accumulation on any premises or on any open lot any lumber, boxes, barrels, bricks, stone or similar materials that may be permitted to remain thereon and which are rat harborages, unless the same shall be placed on open racks that are elevated not less than 12 inches above the ground, evenly piled or stacked.

(d) Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health department deems it necessary to eliminate such harborage, he or she may require the owner to install suitable cement floors in basements or to replace wooden first or ground floors or require the owner to correct such other interior rat harborage as may be necessary in order to facilitate the eradication of rats in a reasonable time and thereby to reduce the cost of such eradication.

(e) All bird feed and grass seed shall be kept and stored in rat-free and rat- proof containers. Spillage from bird feeders shall be policed daily.  
(Code 2008, § 8-1307)

**8-1308. INSPECTIONS.**

The Property Maintenance Official is empowered to make such inspections and re-inspections of the interior and exterior of any building or structure as in his or her opinion may be necessary to determine full compliance with this article.  
(Code 2008, § 8-1308)

**ARTICLE 14. INSURANCE PROCEEDS FUND****8-1401. SCOPE AND APPLICATION.** <sup>41</sup>

The city is hereby authorized to utilize the procedures established by K.S.A. 40-3901 — 3910, whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, ~~arising out of any fire, explosion, or windstorm,~~ where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this article.  
(Code 2008, § 8-1401; Ord. 776, Sec. 1, 4-401)

**8-1402. LIEN CREATED.** <sup>42</sup>

The governing body of the city hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, ~~caused by or arising out of any fire, explosion, or windstorm,~~ where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.  
(Code 2008, § 8-1402; Ord. 776, Sec. 1, 4-406)

**8-1403. SAME; ENCUMBRANCES.**

Prior to final settlement on any claim covered by section 8-1402, the insurer or insurers shall contact the county treasurer, Johnson County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Johnson County, Kansas.  
(Code 2008, § 8-1403)

**8-1404. SAME; PRO RATA BASIS.**


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<sup>41</sup> **Legal analysis: 8-1401. SCOPE AND APPLICATION.** Conform to K.S.A. 40-3902, as 2016 amendments removed the “fire, explosion, or windstorm” language.

<sup>42</sup> **Legal analysis: 8-1402. LIEN CREATED.** *Id.*

Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.  
(Code 2008, § 8-1404)

**8-1405. PROCEDURE.**

(a) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the city treasurer in an amount equal to the sum of 15 percent of the covered claim payment, unless the chief building inspector of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(b) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the chief building inspector shall contact the named insured or insureds by certified mail, return receipt requested, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this article.

(Code 2008, § 8-1405; Ord. 776, Sec. 1, 4-402)

**8-1406. FUND CREATED; DEPOSIT OF MONIES.**

The city treasurer is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All monies received by the city treasurer as provided for by this article shall be placed in said fund and deposited in an interest-bearing account.  
(Code 2008, § 8-1406; Ord. 776, Sec. 1, 4-403)

**8-1407. BUILDING INSPECTOR; INVESTIGATION, REMOVAL OF STRUCTURE.**

(a) Upon receipt of monies as provided for by this article, the city treasurer shall immediately notify the chief building inspector of said receipt, and transmit all documentation received from the insurance company or companies to the chief building inspector.

(b) Within 20 days of the receipt of said monies, the chief building inspector shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended.

(c) Prior to the expiration of the 20 days established by subsection (b) of this section, the chief building inspector shall notify the city treasurer whether he or she intends to initiate proceedings under K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended.

(d) If the chief building inspector has determined that proceedings under K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended shall be initiated, he or she will do so immediately but no later than 30 days after receipt of the monies by the city treasurer.

(e) Upon notification to the city treasurer by the chief building inspector that no proceedings shall be initiated under K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended, the city treasurer shall return all such monies received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 30 days of the receipt of the monies from the insurance company or companies.  
(Code 2008, § 8-1407; Ord. 776, Sec. 1, 4-404)

#### **8-1408. REMOVAL OF STRUCTURE; EXCESS MONIES.**

If the chief building inspector has proceeded under the provisions of K.S.A. ch. 12, art. 17 (K.S.A. 12-1750 et seq.), as amended, all monies in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.  
(Code 2008, § 8-1408; Ord. 776, Sec. 1, 4-405)

#### **8-1409. SAME; DISPOSITION OF FUNDS.** <sup>43</sup>

If the chief building inspector, with regard to a building or other structure damaged by ~~fire, explosion, or windstorm,~~ determines that it is necessary to act under K.S.A. 12-1756, any proceeds received by the city treasurer under the authority of section 8-1405(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. 12-1756. Upon reimbursement from the insurance proceeds, the chief building inspector shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city treasurer under section 8-1405(a), the chief building inspector shall publish a new lien as authorized by K.S.A. 12-1756, in an amount equal to such excess expenses incurred.  
(Code 2008, § 8-1409)

#### **8-1410. EFFECT UPON INSURANCE POLICIES.**

This article shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.  
(Code 2008, § 8-1410; Ord. 776, Sec. 1, 4-407)

#### **8-1411. INSURERS; LIABILITY.**

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<sup>43</sup> **Legal analysis: 8-1409. SAME; DISPOSITION OF FUNDS.** Conform to K.S.A. 40-3902, as 2016 amendments removed the "fire, explosion, or windstorm" language.

Insurers complying with this article or attempting in good faith to comply with this article shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this article, or releasing or disclosing any information pursuant to this article.

(Code 2008, § 8-1411; Ord. 776, Sec. 1, 4-408)

## **ARTICLE 15. ENVIRONMENTAL CODE**

### **8-1501. TITLE.**

This article shall be known as the "Environmental Code."

(Code 2008, § 8-1501)

### **8-1502. LEGISLATIVE FINDINGS OF FACT.**

The governing body has found that there exist within the city unsightly and hazardous conditions due to: dilapidation, deterioration or disrepair of walls, siding, fences or structure exteriors; accumulations increasing the hazards of accidents or other calamities; structural defects; uncleanliness; unsightly stored or parked material, equipment, supplies, grocery carts, machinery, vehicles or parts thereof. Such conditions are inimical to the general welfare of the community in that they have a blighting influence on the adjoining properties, the neighborhood and the city, or are injurious to the health and safety of the residents of the city. The governing body desires to promote the public health, safety and welfare by the repair, removal, abatement, and regulation of such conditions in the manner hereafter provided.

(Code 2008, § 8-1502)

### **8-1503. PURPOSE.**

The purpose of this article is to protect, preserve, upgrade, and regulate the environmental quality of industrial, commercial and residential neighborhoods in this city, by outlawing conditions which are injurious to the health, safety, welfare or aesthetic characteristics of the neighborhoods and to provide for the administration and enforcement thereof.

(Code 2008, § 8-1503)

### **8-1504. RULES OF CONSTRUCTION. <sup>44</sup>**

For the purpose of this article, the following rules of construction shall apply:

(a) Any part thereof - Whenever the words premises, structure, building or yard are used they shall be construed as though they were followed by the words "or any part thereof."

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<sup>44</sup> **Legal analysis: 8-1504. RULES OF CONSTRUCTION, (b), (c), (d), and (e).** Delete as covered by general provisions in Chapter 1.



~~(b) Gender Words of gender shall be construed to mean neuter, feminine or masculine, as may be applicable.~~

~~(c) Number Words of number shall be construed to mean singular or plural, as may be applicable.~~

~~(d) Tense Words of tense shall be construed to mean present or future, as may be applicable.~~

~~(e) Shall The word shall is mandatory and not permissive.  
(Code 2008, § 8-1504)~~

### **8-1505. DEFINITIONS.**

The words and phrases listed below when used in this article shall have the following meanings:

(a) Abandoned Motor Vehicle - any motor vehicle which is not currently registered or tagged pursuant to K.S.A. 8-126 to 8-149 inclusive, as amended; or parked in violation of the ordinance; or incapable of moving under its own power; or in a junked or wrecked condition.

(b) Accessory Structure - a secondary structure detached from the principal structure but on the same premises, including, but not limited to, garages, sheds, barns, or outbuildings.

(c) Commercial or Industrial - used or intended to be used primarily for other than residential purposes.

(d) Dilapidation, Deterioration or Disrepair - shall mean any condition characterized by, but not limited to: holes, breaks, rot, decay, crumbling, cracking, peeling or flaking paint, rusting, or other evidence of physical damage, neglect, lack of maintenance, excessive use or weathering.

(e) Exterior - those parts of a structure which are exposed to the weather or subject to contact with the elements; including, but not limited to: sidings, facings, veneers, masonry, roofs, foundations, porches, screens, shutters, windows, doors or signs.

(f) Garbage - without limitation any accumulation of animal, fruit or vegetable waste matter that results from the handling, preparation, cooking, serving, delivering, storage, or use of foodstuffs.

(g) Person - any individual, individuals, corporation, partnership, unincorporated association, other business organization, committee, board, trustee, receiver, agent or other representative who has charge, care, control or responsibility for maintenance of any premises, regardless of status as owner, renter, tenant or lessee, whether or not in possession.

(h) Premises - any lot, plot or parcel of land including the structures thereon. Premises shall also mean any lot, plot or parcel of land without any structures thereon.

- (i) Refuse - garbage and trash.
- (j) Residential - used or intended to be used primarily for human habitation.
- (k) Structure - anything constructed or erected which requires location on the ground or is attached to something having a location on the ground including any appurtenances belonging thereto.
- (l) Trash - combustible waste consisting of, but not limited to: papers, cartons, boxes, barrels, wood, pallets, excelsior, furniture, bedding, rags, cigarettes, cigarette butts, cigars, cigar butts, leaves, yard trimmings, or tree branches and non-combustible waste consisting of, but not limited to: metal, tin, cans, glass, crockery, plastics, mineral matter, ashes, clinkers, or street rubbish and sweepings, and broken or damaged shopping carts.
- (m) Weathered - deterioration caused by exposure to the elements.
- (n) Yard - the area of the premises not occupied by any structure.  
(Code 2008, § 8-1505)

#### **8-1506. PUBLIC OFFICER.**

The Property Maintenance Official, or designee, is the public officer to be charged with the administration and enforcement of this article.  
(Code 2008, § 8-1506)

#### **8-1507. ENFORCEMENT STANDARDS.** <sup>45</sup>

No person shall be found in violation of this article unless the public officer, after a reasonable inquiry and inspection of the premises, believes that conditions exist of a quality and appearance not commensurate with the character of the neighborhood. Such belief must be supported by evidence of a level of maintenance significantly below that of the rest of the neighborhood. Such evidence shall include conditions declared unlawful under section ~~8-1608~~ 8-1508 but shall not include conditions which are not readily visible from any public place or from any surrounding private property.  
(Code 2008, § 8-1507)

#### **8-1508. UNLAWFUL ACTS.**

It shall be unlawful for any person to allow to exist on any residential, commercial or industrial premises, conditions which are injurious to the health, safety or general welfare of the residents of the community or conditions which are detrimental to adjoining property, the neighborhood or the city. For the purpose of fair and efficient enforcement and administration, such unlawful conditions shall be classified as follows:

- (a) Exterior conditions (yard) shall include, but not be limited to, the scattering over or

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<sup>45</sup> **Legal analysis: 8-1507. ENFORCEMENT STANDARDS.** Revised to cite to 8-1608. Please advise if this assumption was incorrect.

the parking, leaving, depositing or accumulation on the yard of any of the following:

- (1) lumber, wire, metal, tires, concrete, masonry products, plastic products, supplies, equipment, machinery, auto parts, junk, trash, or refuse;
  - (2) abandoned motor vehicles; or
  - (3) furniture, stoves, refrigerators, televisions, sinks, bicycles, lawn mowers, toilets, bathtubs, showers, interior plumbing, mannequins, and plumbing or construction materials not affixed or used in connection with the property, or other such items of personal property.
  - (4) nauseous substances, carcasses of dead animals or places where animals are kept in an offensive manner.
- (b) Exterior conditions (structure) shall include, but not be limited to, deteriorated, dilapidated, or unsightly:
- (1) exteriors of any structure;
  - (2) exteriors of any accessory structure; or
  - (3) fences, walls, or retaining walls.  
(Code 2008, § 8-1508)

### **8-1509. ORDER OF VIOLATION.**

- (a) The city shall serve upon the owner, any agent of the owner of the property, tenant, or any other person, corporation, partnership or association found by the public officer to be in violation of section 8-1508 an order stating the violation. The order shall be served on the owner, agent or tenant of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.
- (b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. The order shall state:
- (1) The condition which has caused the violation of this article; and
  - (2) That the person in violation shall have:
    - (A) 10 days from the receipt of the order to alleviate the exterior conditions (yard)

violation; and/or;

(B) 45 days from the receipt of the order to alleviate the exterior conditions (structure) violation; or in the alternative to subsections (1) and (2) above, **46**

(C) 10 days from the receipt of the order, plus any additional time granted under subsection (c), to request, as provided in section 8-1512 a hearing before the governing body or its designated representative on the matter; and; **47**

(c) Provided, however, that the governing body [or its designee ~~named herein~~] shall grant one or more extensions to the time periods stated in subsections (2) and (3), above, if the owner or agent of the property demonstrates that due diligence is being exercised in the abatement of the conditions which have caused the violation of this article; and, **48 49**

(d) That failure to alleviate the condition or to request a hearing may result in prosecution under section 8-1510 and/or abatement of the condition by the city according to section 8-1511 with the costs assessed against the property under section 8-1514. (Code 2008, § 8-1509) (K.S.A. 12-1617e)

**8-1510. PENALTY.**

The public officer may file a complaint in the municipal court against any person found to be in violation of section 8-1508, provided however, that such person shall first have been sent a notice as provided in section 8-1509 and that the person has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-1509. Upon such complaint in the municipal court, any person found to be in violation of section 8-1508 shall upon conviction be punished by a fine of not more than \$500.00, or by imprisonment, for not more than 180 days, or by both such fine and imprisonment, for each offense. For the purposes of this article, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist. (Code 2008, § 8-1510)

**8-1511. ABATEMENT.**

In addition to, or as an alternative to prosecution as provided in section 8-1510, the public officer may seek to remedy violations of this article in the following manner. If a

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**46 Legal analysis: 8-1509. ORDER OF VIOLATION, (b)(2)(B).** Please clarify what "subsections (1) and (2) above" are intended to reference, and revise accordingly.

**47 Legal analysis: 8-1509. ORDER OF VIOLATION, (b)(2)(C).** It appears that there may be some language missing after this subsection, or if the following (c) is intended to be a continuation of this group of provisions. Please advise and revise accordingly.

**48 Legal analysis: 8-1509. ORDER OF VIOLATION, (c).** Delete "named herein" language. In the alternative, name the designee in this section or article.

**49 Legal analysis: 8-1509. ORDER OF VIOLATION, (c).** Please clarify which subsections (2) and (3) are being referred to here; revise accordingly. It appears it may be referring to (b)(2).

person to whom an order has been served pursuant to section 8-1509 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in section 8-1509, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in section 8-1514.

A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;
- (b) Certified mail, return receipt requested; or
- (c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.
- (d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail  
(Code 2008, § 8-1511)

### **8-1512. HEARING.**

If a hearing is requested within the 10 day period as provided in section 8-1509 such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefor, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the manner provided in section 8- 1611.  
(Code 2008, § 8-1512)

**8-1513. APPEALS.**

Any person affected by any determination of the governing body under sections 8-1511–1512 may appeal such determination in the manner provided by K.S.A. 60-2101. (Code 2008, § 8-1513)

**8-1514. COSTS ASSESSED.**

If the city abates or removes the nuisance pursuant to section 8-1511, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (Code 2008, § 8-1514)

**8-1515. CONSTRUCTION.**

Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of the city to enforce any provisions of its laws nor to prevent or punish violations thereof. The powers conferred by this article shall be in addition to and supplemental to the powers conferred by the Kansas Constitution, by any other law or by ordinance. (Code 2008, § 8-1515)

## ARTICLE 16. ENVIRONMENTAL SANITARY CODE

**8-1601. INCORPORATION OF JOHNSON COUNTY ENVIRONMENTAL SANITARY CODE.** <sup>50</sup>

There is hereby incorporated by reference for the purpose of regulating certain environmental and sanitary issues within the corporate limits of the City of Westwood, Kansas, that certain body of regulations known as the "Johnson County Environmental Sanitary Code," as adopted by the Board of County Commissioners of Johnson County,

<sup>50</sup> **Legal analysis: 8-1601. INCORPORATION OF JOHNSON COUNTY ENVIRONMENTAL SANITARY CODE.** Per 2007 amendment of K.S.A. 12-3010, only one copy is required to be kept on file with the city clerk. Please advise whether the city would like to update this section accordingly.

Kansas on January 29, 2004 by Resolution 008-04, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of the Johnson County Environmental Sanitary Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 850", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such Omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge, and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such Johnson County Environmental Sanitary Code similarly marked, as may be deemed expedient.  
(Code 2008, § 8-1601; Ord. 850, Sec. 1)

**8-1602. PENALTY SCHEDULED FINES.**

The penalty for a violation of any provision of the Johnson County Environmental Sanitary Code shall be a fine not to exceed \$500.00, and/or a definite term of confinement in the county jail, not to exceed 180 days.  
(Code 2008, § 8-1602; Ord. 850, Sec. 2)

**ARTICLE 17. SMOKING REGULATIONS**

**8-1701. PURPOSE.**

It is the purpose of this Article that the City promotes public health by decreasing citizens' exposure to secondhand smoke and creates smoke free environments for workers and citizens through regulation in the work place and all public places.  
(Code 2008, § 8-1701; Ord. 883, Sec. 1)

**8-1702. DEFINITIONS.**

For the purposes of this Article, the following words shall have the meanings respectively ascribed to them by this paragraph:

- (a) Employee - Any person who performs services for an employer, with or without compensation.
- (b) Employer - A person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.
- (c) Enclosed - A space bound by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and halls.
- (d) Open Office Areas - Indoor areas without permanent walls, or walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.

- (e) Place of Employment - Any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, hotel or motel sleeping rooms, private rooms in nursing homes, private meeting/conference rooms and halls not open to the general public while being used for private functions or located within private clubs and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.
- (f) Public Place - Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."
- (g) Service Line - Any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- (h) Smoking - Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco or nicotine product. **51**
- (i) Sports Arena - Sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.  
(Code 2008, § 8-1702; Ord. 883, Sec. 1)

### **8-1703. PROHIBITION OF SMOKING IN BUILDINGS WHICH ARE PLACES OF EMPLOYMENT AND ALL ENCLOSED PUBLIC BUILDINGS.**

- (a) Smoking shall be prohibited in all enclosed buildings which are places of employment within the City.
- (b) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

Each employer having any enclosed building which is a place of employment located within the City shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed buildings within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed buildings.

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<sup>51</sup> **Legal analysis: 8-1702. DEFINITIONS, (h) smoking.** Conform to K.S.A. 79-3301(bb), which specifies that cigarettes are not tobacco products. Also, vaping and e-cigarettes are often considered a nicotine product. Please advise whether the city would like to include language to specify use of these devices as either included or exempted from this definition.



- (c) The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this Article.
- (d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- (e) Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:
- (1) Any vehicle of public transportation, including but not limited to buses and taxicabs, but not limousines for hire.
  - (2) Elevators.
  - (3) Restrooms.
  - (4) Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries.
  - (5) Any health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors offices and dentists offices.
  - (6) Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools.
  - (7) Service lines.
  - (8) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; provided, however, that smoking may take place on stage during live theatrical performances, where smoking is integral to the plot or storyline and prior notice is given to the audience.
  - (9) Shopping malls.
  - (10) Sports arenas, including enclosed places in outdoor arenas.
  - (11) Bars.
  - (12) Restaurants.
  - (13) Convention facilities.
  - (14) All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities.
  - (15) Any other area used by the public or serving as a place of work, including open office areas.

(16) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including, but not limited to joint committees, or agencies of the City or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.

(17) All enclosed buildings owned by the City.

(18) Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.

(19) Within 25 feet of any public entrance to a public place; provided, however, that this prohibition shall not apply to the following: any portion of the public right of way that may be within 25 feet of said entrance, and the outdoor seating area of a restaurant or drinking establishment where smoking is allowed. With respect to said outdoor seating area, smoking may be allowed only if reasonable efforts are made to minimize the chance of smoke affecting the inside occupants of the establishment.

(Code 2008, § 8-1703; Ord. 883, Sec. 1)

#### **8-1704. WHERE SMOKING IS NOT REGULATED.**

Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the smoking restrictions of this Article:

(a) Private residences, not serving as enclosed places of employment or an enclosed public place. Further, smoking shall be regulated in private residences used as a childcare, adult day care or health care facility.

(b) An existing retail establishment whose primary business is the sale of tobacco products and new retail establishments whose primary business is the sale of tobacco products which are located in a stand-alone building not attached to or the part of any building devoted to other uses.

(Code 2008, § 8-1704; Ord. 883, Sec. 1)

#### **8-1705. RESPONSIBILITIES OF PROPRIETORS, OWNERS AND MANAGERS.**

The person having control of a place, business, office or other establishment or activity subject to this Article shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Article in that place and shall take all necessary steps to prevent or stop another person from smoking in violation of this Article. "Necessary steps" means to take all reasonable actions to prevent smoking in violation of this Article by employees, patrons and visitors in the place, business, office or establishment, including:

Posting no-smoking signs and removing all ashtrays; verbally asking a person who is smoking to extinguish the smoking materials; refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws. If the employee, patron or visitor smoking in violation of this Article is hard of hearing, the communications with that person may be written, in

sign language or other effective means of communication.  
(Code 2008, § 8-1705; Ord. 883, Sec. 1)

### **8-1706. PENALTY FOR VIOLATION.**

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a public offense, punishable by a fine not exceeding fifty dollars (\$50.00).
- (b) A person having control of a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of a public offense, punishable by:
- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation.
  - (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year.
  - (3) A fine not exceeding five hundred dollars (\$500.00) for each additional violation within one (1) year.
- (c) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.
- (d) In addition to the fines established by this Section, violation of this Article by a person having control of a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.  
(Code 2008, § 8-1706; Ord. 883, Sec. 1)

### **~~8-1707. SEVERABILITY.~~ 52**

~~If any section, subsection, paragraph, sentence, clause or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof.  
(Code 2008, § 8-1707; Ord. 883, Sec. 1)~~

### **8-1708. BURNING OF GARBAGE.**

This article shall not apply to any other regulations or ordinances of the City pertaining to the burning of garbage, trash or similar substances.  
(Code 2008, § 8-1708; Ord. 883, Sec. 1)

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<sup>52</sup> **Legal analysis: 8-1707. SEVERABILITY.** Delete as covered by general provisions in Chapter 1.

## CHAPTER 10.

**POLICE**

- Article 1. Department Regulations
- Article 2. Property in Police Custody
- Article 3. Law Enforcement Trust Fund
- Article 4. Alarm Systems

**ARTICLE 1. POLICE DEPARTMENT****10-101. POLICE FORCE.**

The regular police force of the city shall consist of the chief of police, assistant chief of police and such law enforcement personnel as the governing body may provide. The chief of police under direction of the mayor, shall have supervision and be in charge of the police department and any law enforcement personnel appointed by the governing body. (Code 1970, 9-101; Code 2008, § 10-101)

**10-102. DUTIES OF CITY CHIEF OF POLICE AND ASSISTANTS.**

It shall be the duty of the chief of police and the assistant chief of police and other police officers, to see that the laws of the State of Kansas and all ordinances of the city and all resolutions of the governing body are properly enforced and obeyed within the police jurisdiction of the city. Whenever an arrest is made they shall attend all trials in municipal court unless excused by the municipal judge. They shall promptly serve all process papers, notices or orders required by law or as directed by the mayor. They shall also perform such other duties as may be required by the mayor, or by ordinances of the city. (Code 1970, 9-102; Code 2008, § 10-102)

**10-103. CHIEF OF POLICE: POWERS. <sup>1</sup>**

The chief of police shall at all times have power to make or order an arrest, with a warrant ~~proper process~~, for any offense against the laws of the state or of the city, and bring the offender for trial before the proper officer of the city, and to arrest without ~~process~~ a warrant in all cases where any such offense shall be committed, or attempted to be committed, in his or her presence and such other powers as provided by law. The chief of police shall have power to make such rules and regulations as may be necessary for the proper and efficient conduct of the department.

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<sup>1</sup> **Legal analysis: 10-103. CHIEF OF POLICE: POWERS.** Revise to conform to K.S.A. 22-2401, and to avoid potential constitutional concerns, as the terminology "without process" could be interpreted to indicate a lack of constitutional due process following an arrest.

(Code 1970, 9-103; Code 2008, § 10-103)

#### **10-104. ARRESTS BY LAW ENFORCEMENT PERSONNEL.**

The law enforcement personnel of the city shall have power to arrest all offenders against the laws of the state, or of the city, by day or night, in the same manner as the chief of police, and keep them in the city **prison**, or other place to prevent their escape, until a trial can be had before the proper officer.

(Code 1970, 9-104; Code 2008, § 10-104)

#### **10-105. MAYOR: COMMAND; STATE OF EMERGENCY.**

The mayor, and in the absence of the mayor the president of the council, shall assume command of the police department when and only when a state of emergency exists within the city. If a state of emergency is declared to exist by the mayor, he or she shall submit to the governing body at its next meeting a written report stating the cause of the emergency and its duration. Emergency as used herein is defined as a major crime or a public disaster.

(Code 1970, 9-105; Code 2008, § 10-105)

#### **10-106. EMERGENCY TEMPORARY LAW ENFORCEMENT PERSONNEL.**

The mayor may appoint qualified temporary law enforcement personnel in the event of an emergency or other exigent circumstances, or as soon as it is practicable whenever a vacancy occurs in the police department. Such personnel shall serve at the pleasure of the mayor. Should the mayor desire to appoint any temporary law enforcement personnel or any other person to a permanent position of law enforcement personnel, he or she shall submit the appointment to the city council for approval as provided by law. <sup>2</sup>

(Code 1970, 9-108; Code 2008, § 10-106)

#### **10-107. RULES OF CONDUCT.**

The "Westwood Policy and Procedures Manual" is hereby incorporated by reference, as if the same were set out in full herein, for the purpose of providing rules and regulations governing all members of the police department of the City of Westwood, Kansas. Copies of the Department Operation Manual are available from the department. <sup>3</sup>

(Code 2008, § 10-107)

#### **10-108. REWARD MONIES; DISPOSITION.**

All money due to or received by the chief of police or any law enforcement personnel on account of any reward accruing to him or her in consequence of any action in the line of duty shall be deposited to the credit of a fund for aid of law enforcement personnel of the city in payment of benefits for sickness and injury and allied uses. If no such fund has

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<sup>2</sup> **Legal analysis: 10-106. EMERGENCY TEMPORARY LAW ENFORCEMENT PERSONNEL.** Revise to avoid potential liability issues.

<sup>3</sup> **Legal analysis: 10-107. RULES OF CONDUCT.** Please advise whether the same Policy and Procedures Manual is still the applicable document for the rules of conduct.

been established by the police department, said monies shall be deposited with the city treasurer and shall become general funds of the city.  
(Code 1970, 9-111; Code 2008, § 10-108)

### **10-109. CANINE CORPS.**

Any dog used by the city whether owned, leased, rented or borrowed, for the purpose of performing duties with the police department shall be commissioned as a member of the Canine Corps and shall perform such duties as may be designated by the chief of police or the officer in charge of such unit and who has been designated the responsibility for the handling and supervision of such animal.  
(Code 1993; Code 2008, § 10-109; Ord. 598, Sec. 6.15-1)

## **ARTICLE 2. PROPERTY IN POLICE CUSTODY**

### **10-201. REGULATIONS.**

The police department is required to establish regulations detailing the collection, storage, and inventory of property which may come under its control by any manner.  
(Code 2008, § 10-201)

### **10-202. DISPOSITION.**

Any property which has been acquired or turned over to the police department and has been classified in accordance with procedures existing in the police department as unclaimed or for which the proper owner cannot be ascertained shall be kept for a minimum of 90 days. After a period of 90 days, such property, except as provided in section 10-203, shall be sold at public auction to the highest bidder and the proceeds after expenses shall be paid to the city general fund.  
(Code 2008, § 10-202)

### **10-203. SAME; EXEMPT PROPERTY.**

The following classes of property shall be considered exceptions to section 10-202 and shall be dealt with in the following manner:

- (a) Cash money shall be turned over to the city general fund unless it shall be determined to have collector's value, in which case it shall be auctioned according to the provisions in section 10-202.
- (b) Firearms which are available for disposition may be dealt with in the following manner:
  - (1) If compatible with law enforcement usage, they may be turned over to the police department inventory.
  - (2) They may be sold to a firearms dealer who maintains the appropriate federal firearms license.
  - (3) They may be destroyed.

- (4) In no case shall firearms be sold at public auction.
- (c) Other weapons such as knives, etc., which are deemed to have a legitimate value may be sold at auction, however, homemade weapons or weapons of a contraband nature shall be destroyed.
- (d) Any items determined to be contraband such as explosives, narcotics, etc., shall be destroyed.
- (e) Items of a pharmaceutical nature, which, while not contraband when properly dispensed, or which are of an over-the-counter-variety, shall be destroyed.
- (f) Foodstuffs, if sealed and undamaged may be turned over to any appropriate social service agency or destroyed, but shall not be auctioned.
- (g) Alcohol products such as beer, wine, whiskey, etc., shall be destroyed.
- (h) Items with a value in excess of \$500.00 may be sold after advertising said item in a general circulation newspaper on at least two occasions. Such sales shall be by closed bid.
- (i) Property which was seized under a warrant, or otherwise as part of a criminal investigation, will be disposed of according to the provisions of K.S.A. 22-2512. <sup>4</sup>
- (j) Abandoned vehicles in police custody that remain unclaimed will be disposed of according to the procedures provided by K.S.A. 8-1102.  
(Code 2008, § 10-203)

#### **10-204. CLAIMING PROPERTY.**

The police department shall be required to make reasonable attempts to locate the owner of any property in storage. However, the responsibility for claiming and identifying any such property shall rest solely with the owner.  
(Code 2008, § 10-204)

#### **10-205. PROOF OF OWNERSHIP.**

Claimants to any property in police storage shall be required to present reasonable proof of ownership and no property shall be released unless such reasonable proof is presented.  
(Code 2008, § 10-205)

#### **10-206. AUCTION.**

At such time as it has been determined that an auction is necessary to dispose of unclaimed property, an inventory listing all property to be disposed of shall be prepared and kept on file in the police department. Notice of an auction shall be published at least

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<sup>4</sup> **Legal analysis: 10-203. SAME; EXEMPT PROPERTY.** Revise for clarity and to conform to state law.

twice in a **general circulation newspaper** prior to the date of the auction. The notice shall specify the date, time and place of the auction and shall also notify prospective buyers or potential claimants that a list of items to be auctioned is available at the police department and any claims on property must be made prior to the start of the auction. (Code 2008, § 10-206)

### **ARTICLE 3. LAW ENFORCEMENT TRUST FUND**

#### **10-301. ESTABLISHED.**

There is hereby established a fund in the city treasury entitled "Special Law Enforcement Trust Fund." The purpose of this fund is to provide for depository for the proceeds of sale and any monies forfeited to the city police department pursuant to Kansas statutes relating to controlled substance investigation forfeitures. **5**  
(Code 1993, 10-201; Code 2008, § 10-301; Ord. 732, Sec. 1)

#### **10-302. PROCEEDS OF SALES.**

Any proceeds of sales and any monies forfeited to the city police department pursuant to the provisions of Kansas statutes shall be deposited in the "Special Law Enforcement Trust Fund".  
(Code 1993, 10-202; Code 2008, § 10-302; Ord. 732, Sec. 2)

#### **10-303. USE OF MONIES.**

(a) All monies in the trust fund shall be expended only upon approval of the governing body and only for the following law enforcement purposes:

- (1) To defray costs of prorated or complex investigations.
- (2) Providing additional technical equipment or expertise.
- (3) To provide matching funds to obtain federal grants.
- (4) Other law enforcement purposes deemed appropriate by the governing body.

(b) No monies in the trust fund shall be used for payment of normal operating expenses of the police department or for any other expense or non-law enforcement expense of the city.

(Code 1993, 10-203; Code 2008, § 10-303; Ord. 732, Sec. 3)

#### **10-304. QUARTERLY REPORT.**

The police department shall submit a quarterly report to the governing body specifying the type and approximate value of any forfeited property received and the amount of any proceeds **received**. Neither the police department nor governing body shall anticipate

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**<sup>5</sup> Legal analysis: 10-301. ESTABLISHED.** Please confirm that said Special Law Enforcement Trust Fund still exists as described and under the same name.



future forfeitures or proceeds therefrom in the adoption and approval of its annual budgets.

(Code 1993, 10-204; Code 2008, § 10-304; Ord. 732, Sec. 4)

**10-305. CONSTRUCTION OF ARTICLE.**

The provisions of this article shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

(Code 1993, 10-205; Code 2008, § 10-305; Ord. 732, Sec. 5)

**ARTICLE 4. ALARM SYSTEMS**

**10-401. PERMIT REQUIRED; UNLAWFUL ACTS; EXCEPTION.**

No person shall possess or operate an alarm system designed with the intent of eliciting a police response without first obtaining a permit for such alarm system. Provided, the provisions of this section are not applicable to local alarm systems affixed to motor vehicles.

(Code 1993, 5-901; Code 2008, § 10-401; Ord. 700, Sec. 1)

**10-402. APPLICATION FOR PERMIT; NON-TRANSFERABILITY; EXCEPTIONS. 6**

Every alarm user shall obtain an alarm users permit from the chief of police within 30 days after the effective date of this article or prior to use of an alarm system. Alarm permits are nontransferable. Each building, structure or facility maintaining one or more alarm systems must obtain an alarm users permit. Each permit shall bear the signature of the chief of police and shall be physically upon the premises using the alarm system and shall be available for inspection by the chief of police, his or her designate or any officer. An alarm user which is a governmental political unit shall be subject to this article; but such governmental unit shall not be subject to any fees or the imposition of any penalty as provided herein.

(Code 1993, 5-902; Code 2008, § 10-402; Ord. 700, Sec. 2)

**10-403. REGULATIONS; REQUIREMENTS AND DUTIES.**

(a) Any seller, vendor or installer of any type of alarm system shall obtain a permit from the chief of police prior to the selling or installing of any alarm system within the city.

(b) The chief of police or his or her designate may require inspection of any and all alarm systems installed within the city.

(c) Local alarm systems shall be equipped to automatically discontinue emitting an audible sound within 15 minutes after activation.

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<sup>6</sup> **Legal analysis: 10-402. APPLICATION FOR PERMIT; NON-TRANSFERABILITY; EXCEPTIONS.** Please clarify whether these provisions apply to all alarm systems (10-402), or only those that will directly notify police if activated (10-401). Also please advise if any of these provisions need to be updated in light of the growing presence of DIY alarm systems that can be purchased online.

(d) The chief of police or his or her designate shall have the right to discontinue any alarm emitting an audible sound.

(e) Alarm users shall submit with their permit application to the chief of police a release of liability releasing the city, any police officer or any other city employee from damages caused either personally or to any property when in response to the activation of such alarm system and also release the city, any police officer or other city employee from damages from disconnecting, resetting or not resetting the alarm system.  
(Code 1993, 5-903; Code 2008, § 10-403; Ord. 700, Sec. 3)

**10-404. NUISANCE ALARM SYSTEMS PROHIBITED.**

It shall be unlawful for any person or business to own or operate any burglary, robbery, fire, medical, or panic alarm system deemed to be a nuisance. Nuisance alarm systems shall be defined as follows:

(a) False Alarms. - Any alarm which elicits a response from the police and/or fire departments more than six times in any 12 month period when no emergency exists. Exempt from this definition are newly installed systems, which shall receive a grace period of 30 days or four false alarms, whichever occurs first; alarm signals caused by violent conditions of nature or other extra-ordinary circumstances beyond control of the owner or operation; alarm systems owned or operated by any governmental political unit.

(b) Direct Telephone Alarms. - Any alarm which is programmed to automatically dial any telephone number, listed or unlisted, directly into any city building for the purpose of transmitting a voice recording of an emergency message.

(c) Disturbing Alarms. - Any alarm which emits an audible signal which is not automatically discontinued within 15 minutes of activation.  
(Code 1993, 5-904; Code 2008, § 10-404; Ord. 700, Sec. 4)

**10-405. DIRECT ALARM SYSTEMS TO BE DISCONNECTED.**

It shall be unlawful for any alarm user to fail to disconnect any direct telephone alarm as defined in section 10-404 within 72 hours of receipt of written notice from the police department that such a programmed connection exists.  
(Code 1993, 5-905; Code 2008, § 10-405; Ord. 700, Sec. 5)

**10-406. DISTURBING ALARMS TO BE DISCONNECTED OR MODIFIED.**

It shall be unlawful for any alarm user to fail to disconnect or modify any disturbing alarms as defined in section 10-404 within 72 hours of receipt of written notice from the police department that such a condition exists.  
(Code 1993, 5-906; Code 2008, § 10-406; Ord. 700, Sec. 6)

**10-407. NOTIFICATION OF NUISANCE ALARMS.**

At the time of the sixth false alarm in any 12 month period, the city shall notify the responsible party by first class mail of such occurrence and that additional false alarms

shall require the payment of fees as per section 10-409 of this article. Such written notification shall be assumed to have been delivered three days after mailing.  
(Code 1993, 5-907; Code 2008, § 10-407; Ord. 700, Sec. 7)

#### **10-408. RESPONSIBLE PARTY.**

The responsible party shall be the resident for a residential alarm system and the business owner or manager for a business alarm system, regardless of whether such system is owned, leased, rented, or otherwise controlled.  
(Code 1993, 5-908; Code 2008, § 10-408; Ord. 700, Sec. 8)

#### **10-409. FALSE ALARMS; FEES REQUIRED. <sup>7</sup>**

Any alarm system which has recorded more than six false alarms within any 12 month period shall be subject to the following fees:

- (a) Seven through 10 false alarms - \$25.00 each.
- (b) Eleven through 14 false alarms - \$50.00 each.
- (c) Fifteen through 18 false alarms - \$75.00 each.
- (d) Nineteen and each subsequent alarm - \$100.00 each.

The payment of the fee provided for shall be submitted to the city within 10 days of receiving notice that such fee is due.  
(Code 1993, 5-909; Code 2008, § 10-409; Ord. 700, Sec. 9)

#### **10-410. DESIGNATION OF ALARM COORDINATOR; DUTIES. <sup>8</sup>**

There is hereby established the position of alarm coordinator. The alarm coordinator shall:

- (a) Maintain records necessary to carry out the terms of this article; such records shall be confidential.
- (b) Make notifications as outlined in section 10-407.
- (c) Establish, distribute, and enforce such rules and regulations as may be necessary for implementation of this article, and make same available upon request.
- (d) Determine which alarms constitute false alarms as defined in section 10-404.  
(Code 1993, 5-910; Code 2008, § 10-410; Ord. 700, Sec. 11)

#### **10-411. PENALTY.**

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<sup>7</sup> **Legal analysis: 10-409. FALSE ALARMS; FEES REQUIRED.** Please review the fee amounts listed herein and advise as to any changes.

<sup>8</sup> **Legal analysis: 10-410. DESIGNATION OF ALARM COORDINATOR; DUTIES.** Please advise whether this designation still exists as described and under the same title. Revise if needed.

Any person convicted of a violation of any of the provisions of or failing to comply with any of the mandatory requirements of this article shall be guilty of a public offense and punished by a fine of not more than \$500.00 or by imprisonment not to exceed 30 days or by both such fine and imprisonment. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the city ordinances is committed, continued or permitted by any such person.  
(Code 1993, 5-911; Code 2008, § 10-411; Ord. 700, Sec. 12)

## CHAPTER 11.

**PUBLIC OFFENSES**

Article 1. Uniform Public Offense Code  
 Article 2. Local Regulations  
 Article 3. Fireworks

**ARTICLE 1. UNIFORM OFFENSE CODE****11-101. INCORPORATING UNIFORM PUBLIC OFFENSE CODE.**<sup>1</sup>

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Westwood, Kansas, that certain code known as the "Uniform Public Offense Code," Edition of 2022, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. ~~No fewer than three copies~~ At least one copy of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Westwood, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

(Code 2008, § 11-101; Ord. 879, Sec. 1; Ord. 888, Sec. 1; Ord. 900, Sec. 1; Ord. 912, Sec. 1; Ord. 917, Sec. 1; Ord. 929, Sec. 1, Ord. 938, Sec. 1; Ord. 954, Sec. 1; Ord. No. 962, § 1, 8-13-2015; Ord. No. 973, § 1, 8-11-2016; Ord. No. 983, § 1, 7-13-2017; Ord. 993, Sec. 1; Ord. 1003, Sec. 1; Ord. No. 1032, § 1, 10-13-2023)

**11-102. SHORT; CITATION; REFERENCE.**

This code shall be known as the "Uniform Public Offense Code, City of Westwood, Kansas" and it is sufficient to refer to the code as the "Uniform Public Offense Code" (or "UPOC") in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part of portion thereof as an addition to, amendment to, correction or repeal of the "Uniform Public Offense Code." Any such ordinance shall effectively add to, amend, correct or repeal the ordinance section which is the basis for the appropriate code provision Further reference may be had to the titles, chapters, sections and subsections of the "Uniform Public Offense Code" and such reference shall apply to that number title,

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<sup>1</sup> **Legal analysis: 11-101. INCORPORATING UNIFORM PUBLIC OFFENSE CODE.** As amended in 2007 Kansas Laws Ch. 142, K.S.A. 12-3010 now requires that only one copy of the adopted document be stamped and kept on file with the city clerk. Revise accordingly. Of course, nothing in said revision would prevent the city from retaining optional extra copies.

chapter, section or subsection as it appears in the code. <sup>2</sup>  
 (Code 1993; Code 2008, § 11-102; Ord. 745, Sec. 1)

### **11-103. REFERENCE APPLIES TO AMENDMENTS.**

Whenever a reference is made to this code as the “Uniform Public Offense Code” or to any portion thereof or to any ordinance of the city, the reference shall apply to all amendments, corrections, and additions now or thereafter made.  
 (Code 1993; Code 2008, § 11-103; Ord. 745, Sec. 1)

### **11-104. TITLE, CHAPTER AND SECTION HEADINGS.**

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner effect the scope, meaning or intent Of the provisions of any title, chapter or section hereof.  
 (Code 1993; Code 2008, § 11-104; Ord. 745, Sec. 1)

### **11-105. SUPPLEMENTS AUTHORIZED.** <sup>3</sup>

This code shall be kept current and the city clerk is authorized to cause the periodic preparation of loose leaf supplements. The supplements may be added to this code by insertion of new pages for omitted sections, amended sections, sections for ordinances passed in the interim of code preparation and new provisions, or may be added as supplemental materials to the city’s official online code.  
 (Code 1993; Code 2008, § 11-105; Ord. 745, Sec. 1)

### **11-106. EFFECT OF CODE ON PAST ACTIONS AND OBLIGATIONS.** <sup>4</sup>

Neither the adoption of this code nor the repeal or amendments of any ordinances or part or portion of any ordinances of this city shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at the effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, on the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof, required fine paid , filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining, shall continue in full force and effect.  
 (Code 1993; Code 2008, § 11-106; Ord. 745, Sec. 1)

### **11-107. PROHIBITED ACTS.**

Whenever in this city any act or omission is made unlawful, it includes causing, allowing,  
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<sup>2</sup> **Legal analysis: 11-102. SHORT; CITATION; REFERENCE.** Revise to include the UPOC abbreviation, in case said shorthand may be used on any citations or other applicable city documents.

<sup>3</sup> **Legal analysis: 11-105. SUPPLEMENTS AUTHORIZED.** Revise to allow for online publication and supplementation of code.

<sup>4</sup> **Legal analysis: 11-106. EFFECT OF CODE ON PAST ACTIONS AND OBLIGATIONS.** If obsolete, delete.

permitting, aiding, abetting, suffering or concealing the fact of such act or omission.  
(Code 1993; 11-108; Code 2008, § 11-107; Ord. 745, Sec. 1)

### **11-108. CIVIL REMEDIES PRESERVED.**

This code does not bar, suspend or otherwise affect any civil right or remedy authorized by law to be enforced in a civil action, based on conduct which it makes punishable.  
(Code 1993, 11-110; Code 2008, § 11-108; Ord. 745, Sec. 1)

### ~~11-109. INVALIDITY.~~<sup>5</sup>

~~If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The governing body hereby declares that it would have passed this code, any section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. If for any reason this entire code should be declared invalid or unconstitutional, then the original ordinance or ordinances as they existed prior to passage of this code, shall be in full force and effect.  
(Code 1993, 11-111; Code 2008, § 11-109; Ord. 745, Sec. 1)~~

### **11-110 UNIFORM PUBLIC OFFENSE CODE, ADDITIONS AND DELETIONS.**

Article 5 of the Uniform Public Offense Code is hereby amended by deleting existing Sections 5.6 and 5.7 and by inserting in place thereof the following:

Section 5.6 Purchase or Possession of Cigarettes or Tobacco Products by a Minor

(a) It shall be unlawful for any person:

(1) Who is under 21 years of age to purchase or attempt to purchase cigarettes, electronic cigarettes, liquid nicotine or tobacco products; or

(2) Who is under ~~18~~ 21 years of age to possess or attempt to possess cigarettes, electronic cigarettes, liquid nicotine or tobacco products. (K.S.A. 79-3321—3322, as amended).<sup>6</sup>

(b) For the purposes of this Section, the terms described herein are used as defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

Violation of this Section shall be a cigarette or tobacco ordinance infraction for which the

<sup>5</sup> **Legal analysis: 11-109. INVALIDITY.** Delete as covered by general provisions in Chapter 1.

<sup>6</sup> **Legal analysis: 11-110 UNIFORM PUBLIC OFFENSE CODE, ADDITIONS AND DELETIONS, (a)(2).** Conform to K.S.A. 79-3321, which was amended by Laws 2023, ch. 18, § 3 to raise the age from 18 to 21.

fine shall be a minimum of \$25 and a maximum of \$100. In addition, the judge may require a person charged with violating this section to appear in court and/or may require completion of a tobacco education program.

#### Section 5.7 Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor.

(a) It shall be unlawful for any person, directly or indirectly, to:

(1) Sell, furnish or distribute cigarettes, electronic cigarettes, liquid nicotine or tobacco products to any person under 21 years of age; or

(2) Buy any cigarettes, electronic cigarettes, liquid nicotine or tobacco products for any person under 21 years of age.

(b) It shall be a defense to a prosecution under this Section if:

(1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples; and<sup>7</sup>

~~(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, liquid nicotine or tobacco products to the person under 21 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products; and~~

(3) To purchase or receive the cigarettes, electronic cigarettes, liquid nicotine or tobacco products, the person under 21 years of age exhibited to the defendant a driver's license, Kansas non driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products.

(4) For purposes of this Section a person who violates this Section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 21 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual; or both.

(c) It shall be a defense to a prosecution under this Section if:

(1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, or tobacco products by mail; and

(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 21 or more years of age.

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<sup>7</sup> **Legal analysis: 11-110 UNIFORM PUBLIC OFFENSE CODE, ADDITIONS AND DELETIONS, (b)(1).** Added language for clarity, under the assumption that this is to be an inclusive list. Please advise if said assumption was incorrect.



(d) For the purposes of this Section, the terms described herein are used as defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

(e) As used in this Section, "sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration. (K.S.A. 79-3302; K.S.A. 79-3321—3322).

Violation of this Section shall constitute a Class B violation punishable by a minimum fine of \$200.

(Code 2008, 11-110; Ord. No. 971, § 1(11-110), 8-11-2016)

## **ARTICLE 2. LOCAL REGULATIONS**

### **11-201. ALCOHOLIC LIQUOR.**

(a) Definitions.

(1) For purposes of this section, alcoholic beverage or alcoholic liquor are defined to mean, alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being but not including cereal malt beverages.

(2) Cereal Malt Beverage - means any fermented but un-distilled liquor brewed or made from malt or from a mixture of malt or malt substitute, or any flavored malt beverage, but does not include any such liquor which contains more than 3.2 percent alcohol by weight. **8**

(b) Unlawful Acquisition of Alcoholic Beverage. - No person under 21 years of age shall obtain or purchase or attempt to obtain or purchase alcoholic beverage from any person except as authorized by law. Violation of this section is a Class B offense.

(c) Unlawful Possession or Consumption of Alcoholic beverage. - No person under 21 years of age shall possess or consume alcoholic beverage except as authorized by law. Violation of this section is a Class B offense.

(d) Unlawful Acquisition of Cereal Malt Beverages. - No person under the legal age for consumption of cereal malt beverage shall obtain or purchase cereal malt beverage from any person except as authorized by law. Violation of this section is a Class B offense.

(e) Legal Age for Consumption of Cereal Malt beverage. - Legal age for consumption of cereal malt beverage means 21 years of age.

(f) Unlawful Possession or Consumption of Cereal Malt Beverages. - No person under

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**<sup>8</sup> Legal analysis: 11-201. ALCOHOLIC LIQUOR(a)(2).** Conform to K.S.A. 41-2701(a).

the legal age for consumption of cereal malt beverage shall possess or consume cereal malt beverage except as authorized by law. Violation of this section is a Class B offense.

(g) Intoxicating Liquors and Cereal Malt Beverages Consumption Prohibited in Certain Places. - (1) It is unlawful for any person to consume any cereal malt or alcoholic beverages in or upon any street, avenue, alley or sidewalk, public way, public parking lot or upon any public property or within any vehicle in or upon any such place; provided further that it is unlawful for any person to have in his or her possession in any such place, an open cereal malt beverages container or alcoholic beverage container; provided further that the Chief of Police may authorize the consumption of cereal malt and alcoholic beverages on public property, at a block party if the street is blocked, or with a parade permit, pursuant to a valid application submitted to the Chief of Police and when the Chief of Police determines that such activity would not be detrimental to the health, safety and morals of the community.

(2) No person shall knowingly or unknowingly sell, or give away, furnish, dispose of, procure, exchange or deliver, or permit the selling, giving away, furnishing, disposing of, procuring of, exchanging or delivering of any cereal malt or alcoholic beverage, in any eating and drinking establishments, building, structure, land or premises, for consumption in such building or structure or for consumption upon such land or premises, unless such person has applied for and been granted the proper license as provided for in Chapter 3 of this Code.

(3) It is unlawful for any person to be intoxicated on any highway, street, or in any public place or building in the city.

(4) Nothing in this chapter shall be deemed to prevent, regulate, or control the lawful consumption of cereal malt and alcoholic beverages upon private property by those occupying such private property as the owner, or as a lessee and by the guests of the owner or lessee, provided that no charges made by the owner or lessee for the serving or mixing of any drink or drinks or of cereal malt or alcoholic beverages or for any substance co-mixed with such beverages. <sup>9</sup>

(5) Violation of this section is a Class B offense.  
(Code 1993, 11-105; Code 2008, § 11-201; Ord. 745, Sec. 3)

### **11-202. INTERFERENCE WITH LAW ENFORCEMENT OFFICER.**

It is unlawful for any person to knowingly and intentionally interfere with, molest or assault, a law enforcement officer. Violation of this section is a Class B offense.  
(Code 1993, 11-206; Code 2008, § 11-202; Ord. 745, Sec. 3)

### **11-203. RESISTING ARREST.**

It is unlawful for any person to resist arrest by knowingly and intentionally obstructing, resisting, opposing, or interfering with a law enforcement officer while such officer is engaged in making an arrest. Violation of this section is a Class B offense.

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<sup>9</sup> **Legal analysis: 11-201. ALCOHOLIC LIQUOR, (g)(4).** Revised for clarity.

(Code 1993, 11-207; Code 2008, § 11-203; Ord. 745, Sec. 3)

#### **11-204. FAILURE TO APPEAR.**

It is unlawful for any person to fail to appear by willfully incurring a forfeiture of an appearance bond and failing to surrender one's self within 30 days of the date of such forfeiture by one who is charged with a public offense, has been released on bond for appearance before the municipal court of this city for trial or other proceeding prior to conviction, or willfully incurring a forfeiture of an appearance bond and failing to surrender one's self within 30 days after his or her conviction of a public offense has become final by one who has been released on an appearance bond by any court. Any person who is released upon his or her own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, shall be deemed a person released on bond for appearance within the meaning of this section. The provisions of this section shall not apply to any person who forfeits a cash bond supplied pursuant to law or city ordinance upon an arrest for a traffic offense. Violation of this section is a Class B offense. (Code 1993, 11-208; Code 2008, § 11-204; Ord. 745, Sec. 3)

#### **11-205. DRUGS.**

The provisions of the Uniform Controlled Substances Act (K.S.A. 65-4101 et seq.) and amendments hereto relating to controlled substances are hereby incorporated by reference.

(Code 1993, 11-213; Code 2008, § 11-205; Ord. 745, Sec. 3)

#### **11-206. BLASTING.**

It shall be unlawful for any person to blast or cause to be blasted rocks, stumps or other material unless the object or area to be blasted be covered in such a manner as to prevent any fragment, rocks, or other material from ascending into the air. A violation of this section is a Class B offense.

(Code 1993, 11-214; Code 2008, § 11-206; Ord. 745, Sec. 3)

#### **11-207. UNLAWFUL REMOVAL OF MATERIALS TO BE RECYCLED.**

(a) It shall be unlawful for any person not under contract with the city to remove any item including but not limited to newspapers, aluminum cans, glass bottles or plastic containers placed in or adjacent to city recycling containers or receptacles.

(b) Violation of this section is a Class C offense.

(Code 1993, 11-215; Code 2008, § 11-207; Ord. 745, Sec. 3)

#### **11-208. PEDESTRIAN ON PUBLIC ROADWAYS.**

(a) Prohibitions.

(1) Where a sidewalk is provided and its use is practicable it shall be unlawful for any pedestrian to walk, jog or run along and upon an adjacent roadway.

(2) Where a sidewalk is not available, any pedestrian walking, jogging or running along

and upon a highway shall walk, jog or run only on a shoulder, as far as practicable from the edge of the roadway.

(3) Where neither a sidewalk nor a shoulder is available, any pedestrian walking, jogging or running along and upon a highway shall walk, jog or run as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk, jog or run only on the left side of the roadway.

(4) Except as otherwise provided in this article, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

(b) **Pedestrian Reflective Clothing.** Any pedestrian using the public streets for walking, jogging and/or running in the city from one-half hour after sunset to one-half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and/or vehicles on a highway and/or streets at a distance of 500 feet ahead shall be required to wear on his or her person some type of reflective apparel or materials of sufficient size and placement so as to be visible to vehicular traffic from a distance of 200 feet.

(c) Violation of this section is a Class C offense.  
(Code 1993, 11-216; Code 2008, § 11-208; Ord. 745, Sec. 3)

### **11-209. DISTURBING THE PEACE.**

(a) It shall be unlawful for any person to make, continue, maintain or cause to be made or continued any excessive, ~~unnecessary~~, unreasonable or unusually loud noise or any noise which either annoys or disturbs others of reasonable sensitivities, or which injures or endangers the comfort, repose, health, peace or safety of others within the city.<sup>10</sup>

(b) It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. Neighboring inhabitants shall include persons living within or occupying residential districts of single or multi-family dwellings and shall include areas where multiple-unit dwellings and high-density residential districts are located.

(c) No person shall congregate with other persons because of, participate in, or be in

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<sup>10</sup> **Legal analysis: 11-209. DISTURBING THE PEACE, (a), (c).** Revised to avoid potential constitutional issues. *State v. Garren*, 117 N.C.App. 393, 451 S.E.2d 315 (1994), held that an ordinance prohibiting "loud, raucous and disturbing" noises was unconstitutional (but severable); the court also cited numerous precedents which held that targeting "unnecessary" noises were unconstitutional. In *Jim Crockett Productions v. City of Charlotte*, 706 F.2d 486 (4th Cir. 1983), the court deemed the term "unnecessary" in a noise ordinance to be unconstitutionally vague. Also, an "annoyance" standard drew the fire of the U.S. Supreme Court in *Coates v. City of Cincinnati*, 402 U.S. 611 (1971); it is one thing for a sound to be some loud as to "disturb a reasonable person," but any given level of sound might "annoy" someone without rising to the level of disturbance.

any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons of reasonable sensitivities residing in any residential area. No person shall visit or remain within any residential dwelling unit or within the vicinity of a residential dwelling unit wherein such party or gathering of people is taking place except persons who have gone there for the sole purpose of abating the disturbance. A police officer may order all persons present in any group or gathering from which such sound emanates, other than the owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this section. Owners or tenants of the dwelling until shall immediately abate the disturbance and, falling to do so, shall be in violation of this section.

(d) Prima Facie Violation. - The operation of any tool, equipment, vehicle, electronic device, set, instrument, television, phonograph and machine or other noise or sound producing device, at any time in such a manner as to be plainly audible at any adjacent property line, or for 50 or more feet in the case of a multiple-family dwelling, between the hours of 10:00 p.m. and 7:00 a.m. (except on Sundays, which such latter time shall be 8:00 a.m.), shall be prima facie evidence of a violation of this section.

(e) Exemptions. - Sounds emanating from the following shall be exempt from the provisions of (a) through (d) above:

- (1) Emergency vehicles;
- (2) Public safety vehicles;
- (3) Emergency activities of the fire or police department;
- (4) Emergency activities of any utility company;
- (5) Emergency activities of municipal maintenance vehicles and equipment;
- (6) Public projects, snow removal, or any other public, emergency, or safety activities;
- (7) Heating, ventilation, air-conditioning units or generators used during power outages;
- (8) Noise from construction sites, until 9:00 p.m. on weekdays.
- (9) Noise from parades, carnivals, fairs and other like public displays or entertainment for which a permit has been issued by the city according to Chapter 12, section 12-104, while operating under the conditions allowed by the permit. **11**

(f) Statement of Intent. - No provision of this article shall be construed to limit or abridge the rights of any person to peacefully assemble and express opinions. It is the purpose of this article to protect individuals from unreasonable intrusions caused by excessive, unnecessary, unreasonable or unusually loud noises.

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**<sup>11</sup> Legal analysis: 11-209. DISTURBING THE PEACE, (e)(9)exemptions.** Added exemption for city-approved events.

(Code 1993, 11-217; Code 2008, § 11-209; Ord. 747, Sec. 1)

**11-210. CAMPING ON PRIVATE PROPERTY.**

Overnight camping on private property within the city limits is prohibited without first obtained, in advance, the permission of the owner of the property. Overnight camping on private property is only permitted two (2) nights per calendar week.

(Code 2008, § 11-210)

**ARTICLE 3. FIREWORKS**

**11-301. DEFINITION.**

Fireworks shall mean and include any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation, and shall include blank cartridges in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles or other fireworks of the like construction, and any fireworks containing any explosive substance.

(Code 1993, 7-301; Code 2008, § 11-301; Ord. 268, Sec. 1)

**11-302. USE OF FIREWORKS PROHIBITED.**

It shall be unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, possess, or use or explode any fireworks in the city. This section shall not apply to a city sponsored display, or display for which a permit has been granted by the Governing Body.

(Code 1983, 7-302; Code 2008, § 11-302; Ord. 598)

**11-303. PENALTY.**

An person convicted of violating the provisions of this article shall be fined not more than \$500.00, or imprisoned not more than six months, or both.

(Code 1983, 7-303; Code 2008, § 11-303; Ord. 598)

## CHAPTER 12.

**PUBLIC PROPERTY**

Article 1. Public Use Regulations

Article 2. Westwood City Parks

Article 3. Community Forestry

**ARTICLE 1. PUBLIC USE REGULATIONS****12-101. DEFINITIONS.**

As used in this article the term "public grounds" shall include the city buildings, city parks, and any other public property open or available for general use by the public.

(Code 1983; Code 2008, § 12-101)

**12-102. RULES AND REGULATIONS.**

The city governing body is authorized to adopt suitable rules and regulations governing the use of all public grounds of the city and the facilities thereon, as defined in 12-101, which shall be open and available to the general public. Such rules and regulations shall fix the conditions under which said grounds and facilities may be used and the charges, where charges are authorized, to be paid to the city for such purposes.

(Code 1983; Code 2008, § 12-102)

**12-103. EXCLUSIVE USE; WHEN.**

The governing body may, in accordance with sound public policy, grant permission to any individual, society or organization for exclusive use of public grounds and facilities for temporary periods only. Such permission shall not be inconsistent with the use for which grounds or facilities were acquired and made available for public use by the city.

(Code 1983; Code 2008, § 12-103)

**12-104. CONCESSIONS; CARNIVALS; FAIRS.**

The governing body may, on application to the city clerk, issue a permit for the use of public grounds of the city by persons; organizations or companies for concessions, carnivals, fairs and other like public displays or entertainment.

(Code 1983; Code 2008, § 12-104)

**12-105. HOLD CITY HARMLESS.**

No person, organization or company shall be granted a license for concessions, carnivals, fairs and other like public displays or entertainment until they first shall have agreed, in writing, to waive any claim against and shall indemnify and hold the city, the city

governing body or its representatives harmless against the claims of any or all persons for injury to any person or damage to any property occasioned by or in connection with the use of the premises for which the license was issued. In addition, any licensee shall be required to provide proof of insurance that is satisfactory to the city.

(Code 1983; Code 2008, § 12-105)

### **12-106. DISPOSITION OF FUNDS.**

All monies collected from any license or permit issued under this article shall be deposited in the city's park fund and used exclusively for park purposes.

(Code 1983; Code 2008, § 12-106)

### **12-107. MISCONDUCT.**

It shall be unlawful for any person to:

- (a) Cut, break, deface, injure or carry away any tree, shrub or bush growing on public property;
- (b) Injure, deface or destroy property of any kind in any park or playground;
- (c) Drive or ride any horse, bicycle or motorized vehicle except upon designated roadways in public parks or playgrounds;
- (d) To interfere in any manner with the water supply, water pipes, gas supply or gas pipes upon public property.

(Code 1983; Code 2008, § 12-107)

### **12-108. CAMPING ON PUBLIC GROUNDS.**

Overnight camping on public grounds within the city limits is prohibited without having first obtained, in advance, a permit from the governing body.

(Code 1993; Code 2008, § 12-108; Ord. 598)

### **12-109. SAME; APPLICATION FOR PERMIT.**

- (a) Application for a permit must be made in advance of a regular council meeting so as to permit 30 full days to elapse between the time the permit is first considered and issued and the date of the proposed overnight camping.
- (b) Such permit may, at the sole discretion of the governing body, be issued to any natural person upon such terms and conditions as the governing body shall deem advisable.
- (c) The fee for granting of the application for a permit shall be \$5.00 for each overnight camping period unless such fee is waived by the governing body. <sup>1</sup>

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<sup>1</sup> **Legal analysis: 12-109. SAME; APPLICATION FOR PERMIT.** Please review the camping permit fee (\$5.00) and advise as to any changes.



(Code 1993; Code 2008, § 12-109; Ord. 598)

**12-110. SAME; PENALTY.**

Any person who violates any of the provisions of sections 12-108 or 12-109 by camping or attempting to camp overnight on public grounds without having first obtained the permit provided in sections 12-108 and 12-109 shall upon conviction thereof be fined in any sum not exceeding \$500.00 or be imprisoned not to exceed 6 months, or be both so fined and imprisoned. Each day's violation shall constitute a separate offense.

(Code 1993, 12-111; Code 2008, § 12-110; Ord. 598)

**12-111. SANITATION.**

All waste material, paper, trash, rubbish, tin cans, bottles, containers, garbage and refuse of any kind whatsoever shall be deposited in disposal containers provided for such purposes. No such waste or contaminating material shall be discarded otherwise. No sticks, stones, trash or other objects shall be thrown or discarded in or on any park lands, fountains, pools, drinking fountains, sanitary facilities, or other improvements.

(Code 2008, § 12-111)

**12-112. PROHIBITION AGAINST ALCOHOLIC BEVERAGES AND CEREAL MALT BEVERAGES.**

It shall be unlawful for any person or persons to use, consume or have on the premises of any park or other public grounds within the city any alcoholic liquor or cereal malt beverage, unless a permit is obtained from the city.

(Code 2008, § 12-112)

**12-113. HUNTING.**

It shall be unlawful for any person to pursue, catch, trap, maim, kill, shoot or take any wildlife, either bird or animal, in any manner at any time while in any public grounds. This provision shall not apply to anyone authorized by the city to undertake such activities, including, but not limited to, the city's animal control officers.

(Code 2008, § 12-113)

**12-114. FIRES.**

It shall be unlawful for any person to build or kindle any fire on any public grounds except in the ovens, stoves, or grills provided for that purpose by the city, and such fire must be extinguished by the person, persons or parties starting such fire, immediately after use thereof.

(Code 2008, § 12-114)

**12-115. PRESERVATION OF NATURAL STATE.**

It shall be unlawful for any person, except duly authorized city employees, to take, injure,

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or disturb any live or dead tree, plant, shrub, or flower, or otherwise interfere with the natural state of public grounds.  
(Code 2008, § 12-115)

## ARTICLE 2. WESTWOOD CITY PARKS

### 12-201. CITY LAWS EXTENDED TO PARKS.

The laws of the city shall extend to and cover all city parks.  
(Code 2008, § 12-201)

### 12-202. POLICE JURISDICTION OVER PARKS.

The city shall have police regulations governing any public parks belonging to the city and the chief of police and law enforcement officers of the city shall have full power to enforce city laws governing city parks and shall maintain order therein.  
(Code 2008, § 12-202)

### 12-203. DAMAGING PARK PROPERTY.

It shall be unlawful for any person, except duly authorized city employees, to willfully or wantonly remove, injure, tarnish, deface or destroy any building, walk, bench, tree or improvement or property of any kind belonging to any park owned by the city.  
(Code 2008, § 12-203)

### 12-204. DANGEROUS WEAPONS NOT ALLOWED.

(a) Except as provided in subsection (b), it shall be unlawful for any person to carry or have in his or her possession any firearm or dangerous weapon or to shoot or discharge the same within the limits of any city parks.

(b) The provisions of subsection (a) above shall not apply to duly authorized law enforcement officers in the performance of official duty, or individual who is so properly licensed by the State of Kansas to carry a concealed handgun.  
(Code 2008, § 12-204)

### 12-205. GENERAL REGULATIONS.

The city may post such rules and regulations, as are approved by the governing body, pertaining to the use of the city parks in a conspicuous place in each city park. Violations of these posted rules shall constitute a violation of this code.  
(Code 2008, § 12-205)

### 12-206. WESTWOOD CITY PARK RULES. <sup>2</sup>

The governing body hereby establishes the following rules of conduct for users of all city

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<sup>2</sup> **Legal analysis: 12-206. WESTWOOD CITY PARK RULES.** As to bicycles in the park - Subsection (1) indicates they are allowed on designated roadways. Subsection (8) indicates they are entirely prohibited. Please advise; revise accordingly.

parks and public grounds:

(1) No bicycles are allowed inside the parks or public grounds except on designated roadways.

(2) No swimming or wading is permitted in the park fountain.

(3) Alcoholic liquor or cereal malt beverages are allowed inside the park only upon proper application and permit by the Governing Body.

(4) Tennis court time limits are:

Twosome - 45 minutes

Foursome - 60 minutes

(5) All trash, bottles or debris must be placed in trash containers.

(6) No excessive noise will be allowed, especially in the evening hours that may disturb neighboring residents.

(7) No climbing of trees is allowed.

(8) No bicycles, skate boards, roller blades or roller skates are allowed.

(9) No sticks, stones, trash or other objects shall be thrown or discarded in or on any park lands, fountains, pools, drinking fountains, sanitary facilities, or other improvements. (Code 1993, 12-201; Code 2008, § 12-206; Ord. 557; Ord. 702; Ord. 766)

### ARTICLE 3. COMMUNITY FORESTRY

#### 12-301. DEFINITIONS.

(a) Street Trees: are herein defined as trees, shrubs, bushes, and all other woody vegetation, on the public right-of-way, of all streets, alleys, avenues, boulevards, and other public rights-of-way within the city.

(b) Park Trees: are herein defined as trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

(c) Community forest: is herein defined as all street and park trees as a total resource.

(d) Public Trees: are defined as trees on public grounds.  
(Code 1993; Code 2008, § 12-301)

#### 12-302. CREATION.

There is hereby created and established a community forestry program under the direction of the parks and recreation committee.  
(Code 1993; Code 2008, § 12-302)

### **12-303. DUTIES AND RESPONSIBILITIES.**

It shall be the responsibility of the parks and recreation committee to develop and administer an annual urban forest program to include the care, replacement, maintenance, and removal or disposition of trees and shrubs in parks, along streets and in other public areas.

(Code 1993; Code 2008, § 12-303)

### **12-304. TREE SPECIES TO BE PLANTED.**

The city shall maintain a list of recommended trees for planting in public areas. This list shall be available to residents of the city upon request to aid in the selection of trees for private properties. The list of recommended trees shall be updated periodically to reflect new developments or species that will affect the population of the Community Forest.

(Code 1993; Code 2008, § 12-304)

### **12-305. DISTANCES AND CLEARANCES FOR PLANTING.**

(a) No additional trees shall be planted in any public right-of-way. Trees shall not be planted closer than three feet from a sidewalk or seven feet from a street that has no sidewalk.

(b) No tree shall be planted closer than 35 feet from any street corner, measured from the point of the nearest intersection of curbs or curbing.

(c) No tree shall be planted closer than 10 feet from any fireplug.

(d) Special permission must be obtained from the parks and recreation committee or their designee when planting trees within 20 feet of any point on a line on the ground immediately below any overhead utility wire, or within five lateral feet of any ground waterline, sewer line, transmission line, or other utility.

(Code 2008, § 12-305)

### **12-306. PUBLIC TREE CARE.**

(a) The city shall have the right to plant, prune, spray, maintain, and remove trees, plants, and shrubs within right-of-way or bounds of all streets, alleys, lanes, squares, and public grounds, as may be necessary to insure the public safety or to preserve or enhance the beauty of such public grounds.

(b) The parks and recreation committee or their designee may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, waterlines, or other public improvements, or is seriously affected with any injurious insect or disease.

(c) The abutting property owners shall have the right to perform normal tree care on all street trees in compliance with American National Standards Institute (ANSI) and other standards applicable thereto.

(Code 1993, 12-307; Code 2008, § 12-306)

**12-307. CLEARANCE OVER STREETS AND WALKWAYS.**

Clearance over streets and walkways shall be the responsibility of the abutting property owner. A clearance of eight feet must be maintained over walkways and a clearance of 14 feet must be maintained over streets. Property owners are responsible for trees on their own property as well as trees on the public right-of-way that abuts their property. The city shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign.

(Code 2008, § 12-307)

**12-308. REMOVAL OF STUMPS.**

All stumps of street and public trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

(Code 1993 12-313; Code 2008, § 12-308)

**12-309. INJURING TREES AND SHRUBS. <sup>3</sup>**

No person shall willfully break, cut, take away, destroy, injure, mutilate, or attempt to willfully break, cut, take away, destroy, injure or mutilate any tree, shrub, vine, flower or landscaping standing, growing, or being on any public ground, street, sidewalk, promenade or park in the city, unless that person is a city employee or tree care professional performing any of the tasks in section 12-306 on behalf of the city.

(Code 2008, § 12-309)

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<sup>3</sup> **Legal analysis: 12-309. INJURING TREES AND SHRUBS.** Added language to allow for city-directed tree care and maintenance.

## CHAPTER 13.

### PUBLIC RIGHTS-OF-WAY

#### ~~Article 1. Use and Occupancy of the Public Right-of-Way~~

#### **ARTICLE 1. USE AND OCCUPANCY OF THE PUBLIC RIGHT-OF-WAY**

##### **13-101. GENERAL.**

No person shall excavate the right-of-way, construct, or use the facilities within the right-of-way of the City except as provided herein.

(Code 2008, § 13-101)

##### **13-102. DEFINITIONS.**

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

- (a) Abandoned Facilities means those facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.
- (b) Affiliate means any person controlling, controlled by or under the common control of a service provider.
- (c) Antenna means communications equipment that transmits or receives electromagnetic radio signals used in the provision of Services.
- (d) Applicant means any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.
- (e) Area of Influence means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration.
- (f) Base station means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. "Base station" does not mean a tower or equipment associated with a tower and does not include any structure that, at the time the relevant application is filed with the authority, does not support or house wireless communication equipment or facilities.
- (g) City means the City of Westwood, Kansas, a municipal corporation and any duly

authorized representative.

(h) Collocation means the mounting or installation of communication facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for Services.

(i) Construct means and includes to construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.

~~(j) Day means calendar day unless otherwise specified.~~<sup>1</sup>

(k) Eligible Facilities Request means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving:

- (1) collocation of new transmission equipment;
- (2) removal of transmission equipment; or
- (3) replacement of transmission equipment.

(l) Emergency means a condition that (a) poses a clear and immediate danger to life or health, or of a loss of property; or (b) requires immediate repair or replacement in order to restore service to a user.

(m) Excavate means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.

(n) Excavation Fee means the fee charged by the City for each street or pavement cut which is intended to recover the costs associated with construction and repair activity of the ROW-user and its contractors and/or subcontractors.

(o) FCC means Federal Communications Commission.

(p) Facility means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, wireless communication facilities, or other equipment.

~~(q) Governing Body means the Mayor and the City Council of the City of Westwood, Kansas.~~<sup>2</sup>

(r) Governmental Entity means any county, township, city, town, village, school

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<sup>1</sup> **Legal analysis: 13-102. DEFINITIONS, (j) "Day."** Delete as covered by general provisions in Chapter 1.

<sup>2</sup> **Legal analysis: 13-102. DEFINITIONS, (q) "Governing body."** Delete as covered by general provisions in Chapter 1.

district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States or of the United States.

(s) KCC means the Kansas Corporation Commission.

(t) Pavement means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material, including, but not limited to, any material used or approved by the City in street resurfacing.

(u) Permit and Inspection Fee means the fee charged by the City to recover its cost incurred for right-of-way management; including, but not limited to: costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits and, other costs the City may incur in managing the provisions of this Article.

(v) Permittee means any person to whom a right-of-way permit is issued to excavate a right-of-way.

(w) Person means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity. <sup>3</sup>

(x) Public Improvement means any project undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, streetlights, public facilities, parks, public easements, recreational facilities, irrigation system, public improvements, public buildings or public lands.

(y) Public Lands means any real property of the City or any interest therein that is not right-of-way.

(z) Public Works Director means the Public Works Director of the City or his or her authorized representative. <sup>4</sup>

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

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<sup>3</sup> **Legal analysis: 13-102. DEFINITIONS, (w) "Person."** Delete as covered by general provisions in Chapter 1.

<sup>4</sup> **Legal analysis: 13-102. DEFINITIONS, (z) "Public works director."** Please confirm that this is still the current title for this position.



(bb) Repair means the temporary construction work necessary to make the right- of-way or any public improvement therein useable.

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

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

(ee) Right-of-Way or Rights-of-Way (herein also "ROW") means the area on, below or above public streets, alleys, bridges and parkways and the areas immediately adjacent thereto dedicated to public use or in which the City has acquired right-of-way interest in the real property, e.g. dedicated roadway area.

(ff) Right-of-Way Permit means the authorization to excavate for the construction, installation, repair, or maintenance of any type of facility within the right- of-way.

(gg) Routine Service Operation means a work activity that makes no material change to the facilities and does not disrupt automobile or pedestrian traffic.

(hh) ROW-User means a person, its successors and assigns, that uses the right- of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an agreement pursuant to the Interlocal Cooperation Act (K.S.A. 12-2901, et seq.) with the City regarding the use and occupancy of the City's right-of-way.

(ii) Service means a commodity provided to a person by means of a delivery system comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, Open Video Systems, wireless services, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewers.

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

(kk) Small cell facility means a wireless facility that meets both of the following qualifications:

(1) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of

the antenna's exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and

(2) primary equipment enclosures that are no larger than seventeen (17) cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. ~~Accessory facilities~~ Associated equipment may be located outside the primary equipment, and if so located, ~~are is~~ not to be included in the calculation of equipment volume. ~~Accessory facilities~~ Associated equipment includes, but ~~are is~~ not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services. **5**

(II) Small Cell Network means a collection of interrelated small cell facilities designed to deliver wireless service.

(mm) Stealth or Stealth Technology means using the least visually intrusive facility by minimizing adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding and generally in the relative area as the requested location a communications facility. This means ensuring that all antenna arrays, cables, and other accessory facilities used for the provision of wireless service or other service incapable of underground placement are not obtrusive or noticeably visible from adjacent properties or adjacent rights-of-way. Any accessory facilities mounted onto a tower or structure shall not project greater than one (1) foot, measured horizontally, from the surface of the tower or structure and shall be painted or screened with materials that are a conforming or complementary color to the tower or structure. Cables shall be contained within the interior of the tower or structure. In light of the ongoing and anticipated development of new technologies likely to change the components of communication facilities of all sorts, the Public Works Director may reasonably determine if communications facility or the components thereof are reasonably designed to meet the stealth guideline. All such determinations shall be made in a competitively neutral, non-discriminatory manner in light of the public health, safety and welfare.

(nn) Substantial modification means a proposed modification to an existing wireless support structure or base station that will substantially change the physical dimensions of the wireless support structure or base station under the objective standard for substantial change, established by the FCC pursuant to 47 C.F.R. 1.40001.

(oo) Street means the pavement and sub-grade of a City residential, collector or arterial roadway, excluding curbs, gutters, and portions adjacent to the pavement and sub-grade of a road way that lie in a right-of-way.

(pp) Tower means any structure built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their accessory facilities including structures that are constructed for wireless services and the associated site.

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**<sup>5</sup> Legal analysis: 13-102. DEFINITIONS, (kk)(2), "Small cell facility."** Revised for clarity and to conform to K.S.A. 66-2019(b)(14).

(qq) Transmission Equipment means equipment that facilitates transmission for a wireless service licensed or authorized by the FCC including, but not limited to, radio transceivers, antennas, coaxial or fiber optic cable, and regular and backup power supply. The term includes equipment associated with wireless services including, but not limited to, private, broadcast, and public safety services as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

(rr) Wireless support structure means a freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. Wireless support structure shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

(Code 2008, § 13-102; Ord. No. 980, § 1, 6-8-2017)

### **13-103. PURPOSE.**

The purposes of this Article include, but are not limited to, the following:

- (a) To recognize the City's primary role as chief steward of the right-of-way and its duty to its citizens to recover all or part of the costs of managing the right-of-way and incursions into it;
- (b) To clarify and regulate conditions of occupancy and construction for those ROW-users occupying space within the City's right-of-way given the anticipated increased use of the right-of-way by various ROW-users throughout this county;
- (c) To recognize the necessity for sound management practices in light of the increased use of the right-of-way and the fact that the right-of-way is a limited resource;
- (d) To treat each ROW-user equitably and in a competitively neutral and nondiscriminatory manner with considerations that may be unique to the technologies and situation of each particular ROW-user;
- (e) To minimize disruption, visual impact or inconvenience to the public, and to preserve and promote the public health, safety and welfare;
- (f) To balance the needs of all users of the City's rights-of-way, and to make sure that traditional users such as vehicular and pedestrian traffic may continue to operate safely, that the rights of those whose property adjoins or is part of the rights-of-way are respected, and to consider input from property owners adjoining the right-of-way affected by right-of-way users;
- (g) To balance the rights and interests of all who use or derive benefit from the rights-of-way, but not to create rights or privileges for any particular interests group;
- (h) To comply with all laws, including state and federal legislation;
- (i) To identify the location of users and uses within the right-of-way to assure that different users not interfere with each other, that construction does not damage uses, and that safe and proper construction techniques are employed in the right-of-way;

(j) To avoid the problems the City has found whereby users in the right-of-way install facilities without notifying the City and using improper or dangerous construction methods, thereby rendering future construction unsafe or more difficult;

(k) To recognize that the City is in an older part of the metropolitan area, with numerous uses in the right-of-way, warranting a need for mapping and allocation of the space in the right-of-way; and,

(l) To recognize that the rights of right-of-way users' and service providers' use of the right-of-way shall in all matters be subordinate to the City's use of the right-of-way. (Code 2008, § 13-103; Ord. No. 980, § 2, 6-8-2017)

### **13-104. POLICY.**

(a) It is the policy of the City to authorize any ROW-user to utilize the right-of-way in a competitively neutral, non-discriminatory manner that maximizes the safe and efficient use of the right-of-way, conserves the right-of-way, minimizes the burden on the right-of-way, physically and aesthetically, promotes the public health, safety and welfare, and fully consider the input from adjoining property owners affected by the use of or placement of facilities or equipment in the right-of-way. Any use of the right-of-way by a ROW-user shall be subject to the terms and conditions hereof, in addition to other applicable federal, state or local requirements. Registration hereunder does not relieve any person of any other obligation or duty to the City or that the City may from time to time lawfully impose.

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

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

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

(e) The right of ROW-users and service providers to use and occupy the right-of-way shall always be subject and subordinate to the City's reasonable public health, safety and welfare requirements and regulations. Nothing contained within this Article is intended to abrogate or limit the City's reasonable exercise of such home rule powers. (Code 2008, § 13-104; Ord. No. 980, § 3, 6-8-2017)

**13-105. ADMINISTRATION.**

- (a) The Public Works Director is the principal city official for administration of right-of-way permits for work and excavations made in the right-of-way. The Public Works Director may delegate any or all of the duties hereunder.
- (b) The Public Works Director is the principal City Official responsible for administration of the registering of a service provider. The Public Works Director may delegate any or all of the duties hereunder.
- (c) The City's Public Works Director, or his or her designee, shall administratively develop Infrastructure Policies and Practices to regulate and govern construction within and the use of the rights-of-way.  
(Code 2008, § 13-105)

**13-106. REQUIREMENTS OF SERVICE PROVIDER.**

- ~~(a) Any existing service provider must register within sixty (60) days of the effective date of this article.~~
- ~~(b) Any person, who is not an existing service provider prior to the effective date of this ordinance and who wishes to become a service provider, must first register with the City.~~  
Any service provider must be registered with the City. **6**
- (c) The service provider shall report any changes in its registration information within thirty (30) days.
- (d) No service provider shall be authorized to utilize the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the City.
- (e) The information required for registration includes the following:
- (1) Identity and legal status of service provider, including related affiliates.
  - (2) Name, address, telephone number, fax number and e-mail address of officer, agent or employee responsible for the accuracy of the registration statement.
  - (3) Name, address, telephone number, fax number and e-mail address of the local representative of the service provider who shall be available at all times to act on behalf of the service provider in the event of an emergency.
  - (4) Proof of any necessary permit, license, certification, grant, registration, franchise agreement, collocation agreement, or any other authorization required by any appropriate

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**<sup>6</sup> Legal analysis: 13-106. REQUIREMENTS OF SERVICE PROVIDER.** Delete (a) as no longer needed. Revise (b) to remove dated language, assuming any service providers existing when the ordinance was passed would be registered by now.

governmental entity, including, but not limited to, the City, the FCC or the KCC.

- (5) Description of the service provider's intended use of the right-of-way.
  - (6) Information sufficient to determine whether the service provider is subject to franchising by Kansas law.
  - (7) Information sufficient to determine whether the service provider has applied for and received any certificate of authority required by the KCC.
  - (8) Information sufficient to determine that the service provider has applied for and received any permit or other approvals required by the FCC.
  - (9) Information sufficient to determine that the service provider has registered the location of any of its facilities with "Kansas One Call" or any other central registry, to the extent applicable.
  - (10) Such other information as may be reasonably required by the City to complete the registration statement.
- (f) Each service provider shall designate a local person familiar with the facilities who will act as a local agent for the service provider and will be responsible for satisfying information requirements of this Article. The service provider shall present to the City the agent's name, address, telephone number, fax number and email address. The agent shall be the person to whom relocation notices and other such notices shall be sent, and with whom rests the responsibility to facilitate all necessary communications. The service provider shall be responsible for all costs incurred by the City due to the failure to provide such information to the City.
  - (g) Prior to construction, reconstruction, repair, maintenance, or relocation of facilities owned by the service provider in the right-of-way, the service provider shall first obtain the necessary right-of-way permit as provided hereafter.
  - (h) Prior to providing service to the City and its residents, the service provider shall first obtain the necessary franchise agreement, if any, from the City.
  - (i) The service provider shall participate in any joint planning, construction and advance notification of right-of-way work, including attending a pre-application meeting conference prior to submission of an application hereunder, unless waived by the Public Works Director, and coordination and consolidation of street cut work as directed by the Public Works Director. In addition, the service provider shall cooperate with other service providers and the City for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with the public health, safety or welfare, and to minimize traffic and other disruptions.
  - (j) The service provider shall furnish maps showing the location of facilities of the service provider within the City as provided hereafter.
  - (k) The City shall not exercise its authority under this provision unreasonably, to in any way deter competition, discriminate against any service provider, or violate any applicable

state, federal law, rule or regulation.  
(Code 2008, § 13-106; Ord. No. 980, § 4, 6-8-2017)

### **13-107. MAPPING REQUIREMENT OF SERVICE PROVIDER.**

(a) The service provider shall keep and maintain accurate records and as-built drawings depicting accurate location of all its facilities constructed, reconstructed or relocated in the right-of-way, and may be required to file the same with the City; provided that, the service provider shall not be required to disclose any proprietary information, confidential or related business information to justify the need for additional or upgraded facilities in the course of the application process.

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

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

(d) Underground facilities shall be differentiated from overhead facilities.

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

(Code 2008, § 13-107; Ord. No. 980, § 5, 6-8-2017)

### **13-108. SERVICE PROVIDER'S RIGHT TO SELL, TRANSFER, LEASE, ASSIGN, SUBLET OR DISPOSE.**

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

(Code 2008, § 13-108)

### **13-109. USE OF THE RIGHT-OF-WAY.**

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

- (b) The ROW-user shall coordinate the placement of facilities in a manner that does not interfere with any public improvement and does not compromise the public health, safety or welfare, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as defined in the **City's Manual of Infrastructure Standards** available in the office of the Public Works Director. Said standards shall be competitively neutral and neither unreasonable nor discriminatory.
- (c) The ROW-user shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- (d) All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. All such work shall be subject to existing legal and regulatory restrictions, including, but not limited to, all zoning and traffic laws. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the right-of-way or other public lands of the City or any private property.
- (e) All facilities of the ROW-user shall be placed so as to minimize interference with the use of right-of-way and public lands or private property. The City, through its Public Works Director, shall have the right to consult and review the location, design and nature of the facility prior to its being installed, and approve the same prior to installation.
- (f) Consistent with the 2008 amendment of this Article, all facilities constructed, replaced, or relocated in the rights-of-way after the date hereof shall be placed underground unless otherwise agreed to by the City. Where there are obstructions in the rights-of-way such as trees, shrubs, other utilities, commercial signs, man-made structures, or other like obstruction which makes the cost of such underground burial unreasonable, the ROW-user or Franchisee may request a waiver of this requirement, in which event the City will not unreasonably withhold consent to such waiver. Whenever reasonably possible, all newly constructed facilities or substantial modifications shall be located underground. The ROW-user shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the Public Works Director at his or her discretion for public health, safety or welfare concerns, or some other good cause under the condition that the exercise of such discretion does not cause discrimination among ROW-users. If this requirement is waived, the facilities shall be located as directed by the Public Works Director, including, but not limited to, requirements regarding location and height. Above ground facilities shall comply with the City's Manual of Infrastructure Standards and all applicable zoning regulations, and be located in a manner that does not compromise the public health, safety or welfare; above ground facilities shall utilize reasonable stealth design techniques for facilities incapable of underground placement as described herein, utilizing designs, structures, and finishes aesthetically and architecturally compatible with the environment, or in the instance of collocated facilities consistent with such pole, street light, or other facility upon which said facility is located or placed. No newly-constructed above-ground facilities shall be located directly in front of any single-family home (or in front of where a single-family home could be constructed, in the case of a vacant lot), provided that if the Public Works Director deems it necessary or appropriate, such facilities may be located in the front yard, at or



along the property line between two adjacent properties. Underground placement of facilities shall comply with all existing City standards as well as the standards contained herein, unless waived in writing by the City in its sole discretion for safety concerns, or some other good cause under the condition that the exercise of such discretion does not cause discrimination among ROW-users. <sup>7</sup>

(g) The ROW-user shall not interfere with any private property rights or the facilities of the other ROW-users without their permission. If and when the City requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time, except wireless transmission equipment as defined in 47 CFR 1.40001; provided that, any such relocations shall be subject to the appeal process contained herein.

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

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

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

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<sup>7</sup> **Legal analysis: 13-109. USE OF THE RIGHT-OF-WAY.** Please advise of the "date hereof" referred to in the first sentence.

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

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

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

(n) ROW-users shall contact all public safety agencies before beginning work to advise of any lane or road closures, or any other public safety or traffic issues.

(o) The maximum height which may be approved for facilities, tower and related transmission equipment in the public right-of-way is: fifty (50) feet along an arterial; forty (40) feet along a collector; and twenty (20) feet along a residential street.

(p) ROW-users shall comply with the provisions of traffic control plan consistent with the City's requirements, as described within the application for permit described herein, and subject to the approval of the City and amendments required thereby for the flow of traffic and the public health, safety or welfare.

(Code 2008, § 13-109; Ord. No. 980, § 6, 6-8-2017)

### **13-110. FACILITY RELOCATION.**

(a) The ROW-user shall promptly remove, relocate, or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when reasonably required by the City by reason of public health, safety, or welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's

expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with relocations at due diligence upon notice by the City to begin relocation.

(b) The ROW-user shall promptly remove, relocate, or adjust any facilities located in any private easement, as directed by the City, for a public improvement, at City expense, by moving such facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements; provided that, wireless service providers or wireless infrastructure service providers shall be provided advance written notice of one hundred eighty (180) days to comply with such relocation or adjustment, unless circumstances beyond the City's control require a shorter notice period. The ROW-user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the ROW-user to again relocate its facilities to other areas within the expanded right-of-way, the cost of any such future relocation shall be borne by the City.

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

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

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

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

(g) It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.

(h) In the event that a ROW-user is required to move its Facilities for a private benefit, the ROW-user shall not bear the cost of the relocation or adjustment to the extent of such private benefit and the ROW-user shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.

(Code 2008, § 13-110; Ord. No. 980, § 7, 6-8-2017)

### **13-111. PROTECTION OF THE PUBLIC.**

- (a) It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.
- (b) The City shall not be liable for any damage to or loss of any of the ROW- user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.
- (c) The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this Article to the extent caused by the acts or omissions of the ROW-user.
- (d) The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.
- (e) Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction, and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.
- (f) Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach, or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.
- (g) Any excavation left open overnight on any arterial or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.
- (h) The Public Works Director, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW-user to trim trees upon and overhanging the right-of-way so as to prevent the branches of such trees from coming in contact with the facilities of the ROW-user.
- (i) In the event the ROW-user severely disturbs or damages the root structure in the right-of-way to the detriment of the health and safety of any tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, Public Works Director, in his or her discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.
- (j) Upon the appropriate request of any person having satisfied City procedure and

ordinances, the ROW-user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than fifteen (15) days' written notice from the person detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice from the person advising of the actual operation. To the extent applicable, the ROW-user shall also comply with any requirements of Westwood City Code, including, but not limited to, any relevant building codes.

(k) The Public Works Director may cause to be removed any encroachment in the right-of-way that creates a hazard to public health, safety, or welfare, and the cost of such removal and restoration of the right-of-way shall be borne by the ROW-user.

(Code 2008, § 13-111; Ord. No. 980, § 8, 6-8-2017)

### **13-112. RIGHT-OF-WAY VACATION.**

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

(b) If the vacation requires the relocation of facilities, then:

(1) If the vacation proceedings are initiated by the service provider, the service provider must pay the relocation costs;

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

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

(Code 2008, § 13-112)

### **13-113. ABANDONED AND UNUSABLE FACILITIES.**

(a) A ROW-user owning abandoned facilities in the right-of-way must provide and send to the City the location and nature of any abandoned facilities and either:

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

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

(3) Submit to the City a proposal and instruments for transferring ownership of its facilities to the City. If the ROW-user proceeds under this section, the City may, at its option purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities.

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

(Code 2008, § 13-113; Ord. No. 980, § 9, 6-8-2017)

### **13-114. PERMIT REQUIREMENT.**

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

(b) There are two exemptions to this provision:

(1) Contractors working on the maintenance, construction, or reconstruction of public improvements.

(2) ROW-users performing routine service operations which do not require excavation in the right-of-way and do not disrupt traffic for more than four hours, except that such activities or operations on Rainbow Boulevard, Shawnee Mission Parkway, Mission Road, W. 47th Street, or State Line Road shall not be exempt ~~from~~ under this provision. <sup>8</sup>

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

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

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

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<sup>8</sup> **Legal analysis: 13-114. PERMIT REQUIREMENT (b)(2).** Revise for clarity.

- (1) Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and
- (2) A new right-of-way permit or permit extension is granted.
- (f) Right-of-way permits issued shall be conspicuously displayed by the permittee at all times at the indicated work site and shall be available for inspection by the Public Works Director, other City employees, and the public.
- (g) Prior to the commencement of excavation, the permittee shall identify and locate any buried facilities to be spray painted according to the Uniform Color Code required by Kansas One Call.
- (h) All excavations by the permittee shall have a metal marker inserted into the excavation of the restored pavement, which shall identify the ROW-user.
- (i) Before receiving a right-of-way permit, the applicant must show proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC, or the KCC.
- (j) Any ROW-user who is found to be working in the public right-of-way without a permit will be directed to stop work until a permit is acquired and properly posted at the work site. The only exception allowed is for emergency repair work as described in this Article.
- (k) Any permittee found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the current edition of the City's the Manual of Infrastructure Standards. (Code 2008, § 13-114; Ord. No. 980, § 10, 6-8-2017)

### **13-115. PERMIT APPLICATIONS.**

- (a) Application for a right-of-way permit shall be submitted to the Public Works Director by either the ROW-user or by the person who will do the work and/or excavation in the right-of-way. Before an application may be submitted, the Applicant must attend a pre-application conference, unless waived by the Public Works Director.
- (b) Right-of-way applications shall contain and be considered complete only upon receipt of the following:
  - (1) Compliance with verification of registration;
  - (2) Submission of a completed permit application form, including a descriptive statement of the proposed facility, all required permit attachments, and scaled drawings, including elevation drawings, showing the location and area of the proposed project and the location of all existing and proposed facilities at such location noting specific colors and materials used and proposed;
  - (3) Certificate of liability insurance as required herein;

- (4) Performance and Maintenance Bond;
- (5) A traffic control plan to be used during construction and during any anticipated future access for maintenance or other work on the facility, consistent with the City's requirements, if excavating, cutting, impeding, or working on a paved surface for vehicular or pedestrian traffic, parking vehicles or equipment or storing materials on a paved surface for vehicular or pedestrian traffic, or when required by the latest edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices;
- (6) Payment of all money due to the City for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter;
- (7) For the placement of new communication facilities, including small cell facilities on an existing tower, utility pole or street light, collocation of communication facilities, including small cell facilities, or placement of a new tower or utility pole for the use of communication facilities in the right-of-way: completion of a structural analysis from a licensed professional engineer which describes the facility, tower, utility pole, or street light's structural capacity, including that said facility can safely accommodate all antennas, transmission equipment, and accessory equipment. Said analysis shall be submitted with the application and shall be stamped by a Kansas registered professional engineer. Said report and analysis shall also reflect that the facility or pole is capable of withstanding standard wind loads for applications of the type requested, in compliance with all City codes, nationally recognized street and highway safety codes, and the City's Manual of Infrastructure Standards;
- (8) For above ground facilities, digital photo simulations of the site providing "before and after" views demonstrating the true visual impact of the proposed facility;
- (9) An engineer's certification that any proposed communication facility on the site complies with all FCC standards regarding provisions and regulations for radio frequency emissions or exposure and anticipated levels of electromagnetic radiation to be generated by the facility; provided that, nothing within this Article requires or is intended to hold service providers or ROW-users or to exceed the requirements issued or promulgated by the FCC;
- (10) Applicants for communication facilities in the right-of-way shall submit an affidavit affirming that the applicant has provided notice by first class mail, postage prepaid, to the owners of record of all property within two hundred (200) feet of the proposed location (hereby considered to be adjoining property). The notice shall provide: (A) a description of the proposed facility; (B) the location of the proposed facility; (C) a plan sheet displaying proposed location and showing the facility improvements; (D) the applicant's contact information; and, (E) a statement that the owner shall have twenty (20) days from the date of the notice to provide the City with input regarding the application;
- (11) Applicants for use, construction, excavation, modification, or conducting repairs in or on the State Highway right-of-way also within the City's right- of-way shall first obtain



a permit from the Kansas Department of Transportation prior to submission of an application for permit to use the right-of-way to the City and shall include a copy of such permit with the submission of the application;

(12) Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC;

(13) For the use of City-owned facilities within the right-of-way, including but not limited to poles and street lights, a copy of the executed agreement with the City and/or Special Use Permit for the use of, attachment to, or collocation in, on or within said pole or street light;

(14) For the use of, attachment to, or collocation in, on or within facilities, poles, towers, or other equipment or devices within the right-of-way owned or operated by other governmental entity, corporate entity, person, public or privately held utility, or other service provider, a copy of the executed agreement with said governmental entity, corporate entity, person, public or privately held utility, or other service provider for the use of, attachment to, or collocation in, on or within such facility, pole, tower, or other equipment or device;

(15) Information sufficient to determine whether the permittee, ROW- user, service provider, or service is subject to the payment of franchise fees and/or execution of a franchise agreement; and,

(16) Any other requirement that the Public Works Director deems reasonable to protect the health, safety, and welfare of the public.

(c) All applications for use of the right-of-way by communication systems, wireless support networks, or wireless service providers shall be processed within the timeframes required by state and federal law.

(1) Applications for a new wireless support structure as defined by state and federal law shall be processed within one hundred fifty (150) days of submission of a complete application including all required submissions.

(2) Applications for a substantial modification to an existing wireless support structure or base station or any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by state and federal law shall be processed within ninety (90) days of submission of a complete application including all required submissions.

(3) Applications for a small cell network, small cell facility, or eligible facility request as defined by state and federal law shall be processed within sixty days (60) days of submission of a complete application including all required submissions.

(4) The City shall, within thirty (30) days of receipt of an application for use of the right-of-way by communication systems, wireless support networks, or wireless service providers, including but not limited to the use, construction, modification, or installation of small cell facilities, review the application for completeness. An application will be deemed

complete if it includes the applicable permit review fee(s) and contains all of the applicable submittal requirements set forth herein, unless waived by the Public Works Director. The determination of completeness shall not preclude the City from requesting additional information or studies either at the time of the determination of completeness or subsequently if new or additional information is required, substantial changes in the proposed use, construction, modification, or installation of wireless support systems or facilities occurs, or the proposed installation or modification is modified by the applicant, as determined by the City, or as required for protection of the public health, safety, or welfare.

(5) If the application is incomplete, the City shall notify the applicant within thirty (30) days of receipt of the application that the application is incomplete, identify any and all missing information or documents, and specify the ordinance, article, code provision, or infrastructure standard that requires submission of the document or information.

(6) The application review period begins to run when the complete application is submitted and shall be tolled if the City determines that the application is incomplete and provides notice as set forth herein. The timeframe for review begins running again when the City receives the applicant's supplemental submission in response to the City's notice of incompleteness. Following a supplemental submission, the City shall have ten (10) days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information and shall be tolled in the case of second or subsequent notices. Except as may be otherwise agreed to by the applicant and the City, second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(7) The application review period may also be tolled by mutual agreement of the City and the applicant.

(d) An application for a small cell network involving no greater than twenty-five (25) individual small cell facilities of a substantially similar design within the City shall be permitted, upon written request set forth within or prior to the submission of an application for a right-of-way permit, to file a consolidated application and receive a single permit for the use of the right-of-way for the installation, construction, maintenance and repair of a small cell network in lieu of filing separate applications for each small cell facility; provided that, the City may require a separate application for any small cell facilities that are not of a substantially similar design. Nothing within this subsection is intended to exempt the applicant from compliance with the remaining provisions of subsection (b) or the other requirements of this Article.

(e) If an applicant has submitted an application for a permit for the installation, construction, maintenance, or repair of multiple facilities, that applicant may not submit another application for a permit for the installation, construction, maintenance, or repair of multiple facilities until the first application has been approved or denied. The Public Works Director may waive this provision.

(f) In the event the applicant modifies the proposed Facilities installation or modification description in the initial application after the initial submittal of the application, or as a result of any subsequent submittals, the application as modified will be

considered a new application subject to commencement of a new application review period; provided that, applicant and the City may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City to request additional submittals and additional time that may be reasonably necessary for review of the modified application. (Code 2008, § 13-115; Ord. No. 980, § 11, 6-8-2017)

### **13-116. LIABILITY INSURANCE, PERFORMANCE AND MAINTENANCE BOND REQUIREMENT.**

(a) The permittee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas. The amount will be not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent or wrongful acts or omissions of the permittee. The permittee shall also have coverage for automobile liability in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The City shall be an additional insured on all policies of permittee, to the extent permitted by law, unless waived in writing by the City. If the permittee is self-insured, it shall provide the City proof of compliance regarding its ability to self insure and proof of its ability to provide coverage in the above amounts, and shall agree to indemnify and hold the City harmless for any losses associated with permittee's activities in the right-of-way.

All contractors actually performing work for any permittee hereunder shall be subject to the same insurance requirements set forth herein.

(b) The permittee shall at all times during the term of the permit, and for two years thereafter, maintain a performance and maintenance bond in a form approved by the City Attorney. The amount of the bond will be \$5,000 or the value of the restoration, whichever is greater, for a term consistent with the term of the permit plus two additional years, conditioned upon the permittee's faithful performance of the provisions, terms and conditions conferred by this Article. An annual bond in an amount of \$50,000 automatically renewed yearly during this period shall satisfy the requirement of this section. In the event the City shall exercise its right to revoke the permit as granted herein, then the City shall be entitled to recover under the terms of the bond the full amount of any loss occasioned.

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

(d) No performance and maintenance bond will be required of any governmental entity. For residential property owners requiring work in the right-of-way adjacent to their property, no performance or maintenance bond shall be required, but any contractor or other person doing work on such owner's behalf shall have not less than \$100,000.00 general liability insurance coverage and not less than \$100,000 automobile liability insurance, with both such policies having the City as an additional insured. (Code 2008, § 13-116)

### **13-117. RIGHT-OF-WAY PERMIT FEES AND COSTS.**

- (a) The right-of-way permit fee shall be recommended by the Public Works Director, approved by the Governing Body and listed in **the Schedule of Fees** maintained in the City Clerk's office. An application shall not be deemed submitted unless the permit fee is paid. The permit fee shall be subject to all state and federal fee limitations.
- (b) The right-of-way permit fee may include a permit and inspection fee, and an excavation fee.
- (c) Fees paid for a right-of-way permit, which is subsequently revoked by the Public Works Director, are not refundable.
- (d) Except as provided for in an emergency situation, when a ROW-user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the permit will be double the amount had the ROW-user obtained a permit prior to beginning work.
- (e) The City may also charge and collect any necessary replacement, repair, and restoration costs.
- (f) The City may also charge and collect the cost to the City of any consultants, experts, engineers, or other professionals engaged by the City to assist in connection with any right-of-way permit; provided that, the City may not include travel expenses incurred in the review of an application for more than one trip to the City per application, any travel expenses charged to the applicant shall be reasonable and directly related to the application, and consulting fees shall not be established on a contingency-based or results-based arrangement.  
(Code 2008, § 13-117; Ord. No. 980, § 12, 6-8-2017)

### **13-118. ISSUANCE OF PERMIT.**

- (a) If the Public Works Director determines that the applicant has satisfied the requirements of this Article, the Public Works Director shall issue a right-of-way permit.
- (b) The Public Works Director may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the permittee in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.
- (c) When a right-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bond for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance and maintenance bond for the additional facilities may be required.
- (d) Issued permits are not transferable.
- (e) If work is being done for the ROW-user by another person, a subcontractor or otherwise, the person doing the work and the ROW-user shall be liable and responsible for all damages, obligations, and warranties herein described.  
(Code 2008, § 13-118)

**13-119. PERMITTED WORK.**

- (a) The permittee shall not make any cut, excavation or grading of right-of-way other than excavations necessary for emergency repairs without first securing a right-of-way permit.
- (b) The permittee shall not at any one time open or encumber more of the right-of-way than shall be reasonably necessary to enable the permittee to complete the project in the most expeditious manner.
- (c) The permittee shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavations to those excavations that are necessary for efficient operation.
- (d) The permittee shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.
- (e) The permittee shall notify the City no less than three (3) working days in advance of any construction, reconstruction, repair, location or relocation of facilities which would require any street closure or which reduces traffic flow to less than two lanes of moving traffic for more than four hours. Except in the event of an emergency as reasonably determined by the permittee, no such closure shall take place without notice and prior authorization from the City.
- (f) Non-emergency work on arterial and collector streets may not be accomplished during the hours of 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m., in order to minimize disruption of traffic flow, except upon the express written approval of the City.
- (g) All work performed in the right-of-way or which in any way affects vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the permittee's expense. Such signage shall be in conformance with the latest edition of the City's Manual of Infrastructure Standards, unless otherwise agreed to by the City.
- (h) The permittee shall identify and locate any underground facilities in conformance with the Kansas Underground Utility Damage Prevention Act "Kansas One Call" system, and notice shall be provided directly to Water District No. 1, to Kansas City Power and Light (KCPL), Johnson County Wastewater, and to the Public Works Department with respect to any municipal traffic signal and street light systems, as appropriate.
- (i) The permittee shall be liable for any damages to underground facilities due to excavation work prior to obtaining location of such facilities, or for any damage to underground facilities that have been properly identified prior to excavation. The permittee shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed underground facilities without the approval of the owner of the facilities.
- (j) Whenever there is an excavation by the permittee, the permittee shall be responsible for providing adequate traffic control to the surrounding area as determined by Public Works Director. The permittee shall perform work on the right-of-way at such

times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood. In the event the excavation is not completed in a reasonable period of time, the permittee may be liable for any damages to the City for delay caused by the permittee pursuant to this Article, in addition to any other remedies or penalties provided herein or as provided by law or at equity.

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

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

(m) The City may use the as-built records of the service provider's facilities in connection with public improvements.  
(Code 2008, § 13-119; Ord. No. 980, § 13, 6-8-2017)

### **13-120. RIGHT-OF-WAY REPAIR AND RESTORATION.**

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

(b) All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the permittee shall be fully repaired or replaced promptly by the permittee at its sole expense and the reasonable satisfaction of the City. The Public Works Director has the authority to inspect the repair or replacement of the damage, and if necessary, to require the permittee to do the additional necessary work in order to restore or repair the right-of-way as closely as possible to its original state. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee and a reasonable time not to exceed fifteen (15) days will be provided to allow for the deficiencies to be corrected.<sup>9</sup>

(c) After any excavation, the permittee shall, at its expense, restore all portions of the

<sup>9</sup> **Legal analysis: 13-120. RIGHT-OF-WAY REPAIR AND RESTORATION.** Revise for clarification.

right-of-way to the same condition or better condition than it was prior to the excavation thereof.

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

(e) The permittee responsible for the excavation who leaves any debris in the right-of-way shall be responsible for providing safety protection in accordance with the latest edition of the City's Manual of Infrastructure Standards and any applicable federal or state requirement.

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

(g) In restoring the right-of-way, the permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion or for the length of the contract entered into or any Special Use Permit issued for a greater period, whichever is greater. During the twenty-four (24) months, or for the duration of the contract period or the duration of the Special Use Permit referenced above, if longer, the permittee shall, upon notification from the Public Works Director, correct all restoration work to the extent necessary, using any method as required by the Public Works Director. The work shall be completed within a reasonable time, not to exceed thirty (30) calendar days, of the receipt of notice from the Public Works (not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable), unless a greater period is required by applicable state or federal law or regulation. In the event the permittee is required to perform new restoration pursuant to the foregoing guarantee, the Public Works Director shall have the authority to extend the guarantee period for such new restoration for up to an additional twenty-four (24) months from the date of the new restoration, if the Public Works Director determines any overt action by the permittee not to comply with the conditions of the right-of-way permit and any restoration requirements. All determinations and requirements issued by the Public Works Director pursuant to this subsection specifically and this Article generally shall be competitively neutral, reasonable and nondiscriminatory.

(h) The twenty-four (24) month guarantee or, if applicable greater, period shall be applicable to failure of the pavement surface as well as failure below the pavement

surface.

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

(Code 2008, § 13-120; Ord. No. 980, § 14, 6-8-2017)

### **13-121. CLEATED OR FLANGED WHEELS ON PAVEMENT PROHIBITED.**

It shall be unlawful for any person to drive or operate any vehicle equipped with cleated or flanged wheels upon any of the paved streets or alleys of the city in such a manner as to cause injury or damage to such paved street or alley.

(Code 2008, § 13-121)

### **13-122. DAMAGE OR MODIFICATION TO PAVING OR CURBS.**

It shall be unlawful for any person to break, damage, or injure any paving or curb on any right-of-way of the city. It shall further be unlawful to modify or alter any paving, curb, or gutter.

(Code 2008, § 13-122)

### **13-123. STORAGE ON RIGHT-OF WAY.**

It shall be unlawful for any person to place, leave, or store, or cause to be placed, left, or stored, any implements, dead or disabled automobiles or vehicles, tools, boxes, merchandise, goods, trash, cans, crates, junk, or other property upon any right-of-way except for the purpose of loading or unloading the same.

(Code 2008, § 13-123)

### **13-124. OBSTRUCTING STREETS.**

It shall be unlawful for any person to deposit or cause to be deposited any garbage, trash, or other refuse, including grass, leaves, ice, snow, dirt, or any other foreign substances, onto any streets or gutters of the city, when such deposits obstruct or, in any way, interfere with the free flow of traffic or running water upon streets.

(Code 2008, § 13-124)

### **13-125. STATE HIGHWAY RIGHT-OF-WAY.**

Any persons making any excavations or modifications or repairs in or on the State Highway right-of-way shall first obtain a permit from the Kansas Department of Transportation prior to submission of an application for permit to use the right-of-way to the City. However, public utilities may make any such excavations or modifications or repairs in the event of an emergency which would prohibit compliance with this article or other legal requirement, but any such public utility must notify the Police Department before commencing any such cut or excavation, and further must comply with all other requirements contained in the article and all other legal requirements within seventy-two (72) hours of making any such emergency excavations, modifications, or repairs.

(Code 2008, § 13-125; Ord. No. 980, § 15, 6-8-2017)

### **13-126. COMPLIANCE WITH LAW.**



All work shall be performed in compliance with all State, Federal, and Local requirements including, but not limited to, the Americans with Disabilities Act as amended.  
(Code 2008, § 13-126)

### **13-127. REMEDIES NOT EXCLUSIVE.**

Nothing herein shall limit the City in its exercise of any and all rights it has or may have, at law or at equity, including, but not limited to, any right to seek compensation for damages to any right-of-way that may exceed the amount of any deposit or bond held by or for the benefit of the City.  
(Code 2008, § 13-127)

### **13-128. JOINT APPLICATIONS.**

(a) Applicants may apply jointly for permits to excavate the right-of-way at the same time and place and are encouraged to jointly apply for collocation and implementation of small cell facilities or small cell networks utilizing existing facilities used, owned, leased, or operated by other permittees.

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

(c) Joint applicants shall be jointly and severally liable for any and all obligations and duties described in the Westwood Municipal Code.  
(Code 2008, § 13-128; Ord. No. 980, § 16, 6-8-2017)

### **13-129. SUPPLEMENTARY APPLICATIONS.**

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

(b) A right-of-way permit shall be valid only for the dates specified in the permit. No permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date.  
(Code 2008, § 13-129)

### **13-130. OTHER OBLIGATIONS.**

(a) Obtaining a right-of-way permit under this Article shall not relieve the permittee of its duty to obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity,

including, but not limited to, the City, the FCC or the KCC, and to pay any fees required by any other City, County, State, or Federal rules, laws, or regulations. A permittee shall perform all work in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, and the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations and shall be responsible for all work done in the right-of-way pursuant to its permit, regardless of by whom the work is done.

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

(c) A permittee shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with when the project is complete.

(Code 2008, § 13-130)

### **13-131. DENIAL OF PERMIT.**

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

- (1) The extent to which the right-of-way space where the permit is sought is available;
- (2) The competing demands for the particular space in the right-of-way;
- (3) The availability of other portions of the right-of-way or in other right-of-way for the facilities of the applicant;
- (4) The applicability of any ordinance or other regulations, including City zoning regulations, that affect location of or other standards for facilities in the right-of-way;
- (5) The degree of compliance of the applicant with the terms and conditions of its franchise, this Article, and other applicable ordinances and regulations;
- (6) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
- (7) The balancing of costs of disruption to the public and damage to the right-of-way against the benefits to that part of the public served by the construction in the right-of-way;
- (8) Whether the applicant maintains a current registration with the City;

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

(10) Whether the application complies with the City's Manual of Infrastructure Standards.

(11) The adverse impact of the facilities or the facilities' proposed location on any reasonable public interest and in light of public health, safety or welfare.

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

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

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

(c) The Public Works Director shall not issue a right-of-way permit for encroachments in the right-of-way for private purposes that create a safety hazard, would be deemed a nuisance, or endanger the public health, safety, or welfare.

(d) Denial of a right-of-way permit for wireless communications antenna, tower, small cell network or facility, wireless facility, or related facilities or equipment shall, in accordance with federal and state law, be made in writing and supported by substantial evidence contained in a written record issued contemporaneously with the determination. (Code 2008, § 13-131; Ord. No. 980, § 17, 6-8-2017)

### **13-132. REVOCATION OF PERMIT.**

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

(1) The violation of any material provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

(3) Any material misrepresentation of any fact in the permit application or any activity conducted pursuant to said permit;

(4) The failure to maintain the required bond or insurance;

(5) The failure to complete the work in a timely manner;

(6) The failure to correct a condition indicated on an order issued pursuant to this

Article;

(7) Repeated traffic control violations; or

(8) Failure to repair facilities or property damaged in the right-of-way or on any public or private property.

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

(c) If a right-of-way permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation. (Code 2008, § 13-132)

### **13-133. WORK REQUIREMENTS AND INSPECTIONS.**

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

(b) The permittee shall employ a testing laboratory as approved by the Public Works Director, which shall certify the proper backfilling on any street cut. The permittee shall pay all costs associated with such testing. This provision may be waived with the permission of the Public Works Director.

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

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

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

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

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

(Code 2008, § 13-133)

### **13-134. APPEALS PROCESS.**

(a) Whenever a person shall deem themselves aggrieved by any decision or action taken by the Public Works Director, the person may file an appeal to the Governing Body within ten (10) calendar days of the date of notice of such decision or action; provided that, this section shall not apply to any person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019 (h)(6).

(b) The persons shall be afforded a hearing on the matter before the Governing Body within thirty (30) days of filing the appeal, unless the parties agree to an extension of time.

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

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

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

(Code 2008, § 13-134; Ord. No. 980, § 18, 6-8-2017)

### **13-135. INDEMNIFICATION.**

A ROW-user shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent the same are caused by any act or failure to act of the ROW-user, any agent, officer, director, or their respective officers, agents, employees, directors or representatives, while installing repairing or maintaining facilities in a public right- of-way.

Nothing herein shall be deemed to prevent the City, or any agent thereof from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the ROW- user from its duty to defend against liability or its duty to pay and judgment entered against the City, or its agents.

If a ROW-user and the City are found jointly liable or subject to principles of comparative fault by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state or federal law. This section is solely for the benefit of the City and ROW-user and does not create or grant any rights, contractual or otherwise, to any other person or entity.  
(Code 2008, § 13-135)

### **13-136. FORCE MAJEURE.**

Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other circumstances beyond the ROW- user's or the City's control.  
(Code 2008, § 13-136)

### **13-137. FEDERAL, STATE AND CITY JURISDICTION.**

This Article shall be construed in a manner consistent with all applicable federal, state, and local laws, regulations, and policies. Notwithstanding any other provisions of this Article to the contrary, the construction, operation and maintenance of the ROW-user's facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, the ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction. The ROW-user's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The ROW-user shall comply with all applicable laws and ordinances enacted pursuant to that power. Finally, failure of the ROW-user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this Article.  
(Code 2008, § 13-137)

### ~~**13-138. SEVERABILITY.**~~<sup>10</sup>

~~If any section, subsection, sentence, clause, phrase, or portion of this Article is for any reason held invalid or unconstitutionally any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof, or the Westwood Municipal Code or any portion thereof.  
(Code 2008, § 13-138)~~

### **13-139. CITY'S FAILURE TO ENFORCE.**

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<sup>10</sup> **Legal analysis: 13-138. SEVERABILITY.** Delete as covered by general provisions in Chapter 1.

The City's failure to enforce or remedy any noncompliance of the terms and conditions of this Article or of any permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.

(Code 2008, § 13-139)

### **13-140. PENALTIES.**

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

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

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

(Code 2008, § 13-140)

### **13-141. RESERVATION OF RIGHTS.**

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

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

(Code 2008, § 13-141)

### **13-142. INTERPRETATION.**

The provisions of this Article shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, or welfare.

(Code 2008, § 13-142; Ord. No. 980, § 19, 6-8-2017)

## **CHAPTER 14.**

### **TRAFFIC**

- Article 1. Standard Traffic Ordinance
- Article 2. Local Traffic Regulations
- Article 3. Parade Regulations
- Article 4. Impoundment of Motor Vehicles

### **ARTICLE 1. STANDARD TRAFFIC ORDINANCE**

#### **14-101. INCORPORATING STANDARD TRAFFIC ORDINANCE.**

There is hereby incorporated for the purpose of regulating traffic within the corporate limits of the City of Westwood, Kansas, that certain standard traffic ordinance known as the "Standard Traffic Ordinance for Kansas Cities," Edition of 2022, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. 12-3009 through 12-3012, inclusive, as amended. No fewer than three copies of said standard ordinance shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Westwood, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filled with the city clerk to be open to inspection and available to the public at all reasonable hours

(Code 2008, § 14-101; Ord. 878, Sec. 1; Ord. 877, Sec. 1; Ord. 899, Sec1; Ord. 911, Sec1; Ord. 916, Sec.1; Ord. 928, Sec. 1; Ord. 937, Sec1; Ord 953, Sec1; Ord No. 961, § 1, 8-13-2015; Ord. No. 972, § 1, 8-11-2016; Ord. No. 982, § 1, 7-13-2017; Ord. 992, Sec 1; Ord. 1002, Sec 1; Ord. No. 1031, § 1, 10-13-2022)

#### **14-102. SPEED LIMITATIONS RESTRICTIONS.**

The Governing Body has determined prior to the enactment of L. 1974, ch. 33, and/or where required, based upon the determination of the Kansas Secretary of Transportation, and/or has undertaken and caused to be conducted an engineering and traffic investigation and based upon said investigation has determined, that the speed limits permitted under state law and Section 33 of the Standard Traffic Ordinance for Kansas Cities other than reasonable and safe under the conditions found to exist upon said street, and does re-state, and/or determine and declare that the reasonable and safe speed limits within the City of Westwood (except when a special hazard exists that requires lower speed for compliance with Section 32 of the Standard Traffic Ordinance for Kansas Cities) are the limits specified in this section, or established as hereinafter authorized, and shall be maximum lawful speeds, and no person shall drive a vehicle at a speed greater than or in excess of such maximum limits:



- (a) Thirty (30) miles per hour upon the following streets: 47th Street and State Line Road.
- (b) Thirty-Five (35) miles per hour upon the following streets: Rainbow Boulevard and Shawnee Mission Parkway. The Secretary of Transportation having determined that the speed limits as provided by law upon Rainbow Boulevard within the city limits of the City of Westwood, and upon Shawnee Mission Parkway within the city limits of the City of Westwood, which are connecting links in the state highway system, are greater than is reasonable or safe under the conditions found to exist and has determined and declared a reasonable and safe speed limit thereon to be 35 miles per hour, and has caused to be erected appropriate signs giving notice thereof, the speed limit on said streets for the distance designated is hereby set at 35 miles per hour. Said streets being connecting limits in the state highway system, the Secretary of Transportation has approved said speed limit in writing for said streets.
- (c) Twenty (20) miles per hour between the hours of 7:30 a.m. and 4:30 p.m. of any day school is in session upon 50th Street from Rainbow Boulevard to Norwood St. and from the north property line of the address at 4914 Belinder Avenue to the southernmost intersection of W. 50th Ter.
- (d) Thirty (30) miles per hour upon Mission Road except that said speed limit shall be twenty (20) miles per hour between the hours of 7:30 a.m. to 8:30 a.m., 10:30 a.m. to 11:30 a.m., and 3:00 p.m. to 4:00 p.m. of any day the St. Agnes School is in session on Mission Road from 53rd Street to the northerly line of 51st Street, and twenty (20) miles per hour between the hours of 7:30 a.m. to 8:30 a.m. and 3:00 p.m. to 4:00 p.m. of any day Shawnee Mission Christian School is in session on Mission Road from the northerly line of 49th Terrace to the northerly line of 48th Terrace.
- (e) Twenty-Five (25) miles per hour in any other business district or residential district.

The maximum speed limit established by or pursuant to this paragraph shall be in force and effect regardless of whether signs are posted giving notice thereof and notwithstanding any signs giving notice of maximum speed limits in excess thereof, and any sign giving notice of a maximum speed limit in excess of the limits established by or pursuant to this paragraph shall not be of any force or effect.

- (f) The Chief of Police is hereby directed to erect appropriate signs giving notice of such speed along said streets.  
(Code 2008, § 14-102; Ord. 878, Sec. 2)

### **14-103. EXHIBITION OF SPEED OR ACCELERATION DEFINED.**

Section 37 of the Standard Traffic Ordinance is supplemented by adding to said Section 37 the following subsection (a):

- (a) "Exhibition of speed or acceleration" - is defined to include, but is not limited to, those acts which cause or create unnecessary rapid acceleration, unnecessary tire squeal, skid, smoke, or slide upon acceleration or stopping including the casting of tread, gravel, dirt, or other road surface materials from the tires; acts that simulate a temporary race; or acts that cause the vehicle to unnecessarily turn abruptly, sway or lose traction with

the road surface.  
(Code 2008, § 14-103; Ord. 878, Sec. 3)

#### **14-104. TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.**

(a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118 and amendments thereto.

(b) All traffic violations which are included within this ordinance, and which are not ordinance traffic infractions, as defined in subsection (a) of this section, shall be considered traffic offenses.

(Code 2008, § 14-104; Ord. 878, Sec. 4; Ord. No. 1030, § 2, 8-11-2022)

#### **14-105. PENALTY FOR SCHEDULED FINES AND PENALTIES GENERALLY.**

The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than \$1.00 nor more than \$500.00. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offenses for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed \$500.00.

(Code 2008, § 14-105; Ord. 878, Sec. 5)

### **ARTICLE 2. LOCAL TRAFFIC REGULATIONS**

#### **14-201. TRAFFIC CONTROL DEVICES AND MARKINGS.**

The Standard Traffic Ordinance as adopted is hereby modified by adding thereto the following:

The governing body may, by resolution, establish and fix the location of such traffic control devices as may be deemed necessary to guide and warn traffic under the provisions of this chapter, other traffic ordinances and the state laws. The city shall place and maintain such traffic control signs, signals and devices when and as may be required by the authority of the governing body to make effective the provisions of this chapter and other ordinances for the regulation of traffic.

(Code 2008, § 14-201)

#### **14-202. PARKING OR STOPPING PROHIBITED.**

No person shall stop, stand, or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in any of the following places:

- (a) Shawnee Mission Parkway;
- (b) Rainbow Boulevard within the city;
- (c) The west side of State Line Road from the north city limits to the south city limits at

all times;

(d) The east side of Belinder Avenue at any time and also on the west side of Belinder Avenue between the hours of 2:00 a.m. and 9:00 a.m. and the west side of Belinder Avenue from 47th Avenue to 49th Terrace between the hours of 4:00 p.m. and 6:00 p.m. and the west side of Belinder Avenue from 49th Terrace to the southernmost 50th Terrace intersection between the hours of 2:00 p.m. and 6:00 p.m.;

(e) The east side of Mission Road from the north city limits being 47th Street to the south city limits being 53rd Street, at all times;

(f) The south side of 48th Terrace between Rainbow Boulevard west to Adams Street;

(g) Both sides of 47th Place from Rainbow Boulevard to State Line Road, at all times;

(h) North side of 49th Street from Rainbow Boulevard west to Adams Street, at all times;

(i) Within 100 feet west of the intersection of 50th Street and Belinder Avenue, within 100 feet east of the intersection of 50th Street and Belinder Avenue, within 100 feet north of the intersection of 50th Street and Belinder Avenue, and within 100 feet south of the intersection of 50th Street and Belinder Avenue;

(j) The west side of Adams Street between 49th Terrace and 50th Street, at all times;

(k) The west side of Booth Street between 49th Terrace and 50th Street, at

all times;

(l) The south side of 47th Terrace from Rainbow Boulevard to State Line Road, at all times;

(m) The north side of 48th Street from Rainbow Boulevard to State Line Road, at all times;

(n) The north side of W. 48th Street, from the west pavement edge of Rainbow Boulevard west 250 feet to the west side of the rear service drive behind Westwood Village, at all times;

(o) The south side of W. 48th Street, from 85 feet west of the Rainbow Boulevard pavement edge west to Booth Street, between the hours of 6:00 a.m. to 5:00 p.m., Monday thru Friday;

(p) The south side of W. 48th Street, from 85 feet west of the west pavement edge of Rainbow Boulevard east to Rainbow Boulevard, at all times;

(q) The south side of 47th Terrace from Rainbow Boulevard to State Line Road, at all times;

(r) The north side of 48th Street from Rainbow Boulevard to State Line Road, at all

times;

(s) The north side of 50th Street from Rainbow Boulevard to Belinder Avenue, at all times;

(t) The south side of 50th Street from the west boundary of 2511 West 50th Street to Rainbow Boulevard, at all times and the south side of 50th Street from a point 100 feet east of Belinder Ave. to the west boundary of 2511 W. 50th St. between the hours of 7:00 a.m. to 9:00 a.m. and 2:00 p.m. to 6:00 p.m.;

(u) On the southeast side of West 51st Street from 2331 West 51st Street to Rainbow Boulevard from 7:00 a.m. to 6:00 p.m., and on the northeast side of West 51st Street from the westernmost point of the Westwood View School property line east to the driveway of the Westwood Christian Church from 8:00 a.m. to 4:00 p.m.;

(v) The west side of Belinder Avenue south from its intersection with West 47th Street 100 feet, at all times;

(w) Within 100 feet of Belinder on W. 49th Terrace from a point 100 feet east and west of Belinder Avenue on both sides of the street at all times;

(x)-(z) Reserved;

(aa) On any street, public road or highway within the city ~~for more than two hours~~ between the hours of 12:01 am. and 6:00 a.m.;

(bb) On a sidewalk;

(cc) On a crosswalk;

(dd) Within 15 feet of a fire hydrant;

(ee) Blocking any driveway, emergency exit, fire lane, pedestrian walking lane or on the grass or other unpaved surface of any property or on any public curb;

(ff) On any loading zone while not actually engaged in loading or unloading property or passenger;

(gg) Within 30 feet of a stop sign or traffic signal;

(hh) At any other place where official signs prohibit parking;

(ii) Notwithstanding the above, the City, through its designated personnel, shall have the authority to grant a parking permit to park a vehicle in contravention of the above restrictions for a period not to exceed three hundred sixty-five (365) days, upon a showing of the applicant's necessity, and upon a determination that public safety will not be adversely affected by the granting of such permit. The permit shall state the person to whom it is issued, the location where parking is to be permitted, the vehicle to be parked, any conditions thereon in the public interest, and the duration of the permit.

(Code 1993, 14-105; Code 2008, § 14-202; Ords. 551, 582, 603, 611, 620, 629, 638,

642; 683, 689, 697, 828, 842, 845; 933; 934; Ord. No. 975, § 1, 10-13-2016; Ord. No. 1030, § 1, 8-11-2022)

#### **14-204. UNLAWFUL LEFT TURNS. <sup>1</sup>**

It shall be unlawful for any vehicle to make left turns as follows:

- (a) For the driver of any vehicle proceeding in a westerly direction on 47th Street Terrace or 48th Street to turn left onto Rainbow Avenue between the hours of 7:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m. within the limits of the city.
- (b) For the driver of any vehicle proceeding in an easterly direction on 47th Street Terrace, 48th Street, 48th Street Terrace, 49th Street, to turn left onto Rainbow Avenue between the hours of 7:00 a.m. and 9:00 a.m. and the hours of 4:00 p.m. and 6:00 p.m. within the limits of the city.
- (c) It shall be unlawful for any vehicle proceeding in a westerly direction out of the parking lot at 4715 Rainbow Boulevard, Westwood, Kansas, to turn south onto Rainbow Boulevard across the center line of Rainbow Boulevard.  
(Code 1993, 14-106; Code 2008, § 14-204; Ord. 773)

#### **14-205. TRUCK TRAVEL PROHIBITED.**

Truck travel shall be restricted as follows:

- (a) Truck shall not be allowed to enter upon any streets of the city, except the following named streets: Rainbow Boulevard, Shawnee Mission Parkway, and 47th Street, where truck traffic is allowed. Provided, however, that at the time of any alleged violations of these regulations there must be posted upon the streets of the city upon which trucks are prohibited, signs designating such regulations to be in effect. Trucks carrying goods, merchandise, and other articles to or from any house or premises abutting upon any street upon which trucks are prohibited, and which house or premises do not abut a street upon which trucks are permitted, shall be allowed to enter thereon at the cross street nearest to the house or premises in the direction in which the vehicles are moving and deliver or receive such goods, merchandise, or other articles, but such vehicles shall not proceed on the street farther than to the nearest cross street thereafter.
- (b) No person shall operate any truck within any alley or alleyway in the city.
- (c) "Truck" - as used in this provision, means any vehicle designed or maintained primarily for the transportation of property and having a load limit in excess of one ton, or any vehicle other than those constructed for the purpose of carrying passengers which has a load limit in excess of one ton.
- (d) "Truck" - as used herein, shall not apply to: vehicles engaged by the city in the

<sup>1</sup> **Legal analysis: 14-204. UNLAWFUL LEFT TURNS.** The copy of the original code that we received did not include a Section 14-203. Please advise whether (a) we may be missing some code language, (b) the city would like to add a section 14-203 and title it as reserved, or (c) renumber subsequent sections to account for the missing section.

repair or construction of streets and / or public infrastructure located within the city or engaged by the city or an entity located within the city in trash and garbage pickup; emergency vehicles; official vehicles owned and operated by the city or any other government entity provided their presence in the city are for the benefit of the city or a resident or an entity located within the city; or such repair or construction vehicles as are necessary to repair or construct utilities or other infrastructure within the right-of-way in the city.

(Code 1993, 14-109; Code 2008, § 14-205; Ord. 880, Sec. 1)

#### **14-206. PARKING ON PRIVATE PROPERTY BY THE PUBLIC.**

(a) No person shall park or leave a vehicle unattended or attended for a period of time longer than that designated or at a time when parking is prohibited on private property used by the public for the purpose of vehicular traffic by permission of the owner. The owner or operator of such private property shall have the authority, subject to the approval of the chief of police, to designate by appropriate signs and markings the parking time limit, the areas in which parking is permitted, parking spaces, and times when parking of vehicles is prohibited.

(b) The owner or operator of such property used by the public is authorized to erect suitable signs upon approval of the chief of police, which shall be placed on such property advising the public of the limits and conditions of the parking regulations. A sign shall be erected with the following words legibly painted thereon:

"Traffic Regulation of the City of Westwood, Kansas, enforced on this property. No Parking to (or as posted)"

(Code 1993, 14-111; Code 2008, § 14-206; Ord. 603, Secs. 1:2)

#### **14-207. PARK OR PARKING DEFINED.**

Park or parking as defined in this article shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(Code 1993, 14-112; Code 2008, § 14-207; Ord. 603, Sec. 3)

#### **14-208. PARKING STALLS.**

When parking stalls or spaces are marked or designated on the pavement or curb, vehicles shall be parked or stopped within such stalls or spaces in the direction of the flow of traffic or at the angle indicated by the markings and within the limit lines so marked.

(Code 1993, 14- 113; Code 2008, § 14-208; Ord. 603, Sec. 4)

#### **14-209. PARKING OF DISABLED VEHICLE.**

No person, firm, or corporation shall park or store any dead, damaged or disabled vehicle of any kind, or parts of the same, or any junk vehicles of any kind upon private property used by the public without the permission of both the owner or operator of such public property and the Westwood City Chief of Police.

(Code 1993, 14-114; Code 2008, § 14-209; Ord. 603, Sec. 6)

**14-210. PARKING VIOLATION; TRAFFIC CITATION ISSUED.**

Whenever any motor vehicle without driver is found parked, standing or stopped in violation of this article, the officer finding such vehicle shall take its registration number and may take any other information, including information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a traffic citation. (Code 1993, 14-115; Code 2008, § 14-210; Ord. 603, Sec. 7)

**14-211. FAILURE TO APPEAR IN RESPONSE TO TRAFFIC CITATION.**

If a violator of restrictions on stopping, standing or parking does not appear in response to a traffic citation affixed to such motor vehicle within a period of 10 days, the clerk of the court shall send to the owner of the motor vehicle to which the traffic citation was affixed a letter informing him or her of the violation and warning him or her that in the event such letter is disregarded for a period of 10 days, a warrant of arrest may be issued.

(Code 1993, 14-116; Code 2008, § 14-211; Ord. 603, Sec. 8)

**14-212. EVIDENCE OF VIOLATION; PRIMA FACIE PRESUMPTION.**

In any prosecution charging a violation of any law or regulation governing the stopping, standing or parking of a vehicle, proof that the particular vehicle described in the complaint was in violation of any such law or regulation, together with proof that the defendant named in the complaint was at the time of the violation the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(Code 1993, 14-117; Code 2008, § 14-212; Ord. 603, Sec. 9)

**14-213. SEPARATE OFFENSE FOR PERIOD OF ILLEGAL PARKING.**

Each maximum period of time applying to the location in which a vehicle is illegally parked shall constitute a separate and distinct offense and it shall be the duty of the police officer to place a violation ticket on such vehicle for each such violation. In the event that there is no fixed period of time applying to the offense, then each 24-hour period shall constitute the time for a separate and distinct offense.

(Code 1993, 14-118; Code 2008, § 14-213; Ord. 603, Sec. 10)

**14-214. PARKING ON PRIVATE PROPERTY WITHOUT CONSENT.**

It shall be unlawful for anyone to park or station any vehicle on private property without the consent, expressed or implied, of the owner of the property, or anyone holding under him or her.

(Code 1993, 14-119; Code 2008, § 14-214; Ord. 603, Sec. 11)

**14-215. AUTHORITY TO REMOVE VEHICLES. <sup>2</sup>**


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<sup>2</sup> **Legal analysis: 14-215. AUTHORITY TO REMOVE VEHICLES.** Revise to avoid constitutional issues, in instances where proper notice procedures would need to be followed. Other than

- (a) Whenever any police officer finds a vehicle in violation of this article, such officer is hereby authorized to move such vehicle upon notice, or require the driver or person in charge of the vehicle to move the same from the property.
- (b) Any police officer is hereby authorized to remove or cause to be removed any unattended vehicle left standing upon any private property which under such circumstances would obstruct the normal movement of the property or the normal use of the property.
- (c) Any police officer is hereby authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon public property when:
- (1) Report has been made that such vehicle has been stolen or taken without the consent of the owner;
  - (2) Person or persons in charge of such vehicle are unable to provide for its custody or removal;
  - (3) The motor vehicle is in violation of the stopping, standing or parking sections of this article and the owner of record has been provided with appropriate notice as required;
  - (4) Removal of such vehicle is necessary in the interest of the public safety because of fire, flood, storm, or other emergency reason.
- (Code 1993, 14-120; Code 2008, § 14-215; Ord. 603, Secs. 12:14)

#### **14-216. SAME; ASSESSMENT OF COSTS. <sup>3</sup>**

All costs, charges, of removing the vehicle from the private property to the nearest garage or other place of safety shall be assessed against the owner of the motor vehicle.  
(Code 1993, 14-121; Code 2008, § 14-216; Ord. 603, Sec. 15)

#### **14-217. PARKING RECREATIONAL VEHICLE.**

(a) For purposes of this section, the certain words "travel trailer" and "recreational vehicle" shall be interpreted or defined as any portable structure mounted on wheels or on a motorized chassis, including converted buses, and which is normally used as sleeping quarters and shelter while traveling, but not as a dwelling.

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emergencies, obstructing traffic, or parking in certain areas, towing of illegally parked vehicles without due process guarantees prior to towing is of doubtful constitutionality. See McQuillin, *Municipal Corporations*. Also, add language to allow for emergency reasons.

<sup>3</sup> **Legal analysis: 14-216. SAME; ASSESSMENT OF COSTS.** Per K.S.A. 8-1103(c), "A city ordinance or county resolution authorizing the towing of vehicles from private property shall specify in such ordinance or resolution: (1) The maximum rate such wrecker or towing service may charge for such wrecker or towing service and storage fees;(2) that an owner of a vehicle towed shall have access to personal property in such vehicle for 48 hours after such vehicle has been towed and such personal property shall be released to the owner; and (3) that the wrecker or towing service shall report the location of such vehicle to local law enforcement within two hours of such tow." Either revise to conform, or remove provisions re: towing from private property.



(b) No travel trailer or recreational vehicle shall be used for permanent or semi-permanent residential purposes, within the City of Westwood, Kansas, other than when the vehicle is permitted to park as provided for in section (c), herein.

(c) No person shall park a travel trailer or recreational vehicle in any residential area of the city on any lot, improved or unimproved, except in an enclosed structure, for more than 24 hours; provided however, upon proper application and approval by the chief of police, a vehicle may be parked for a period not to exceed a total of 14 days within the calendar year that the permit was granted.

(d) No travel trailer or recreational vehicle may be stored on any street, alley, lot, improved or unimproved, within the city, provided however, any such vehicle owned by a member or members of a family may store the vehicle in an enclosed structure. (Code 1993, 14-122; Code 2008, § 14-217; Ord. 618, Sec. 1-4)

**Section 14-218. Main Trafficway and Trafficway Connector Designation. 4**

It is hereby authorized, ordered and directed, under the authority of the Act, that the streets hereinafter set forth located within the limits of the City are hereby designated and established as main trafficways or trafficway connectors, as provided below:

<u>Main Trafficways</u>	<u>Trafficway Connectors</u>
West 47th Street	West 51st Terrace
West 47th Place	West 51st Street
48th Street	West 50th Place
48th Terrace	West 49th Place
49th Street	West 47th Terrace
49th Terrace	Norwood Road
50th Street	Fairway Road
50th Terrace	Belinder Court
Mission Road	Booth Avenue
Belinder Avenue	
Adams Street Rainbow	
Boulevard Booth Street	
State Line Road	
Shawnee Mission Parkway	

(Ord. No. 996, § 1, 11-8-2018)

**ARTICLE 3. PARADE REGULATIONS**

**14-301. DEFINITIONS.**

The definitions of certain terms relating to parade regulations shall be as follows:

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<sup>4</sup> **Legal analysis: Section 14-218. Main Trafficway and Trafficway Connector Designation.** Please advise whether the city intended for this list to become part of the code, or to be retained outside of the code as a separate, easily-amendable schedule.

(a) Parade - is any parade, march, ceremony, show, exhibition, pageant, walk-a-thon, organized run, or procession of any kind, or any similar display, in or upon any street, park or other public place in the city.

(b) Parade Permit - is a permit as required by this article.

~~(c) Person is any person, firm, partnership, association, corporation, company or organization of any kind.~~<sup>5</sup>

(Code 1970; Code 2008, § 14-301)

### **14-302. PERMIT REQUIRED.**

No person shall engage in, participate in, aid, form or start any parade, unless a parade permit shall have been obtained from the city chief of police.

(a) This article shall not apply to:

(1) Funeral processions;

(2) Students going to and from school classes or participating in educational activities; provided that such conduct in under the immediate direction and supervision of the proper school authorities;

(3) A governmental agency acting within the scope of its functions.

(Code 1970; Code 2008, § 14-302)

### **14-303. PROCEDURE.**

A person seeking issuance of a parade permit shall file an application with the chief of police on forms provided by such officer.

(a) An application for a parade permit shall be filed with the chief of police not less than 240 hours before the date on which it is proposed to conduct the parade.<sup>6</sup>

(b) The application for a parade permit shall set forth the following information:

(1) The name, address and telephone number of the person seeking to conduct such parade;

(2) If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization, and of the authorized and responsible head of such organization;

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<sup>5</sup> **Legal analysis: 14-301. DEFINITIONS (c).** Delete definition of "person" as covered by general provisions in Chapter 1.

<sup>6</sup> **Legal analysis: 14-303. PROCEDURE.** Please verify that the city intended for this time period to be 10 days and not 24 hours.

- (3) The name, address and telephone number of the person who will be the parade chairperson and who will be responsible for its conduct;
  - (4) The date the parade is to be conducted;
  - (5) The route to be traveled, the starting point and the termination point;
  - (6) The approximate number of persons, animals and vehicles that will constitute such parade; the type of animals and description of the vehicles;
  - (7) The hours when such parade will start and terminate;
  - (8) A statement as to whether the parade will occupy all or only a portion of the width of the streets to be traversed;
  - (9) The location by streets of any assembly areas for such parade;
  - (10) The time at which units of the parade will begin to assemble at any such assembly area or areas;
  - (11) The interval of space to be maintained between units of such parade;
  - (12) The applicant's plan for the collection, removal and disposal of all trash, debris and litter caused by parade participants or observers so that the parade route is returned to its condition prior to the parade.
  - (13) The number and locations of sanitary facilities provided for parade participants and observers;
  - (14) if the parade is designed to be held by, and on behalf of or for any person other than the applicant, the applicant for such permit shall file with the chief of police a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his or her behalf.
  - (15) Any additional information which the chief of police shall find reasonably necessary to a fair determination as to whether a permit should be issued.
- (c) The chief of police, where good cause is shown therefor, shall have the authority to consider any application hereunder which is filed less than 240 hours before the date such parade is proposed to be conducted.
  - (d) There shall be paid at the time of filing the application for a parade, a permit fee of \$10.00. <sup>7</sup>
  - (e) At the time of filing, the applicant shall submit a cost or damage deposit of \$100.00 per each 500 persons expected to attend the parade. The deposit shall be applied toward

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<sup>7</sup> **Legal analysis: 14-303. PROCEDURE, (d).** Please review the fee (\$10.00) and advise as to any changes.

any City cost or expenses arising from clean up costs, other costs, or damage caused by parade participants or observers. Any amount submitted as a damage deposit that exceeds the City's actual costs and expenses arising from damage caused by parade participants or observers clean up costs or other costs shall be returned to the applicant within thirty days of the parade date. A minimum deposit of \$100.00 shall be required in all cases.

(f) Although parades may cross Shawnee Mission Parkway or Rainbow Boulevard, no parade shall proceed on either of these streets, unless the event is sufficiently short in duration or small in size that it will not impede the access of emergency vehicles or otherwise impair the public health, safety, and welfare, as reasonably determined by the Chief of Police.

(g) For each arterial intersection a parade passes through, the applicant shall pay an additional fee equal to the hourly overtime pay of two uniformed police officers for each hour of the parade's duration. The applicant shall pay an estimate of this fee in advance of the permit's issuance, and the applicant shall estimate the duration of the parade. If the parade is shorter than estimated, any excess fee shall be returned, and if the parade is longer than estimated, the applicant shall pay any additional fee within three (3) days of the parade. For purposes of this section, the following are to be considered arterial intersections: 50th Street and Rainbow Avenue, 47th Place and State Line Road, 47th Street and Rainbow, 47th Street and Mission Road, Shawnee Mission Parkway and Rainbow Avenue, and 50th Street and Belinder Avenue.

(h) An additional fee shall also be imposed for any parade at a rate equal to the hourly overtime charge of one uniformed police officer for every two non-arterial street intersections through which the parade passes for each hour of the parade's duration. The applicant shall pay an estimate of this fee in advance of the permits' issuance, and the applicant shall estimate the duration of the parade. If the parade is shorter than estimated, any excess fee shall be returned, and if the parade is longer than estimated, the applicant shall pay any additional fee owed within three (3) days of the parade. (Code 2008, § 14-303; Ord. 765, Sec. 2)

#### **14-304. STANDARDS FOR ISSUANCE.**

The chief of police shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, he or she finds that:

(a) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route;

(b) The conduct of such parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the city other than to be occupied by the proposed line of march and areas contiguous thereto;

(c) The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas; and

(d) The conduct of such parade will not interfere with the movement of firefighting equipment en route to a fire.

(Code 1983; Code 2008, § 14-304)

#### **14-305. APPLICATION FOR PARADE: DECISION BY THE CHIEF OF POLICE.**

The chief of police shall act upon the application for a parade within reasonable time after the filing thereof.

(Code 1970; Code 2008, § 14-305)

#### **14-306. APPEAL PROCEDURE.**

Any person aggrieved shall have the right to appeal the denial of a parade permit to the governing body. The appeal shall be taken within 10 days after notice.

(Code 1970; Code 2008, § 14-306)

#### **14-307. ALTERNATIVE PERMIT.**

The chief of police, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time or over a route different from that named by the applicant. An applicant desiring to accept an alternate permit shall within 10 days after notice of the action of the chief of police, file a written notice of acceptance with the chief of police. An alternate parade permit shall conform to the requirements, and shall have the effect of a parade permit under this article.

(Code 1970; Code 2008, § 14-307)

#### **14-308. NOTICE TO CITY AND OTHER OFFICIALS.**

Immediately upon the issuance of a parade permit the chief of police shall send a copy thereof to the following:

(a) All members of the governing body;

(b) City clerk;

(c) City attorney;

(d) City engineer;

(e) Fire chief.

(Code 1970)

#### **14-309. CONTENTS OF PERMIT.**

Each parade permit shall state the following information:

(a) Starting time;

(b) Minimum speed;

- (c) Maximum speed;
- (d) Maximum interval of space to be maintained between the units of the parade;
- (e) The portions of the streets to be traversed that may be occupied by the parade;
- (f) The maximum length of the parade in miles or fractions thereof;
- (g) Such other information as the chief of police shall find necessary to the enforcement of this article.  
(Code 1970; Code 2008, § 14-309)

#### **14-310. DUTIES OF PERMITTEE.**

- (a) A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances.
- (b) The parade chairperson or other person heading or leading such activity shall carry the parade permit upon his or her person during the conduct of the parade.  
(Code 1970; Code 2008, § 14-310)

#### **14-311. PUBLIC CONDUCT DURING PARADES.**

The following rules of public conduct shall be observed during parades:

- (a) No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or parade assembly or with any person, vehicle or animal participating or used in a parade.
- (b) No driver of a vehicle, streetcar or trackless trolley shall drive between the vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.
- (c) The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a highway or part thereof constituting a part of the route of a parade. The chief of police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on an un-posted street in violation of this article.  
(Code 1970; Code 2008, § 14-311)

#### **14-312. REVOCATION OF PERMIT.**

The chief of police shall have the authority to revoke a parade permit issued hereunder upon application of the standards for issuance as herein set forth.  
(Code 1970; Code 2008, § 14-312)

### **ARTICLE 4. IMPOUNDMENT OF MOTOR VEHICLES**

#### **14-401. DEFINITIONS.**

For the purpose of this article, the following terms, phrases, words and their derivations shall have the following meanings:

(a) Highway. - The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. Where the word "highway" or the word "street" is used in this article, it means street, avenue, boulevard, thoroughfare, alley, and other public way for vehicular travel by whatever name, unless the context clearly indicates otherwise.

(b) Motor Vehicle. - ~~Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively on stationary rails or tracks.~~ Every vehicle or tractor trailer combination that is self-propelled by which any person or property is or may be transported or drawn upon a highway except vehicles used exclusively upon stationary rails or tracks.<sup>8</sup>

(c) Owner or Occupant. - A party having fee simple title in the real property, or a party having a leasehold interest in the real property, or a party who is the beneficiary of a private easement for the purpose of egress or ingress to or from said real property. (Code 1983; Code 2008, § 14-401)

#### **14-402. IMPOUNDING VEHICLES.**

The police department may cause to be impounded:

(a) Any motor vehicle unlawfully parked on a highway in violation of any provision of a city ordinance which prohibits the parking of vehicles at the place where or time when the impounded motor vehicle is found.

(b) Any motor vehicle that has been abandoned and left on a highway or other property open to use by the public for a period in excess of 48 hours pursuant to K.S.A. 8-1102.

(c) Any motor vehicle which:

- (1) Is subject to removal pursuant to K.S.A. 8-1570, or 8-1102, or
- (2) Is subject to seizure and forfeiture under the laws of the state, or
- (3) Is subject to being held for use as evidence in a criminal trial.

(d) Any motor vehicle, the continued presence of which, because of the physical location or condition of the motor vehicle, poses a danger to the public safety or to the motor vehicle.

(e) Any motor vehicle which has been abandoned or parked on any real property, other than public property or property open to use by the public, may be moved and disposed of in accordance with the terms of this article by the police department upon the request of

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<sup>8</sup> **Legal analysis: 14-401. DEFINITIONS, (b) Motor vehicle.** Conform to K.S.A. 8-1101(b).

the owner or occupant of such real property. The real property referred to herein shall not be owned or leased by the person who abandons or parks said vehicle or by the owner or leasee of such vehicle. The City of Westwood, Kansas; or any person, partnership, corporation or their agent conducting a business enterprise for the purpose of towing vehicles which removes such vehicle from the real property at the request of the police department shall have a possessory lien on such vehicle for the cost incurred in removing, towing and storing such vehicle. For purposes of this article, common areas shall be construed not to mean public property or property open to the public.  
(Code 1983; Code 2008, § 14-402)

**14-403. SAME.**

The police department may authorize storage of such impounded motor vehicles at any location, public or private, which is zoned for the storage of motor vehicles.  
(Code 1983; Code 2008, § 14-403)

**14-404. NOTICE OF IMPOUNDMENT; STORAGE OF VEHICLE.**

(a) When owner present. - When the police department intends to impound a motor vehicle pursuant to section 14-402 and the owner of the motor vehicle is then present, the police department shall before the motor vehicle is removed, provide the owner with a notice, in the form prescribed by the police department that the motor vehicle is being impounded, that towing and storage charges will be assessed against the impounded motor vehicle, that the owner may claim and regain possession of the impounded motor vehicle at the location to which it is being removed for storage without prepayment of towing and storage charges and that the owner may request a hearing as to the propriety of the impoundment and as to the amount of and the owner's liability for the towing and storage charges. The notice shall also state the location where the impounded motor vehicle will be stored and the place where the owner may make his or her request for the hearing. The notice shall also state, in prominent language, that failure by the owner to request a hearing within five days after receipt of the notice may act as a waiver of his or her right to a hearing and that this may result in the placing of a lien against the motor vehicle for the towing and storage charges without further notice to the owner; and that the motor vehicle be sold at public auction to the highest bidder for cash after 15 days from the date of the mailing of the notice. The owner of the impounded motor vehicle shall sign the notice as an acknowledgment that he or she has received a copy of the notice and a copy of the notice shall be provided to the owner.

(b) When Owner not Present. When the police department impounds and remove a motor vehicle pursuant to section 14-402(a) and the owner of the motor vehicle is not present at the time of the impoundment, the police department shall, if such motor vehicle has displayed thereon a registration plate issued by the division of vehicles and has been registered with said division, mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. The notice shall be in the form prescribed by the police department, containing the same information as required by section 14-404(a). The police department shall use reasonable diligence in determining the title owner, or if from a non-title state, the registered owner, of the vehicle, and shall inquire by mail of the office of the register of deeds of the county in which the title shows the owner resides, if registered



in this state, as to whether there are any lienholders of record. If the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed to be a resident of the state whose whereabouts are unknown and service shall be made on the Secretary of State as provided in K.S.A. 8-401.

If the owner does not reside in the state, as appears from the motor vehicle registration and the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed a nonresident of the state and service shall be made on the Secretary of State as provided in K.S.A. 8-401.

(c) Failure or Refusal to Sign Notice. - If any person required by this section to sign a notice of impoundment willfully fails or refuses to do so, or if such person cannot be found, the police department shall note this fact on the face of the notice, which shall constitute prima facie evidence of delivery or service of notice as required by this section. (Code 1983; Code 2008, § 14-404)

#### **14-405. IMPOUNDMENT AFTER REQUEST TO LEAVE MOTOR VEHICLE.**

In all cases wherein the owner or operator of a motor vehicle which is on a public street has requested that the motor vehicle be left unattended at that location, in lieu of impoundment of the motor vehicle pursuant to section 14-402, the police department may honor the request for a period of time not exceeding 24 hours, after which time the motor vehicle shall either be removed from the location by the owner or operator or be impounded by the police department pursuant to section 14-404. The police department shall be immune from liability for any damage, loss or destruction of the motor vehicle occasioned by its being left unattended pursuant to the request of the owner or operator thereof, in lieu of impoundment. Nothing in this section shall be construed to limit the authority of the police department to order the removal of a motor vehicle by its owner or operator or to impound a motor vehicle pursuant to section 14-404 at any time whenever in his judgment the presence of the unattended motor vehicle constitutes a danger to the public safety.

(Code 1983; Code 2008, § 14-405)

#### **14-406. RELEASE OF MOTOR VEHICLE FROM IMPOUNDMENT.**

(a) Generally. Unless the vehicle is impounded pursuant to section 14-402(b) herein, the owner of an impounded motor vehicle may secure the release of the motor vehicle from impoundment upon requesting such release and presenting proof of ownership satisfactory to the custodian of the place where the motor vehicle is stored. If the custodian is satisfied that the person making the request is the owner or his or her authorized agent, he or she shall release the motor vehicle to the owner or his or her agent. Nothing in the preceding sentence shall preclude the owner of the impounded motor vehicle or his or her agent from paying any towing and storage charges that may be assessed against the motor vehicle, but neither the police department nor the custodian of the storage space may require payment of any towing or storage charges as a condition precedent to such release. At the same time as the owner or his or her agent requests release of the impounded motor vehicle, and if such request is made with 40 days after the owner receives a copy of the notice of impoundment, the police department

shall provide him or her an opportunity to make a request for a hearing on the propriety of the impoundment and on the amount and his or her liability for the towing and storage charges occasioned by the impoundment; provided, that if the owner or his or her agent requests release of the impounded motor vehicle more than 40 days after the owner receives a copy of the notice of impoundment, no hearing may be requested on the impoundment or on the towing and storage charges and the owner shall be conclusively presumed to have consented to the impoundment and to the amount of and his or her liability for the towing and storage charges.

(b) Security for Payment of Charges. - If the ownership of the impounded motor vehicle is evidenced by a title certificate issued by the Kansas Department of Highway Safety and Motor Vehicles, the owner or his or her agent may secure the release of the motor vehicle from impoundment without the payment of any towing or storage charges or the deposit of any security for the payment thereof. If the ownership of the impounded motor vehicle is evidenced by a foreign title instrument, or if the jurisdiction in which title is recorded is not evidence from the document establishing ownership, the owner or his or her agent, before the custodian of the place where the motor vehicle is stored authorizes release of the motor vehicle from impoundment, shall deposit with the custodian cash in the amount of the towing and storage charges to the date of the request. If the owner or his or her agent refuses to provide the cash deposit, the custodian shall not authorize release of the impounded motor vehicle but if the request is timely made, a date shall be set for the hearing on the impoundment and charges.

(Code 1983; Code 2008, § 14-406)

**14-407. HEARING.**

If the owner of an impounded motor vehicle or his agent timely requests the release of the motor vehicle from impoundment and a hearing on the impoundment and charges, as provided in section 14-406, a date shall be set, not more than five days after the date of request, for the hearing. The city shall provide a hearing examiner, who is an attorney licensed to practice law in the State of Kansas, to conduct the hearings required by this section. At the hearing, the owner, his or her agent, or his or her attorney shall be afforded an opportunity to present, by oral testimony or documentary evidence, his or her objections to (a) the impoundment of the motor vehicle and (b)(1) the amount of the towing and storage charges and (2) his or her liability for the payment thereof.

If the owner or his or her agent requested the hearing more than five days but not more than 40 days after the owner received a copy of the notice of impoundment, the owner, his or her agent or his or her attorney shall be required at the hearing, as a condition precedent to the presentation of any objections by the owner, to show good cause for the delay in making the request more than five days after the owner received a copy of the notice of impoundment: if good cause cannot be shown, the hearing officer shall dismiss the hearing and make the finding stated in subsection (b) below; otherwise, the hearing examiner shall proceed to hear the owner's objections. At the conclusion of the hearing on the owner's objections, the hearing examiner shall render his or her decision if the hearing examiner:

- (a) Finds that the impoundment was improper, he or she shall:
  - (1) Find that the owner is not liable for any towing or storage charges occasioned by

the impoundment and

(2) Determine whether and to what extent the city shall bear the expense of the towing and storage charges; or

(b) Finds that the impoundment was proper, he or she shall establish:

(1) The amount of the towing and storage charges to be assessed against the impounded motor vehicle and

(2) The extent of the liability of the owner for payment of the towing and storage charges so established. The decision of the hearing examiner shall be final, and a copy of the decision shall be furnished to the owner of the impounded motor vehicle, to the custodian of the place where the motor vehicle is stored and to the city attorney.

In the event that the impoundment was pursuant to K.S.A. 8-1102(6 b), the owner or occupant of the real property upon which the abandoned vehicle was located shall not be assessed the costs of towing and storage of the vehicle. Further, nothing within this article shall be construed to modify or effect the validity of the possessory lien of the person removing such vehicle from the real property established by K.S.A. 8-1102(b).<sup>9</sup> (Code 1983; Code 2008, § 14-407)

#### **14-408. CHARGES CONSTITUTE A LIEN.**

The towing and storage charges occasioned by the impoundment of a motor vehicle pursuant to section 14-402 shall be and constitute a lien upon the impounded motor vehicle, except as provided in this section. If the hearing examiner finds pursuant to section 14-407 that the impoundment was improper and if he or she determines that the city shall bear part or all of the towing and storage charges, the lien created by this section shall be discharged. If the hearing examiner finds pursuant to section 14-406 that the impoundment was proper but that the towing and storage charges should be in an amount less than the amount of the lien, the lien created by this section shall be discharged to the extent that it exceeds the amount established by the hearing examiner. The holder of a lien created by this section may perfect such lien in any manner provided by law, but he may not retain possession of the motor vehicle when it has been released pursuant to section 14-406(a). In the event that the impounded motor vehicle is released from impoundment and the owner or his or her agent has provided security for payment of charges as required by section 14-406(b), the lien created by this section shall also be a lien against the security so provided, subject to being wholly or partially discharged as provided in this section.

(Code 1983; Code 2008, § 14-408)

#### **14-409. SATISFACTION OF LIEN; NOTICE OF PUBLIC SALE.**

The holder of a lien against a motor vehicle created by section 14-408, to the extent that

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<sup>9</sup> **Legal analysis: 14-407. HEARING.** In the last paragraph, revise *K.S.A. 8-1102(6)* to *K.S.A. 8-1102 (b)*, assuming the previous citation was a typo (said section does not exist). Please advise if this assumption is incorrect.

such lien has not been discharged as provided in section 14-408 or otherwise satisfied, may enforce such lien in any manner provided by law after 60 days from the date the motor vehicle is impounded by the police department. If the owner of the motor vehicle or his or her agent has provided security for the payment of the lien as provided in section 14-406(b), the lien shall first be satisfied out of the security so provided and, if any portion of the lien remains unsatisfied and undischarged, may then be enforced in any manner provided bylaw. If the motor vehicle against which the lien is created pursuant to section 14-408 is still under impoundment 60 days from the date it is impounded by the police department and the owner has not requested release of the motor vehicle from impoundment nor paid the towing and storage charges that are the basis for the lien, the motor vehicle shall be sold at public sale to the highest and best bidder for cash to satisfy the lien. Notice of the sale shall be given in accordance with K.S.A. 8-1102. Publication, required by K.S.A. 8-1102, may be made before the termination of the 60 day period for a sale thereafter.

(Code 1983; Code 2008, § 14-409)

#### **14-410. REDEMPTION.**

If the city is to conduct the sale:

(a) Any holder of a recorded lien or retained title on a motor vehicle to be sold by the city under the provisions of section 14-409 may claim and take possession thereof, upon payment of accrued charges and estimated costs of publication of the notice of sale to the police department and the deposit with the police department of sufficient assurance by surety bond or otherwise, approved by the city attorney, that the motor vehicle will be forthcoming for public sale thereof or upon claim of the rightful owner prior to the sale. The police department shall, within three days, make a report to the city treasurer and deliver the charges and costs so paid to the city treasurer, taking a receipt therefor and filing it, together with a duplicate copy of the report to the city treasurer, with the records in his office. The funds shall be held in a trust account until final disposition of the motor vehicle. Not less than five days before the date for sale of the motor vehicle, the police department shall notify the lienholder or retained titleholder of the time and place for the sale, and the lienholder or retained titleholder shall deliver such motor vehicle to the police department at or before 12:00 noon of the day before the sale. At the sale the amount paid shall be credited on the bid of the lienholder or retained titleholder. If the lienholder or retained titleholder is the successful bidder for the motor vehicle, the police department shall report this fact to the city treasurer and then the funds previously paid by the lienholder or retained titleholder shall be relieved of the trust previously impressed and become the same as other funds received by the city for storage and costs of impounded motor vehicles. If the motor vehicle is sold for a higher bid to any person other than the lienholder or retained titleholder, the police department shall report this fact to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him or her out of the trust account.

(b) And if the rightful owner of the motor vehicle claims the same before the sale by payment of the accrued charges, the police department shall immediately notify the lienholder or retained titleholder in possession of the motor vehicle and he or she shall return the same to the police department within 12 hours. The police department shall report this redemption by the rightful owner to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him or her out of the

trust account.  
(Code 1983; Code 2008, § 14-410)

**14-411. SALE PROCEEDS.**

The proceeds of a public sale held pursuant to section 14-408 whether such sale was conducted by the city or by any other person, after payment of the towing and storage charges and costs and expenses incident to the sale, shall be deposited with the city treasurer, if the owner of the motor vehicle is absent from the sale, for credit to the trust account. The funds deposited in the trust account pursuant to this section shall remain in the account subject to the order of the person legally entitled thereto, but if no claim is made for these funds within a period of one year after the sale, the funds shall become the property of the city, be released from the trust account and be paid into the general fund as miscellaneous revenues.  
(Code 1983; Code 2008, § 14-411)

**14-412. STATUTORY PROCEDURES.**

Nothing in this article shall be construed to augment, diminish, supersede or otherwise interfere with any statutory procedure established by the legislature for the collection of unpaid towing and storage charges. The procedures in this article are supplementary and cumulative to any statutory procedures.  
(Code 1983; Code 2008, § 14-412)

**14-413. IMPLEMENTATION OF ARTICLE.**

The police department and city treasurer are authorized to make rules for the implementation and administration of this article.  
(Code 1983; Code 2008, § 14-413)

**14-414. REIMBURSEMENT FOR DISCHARGED LIENS.**

If a lien created by section 14-408 and held by a private wrecker or towing firm is discharged by section 14-408 pursuant to a determination by a hearing examiner that an impoundment was improper and that the city shall bear part or all of the towing and storage charges, the city shall pay to the firm the amount determined by the hearing examiner. No payment shall be made until it is authorized by the city attorney.  
(Code 1983; Code 2008, § 14-414)

CHAPTER 15.

**SURFACE WATER MANAGEMENT**

- Article 1. Definitions
- Article 2. Illicit Discharge
- Article 3. Sediment and Erosion Control
- Article 4. Post Construction Storm Water Quality Treatment
- Article 5. Stormwater Utility

**ARTICLE 1. DEFINITIONS**

**15-101 DEFINITIONS.**

(a) As used in this Chapter, the following abbreviations shall have the following meanings unless otherwise specified: **1**

APWA Kansas City Metropolitan Chapter of the American Public Works Association and/or the American Public Works Association

CPESC, INC. Certified Professional in Erosion and Sediment Control, Inc.

FEMA Federal Emergency Management Agency

KDHE Kansas Department of Health and Environment

LDP Land Disturbance Permit

MARC Mid-America Regional Council

MS4 Municipal Separate Storm Sewer System

NPDES National Pollutant Discharge Elimination System

SWPPP Stormwater Pollution Prevention Plan

(b) As used in this Chapter, unless from the context a different meaning is intended, or the Code directs that a different definition is to be applied to a provision, the following terms or phrases shall have the meanings set forth in this Chapter:

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<sup>1</sup> **Legal analysis: 15-101 DEFINITIONS, (a).** Added language to allow for terms that may be intentionally defined differently in a specific article.

- (1) "Approved Plan" means a set of representational drawings or other documents that have been approved by the City as complying with the provisions of this Chapter submitted by an Applicant (either as an independent submittal or a part of another Development application(s)) required by the City Code as a prerequisite to obtaining a building or Land Disturbance permit and that contain the information and specifications required by the City to minimize Stormwater Runoff.
- (2) "Applicant" means any Person who makes application for an approved plan and a permit as required by this Chapter.
- (3) "As-Built Plan" means a record drawing or plan prepared and certified by a licensed Professional Engineer or Land Surveyor that represents the actual dimensions, contours, elevations, etc., of a completed structure, facility, or constructed feature.
- (4) "Best Management Practice" (BMP) means the Stormwater management practice used to prevent or control the discharge of Pollutants, including Sediment, and minimize Runoff, both directly and indirectly, to Stormwater, receiving waters, or Stormwater Drainage Systems, waters of the U.S. or water bodies found in the City of Westwood. BMPs may include structural or nonstructural solutions, a schedule of activities, prohibition of practices, maintenance procedures, or other management practices and programs. Except where in conflict with federal, state, or local law, "BMP" shall refer to the document propounded by the Mid-America Regional Council and Kansas City Metropolitan Chapter of the American Public Works Association known as the Manual of Best Management Practices for Stormwater Quality.
- (5) "Channel" means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.
- (6) "Construction" means constructing, clearing, grading, or excavations that result in soil disturbance. Construction includes structure demolition. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, emergency Construction activities required to immediately protect public health and safety, interior remodeling with no outside exposure of Construction material or Construction waste to the City's Stormwater Drainage System or other public waters, mechanical permit work, or sign permit work.
- (7) "Construction Site Operator" for the purpose of the Land Disturbance Permit and in the context of Stormwater associated with Construction activity, means any Person associated with a Construction project that meets either of the following two criteria:
- (i) The Person has operational control over Construction plans and specifications, including the ability to make modifications to those plans and specifications; or
- (ii) The Person has day-to-day operational control of those activities at a project which is necessary to ensure compliance with a SWPPP or Erosion and Sediment Control Plan for the site or other permit conditions (e.g., the Person is authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).
- (8) "Detention" means the temporary storage of Stormwater Runoff in a Stormwater management practice with the goals of controlling peak discharge rates and/or providing

gravity settling of Pollutants.

(9) "Detention Facility" means a Detention Basin or alternative structure designed for the purpose of Detention Storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

(10) "Detention Basin" means any man-made area or structure that serves as Detention Storage, including: Dry Bottom Basin; any Detention Basin or facility designed to permit no permanent impoundment of water; and, Wet Bottom Basin, any Detention Basin or facility designed to permit permanent impoundment of water in addition to Detention Storage, also called a "Retention Basin" .

(11) "Detention Storage" means the temporary detaining or storage of Stormwater under predetermined or controlled conditions in or on dry bottom basins, wet bottom basins, roofs of buildings or structures also used for other purposes. paved or surfaced areas also used for other purposes, and underground structures or pipes where the surface is used for other purposes.

(12) "Developed Property" means that which has been altered from its natural state by the addition of any improvements such as a building, structure, impervious surface, change of grade, or landscaping, property other than undisturbed property.

(13) "Developer" means any Person proposing to or engaged in Development or Construction.

(14) "Development" means any activity, change in land use, or improvement on any parcel of land, including any subdivision, that alters the surface of the land that increases the imperviousness of or creates additional impervious surfaces, including but not limited to, pavement, buildings, structures, and recreational playing fields. The term does not include:

(i) Construction of any buildings, structures, and/or appurtenant service roads, drives, and walks on a site having previously provided Stormwater control as part of a larger Development;

(ii) Improvements on any site having a gross land area less than one acre in size, regardless of land use;

(iii) Remodeling, repair, replacement, and improvements to any structure or facility and appurtenances that do not cause an increased area of impervious surfaces on the site in excess of ten percent (10%) of that previously existing;

(iv) Construction of any one new single-family or duplex dwelling unit, irrespective of the site area, on which the same may be situated;

(v) Agricultural uses.

(15) "Development Application" means any application required by the City Code as a prerequisite to initiation of Development.



- (16) "Director" means the Director of the City's Public Works Department or the Director's designee.
- (17) "Discharge" means the rate of outflow of water from a Drainage Area or a component of a Stormwater Drainage System.
- (18) "Drainage Area" means the geographical area contributing Stormwater Runoff to a point under consideration; i.e., a watershed, tributary area, or catchment area.
- (19) "Easement" means a legal right granted by a landowner to a grantee allowing the use of private land for Stormwater management purposes.
- (20) "Erosion" means the process by which the ground surface is worn away by the action of the wind, water, ice, gravity, or artificial means, and/or Land Disturbance activities.
- (21) "Erosion and Sediment Control Plan" means a plan for the control of soil Erosion and Sediment resulting from a Land Disturbance activity, in compliance with the Westwood Design Standards.
- (22) "Floodplain" means the floodway and floodway fringe as identified by the Federal Flood Insurance Program of FEMA, or such other designation of the floodplain as is subsequently adopted by the City, and representing the regulated 100-year water surface and corresponding elevations.
- (23) "Harmful" means that amount of chlorine which can be detected, or of any Pollutant that would cause harm to any plant or animal life at any point in the Storm Drainage System, Municipal Separate Storm Sewer System or Water Body.
- (24) "Hotspot" means an area where land use or activities generate highly contaminated Runoff, with concentrations of Pollutants in excess of those typically found in Stormwater.
- (25) "Impervious Area" means the total number of square feet of hard surface area on a given property that either prevents or retards the entry of water into the soil matrix, or causes water to run off the surface in greater quantities or at an increased rate of flow, than it would enter under conditions similar to those on undeveloped land. "Impervious Area" includes but is not limited to, roofs, roof extensions, driveways, pavement and athletic courts.
- (26) "Impervious Cover" means those surfaces that cannot effectively infiltrate rainfall.
- (27) "Infiltration" means the process of percolating Stormwater into the subsoil.
- (28) "Infiltration Facility" means any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above or below grade.
- (29) "Land Disturbance" means any activity that changes the physical conditions of land form, vegetation and hydrology, creates bare soil, or otherwise may cause Erosion or Sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of

materials.

(30) "Land Disturbance Permit (LDP)" means the local permit required by the City of Westwood for any Land Disturbance occurring in a given area.

(31) "Landowner" means that legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights on the land.

(32) "Landscape Architect" means an individual who is duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice landscape architecture.

(33) "Licensed Land Surveyor" means an individual who is duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice surveying.

(34) "Maintenance Agreement" means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of Stormwater management practices.

(35) "Maximum Extent Practicable" means the use of those Best Management Practices, which, based on sound engineering and hydro-geological principals, will, to the greatest degree possible and given all relevant considerations, including technology, climate, and site conditions, reduce Pollutants in Stormwater Runoff and minimize the amount of Stormwater Runoff from a site during and after Construction.

(36) "Municipal Separate Storm Sewer System" or "Public Storm Sewers" means the publicly maintained Stormwater Drainage System within this City, including all appurtenances and ancillary structures thereto, any conveyance or system of conveyances for Stormwater, including road drainage systems, streets, catch basins, Detention Basins, curbs, gutters, ditches, man-made, Channels, or storm drains, as well as any system that meets the definition of a Municipal Separate Storm Sewer System or "MS4" as defined by the Environmental Protection Agency in 40 C.F.R. 122.26, or amendments thereto.

(37) "Nonpoint Source Pollution" means Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, Pollutants from agricultural, silvicultural, mining, Construction, subsurface disposal and urban Runoff sources.

(38) "Non-Stormwater Discharge or Runoff" means any discharge to the Municipal Separate Storm Sewer System that is not composed entirely of Stormwater, including Surface Water Flow, that is resulting from residential, commercial, and industrial activities.

(39) "NPDES Stormwater Discharge Permit" means a National Pollutant Discharge Elimination System permit issued under authority delegated pursuant to 33 U.S.C. 1342(b) that authorizes the discharge of Pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(40) "Off-Site Facility" means a Stormwater management measure located outside the subject property boundary described in the permit application for land Development activity.

(41) "On-Site Facility" means a Stormwater management measure located within the subject property boundary described in the permit application for land Development activity.

(42) "Perennial Vegetation" means grass or other appropriate natural growing vegetation that provides substantial land cover, Erosion protection and soil stability and that is capable of sustained and healthy growth over multiple years under the constraints of shade, temperature, and moisture that will be prevalent on the site. For the purposes of this Chapter, annual grasses that do not regenerate after winter, ornamental plants or shrubs that do not offer effective Erosion and Sediment protection, and plants that are not suitable for the expected growing conditions on the site shall not be considered Perennial Vegetation.

(43) "Permit Holder" means the Person that is issued a Permit by the City of Westwood.

(44) "Pollutant" means anything which causes or contributes to Pollution. Pollutants may include, but are not limited to: Hazardous waste; Industrial waste; paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to Pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from Construction; asphalt based materials; concrete and/or cement; and noxious or offensive matter of any kind. "Pollution" or "Pollutant" means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. The term "Pollution" or "Pollutant" shall include those items defined as "Pollutants" in Section 502(6) of the Federal Clean Water Act, or any amendments thereto, (33 U.S.C. §1362(6)), Pesticides as defined by K.S.A. 2-2438a and any amendments thereto, and insecticides, fungicides, herbicides, rodenticides, nematocides, defoliant, plant regulators, or desiccants, as defined by K.S.A. 2-2202 and any amendments thereto. The term "Pollution" or "Pollutant" shall not include uncontaminated Stormwater, potable water or reclaimed water generated by a lawfully permitted water treatment facility. The term "Pollution" or "Pollutant" also shall not include any substance identified in this definition, if through compliance with the Best Management Practices available, the discharge of such substance has been reduced or eliminated to the Maximum Extent Practicable. In an enforcement action, the burden shall be on the Person who is the subject of such action to establish the reduction or elimination of the discharge to the Maximum Extent Practicable through compliance with the Best Management Practices available.

(45) "Professional Engineer" means an engineer duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice engineering.

(46) "Qualified Erosion Control Specialist" means a Professional Engineer licensed in the State of Kansas or a Landscape Architect licensed in the State of Kansas who has received a minimum of eight (8) hours classroom instruction in Sediment and Erosion control taught by a qualified professional in Erosion and Sediment control or an individual possessing certification as a Certified Professional in Erosion and Sediment Control, certified by CPESC, Inc. or equivalent qualifications approved in writing by the Director as part of an approved Stormwater Pollution Prevention Plan or Erosion and Sediment Control Plan.

(47) "Recharge" means the replenishment of underground water reserves.

(48) "Sediment" means any solid material, organic, or inorganic, that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, ice or gravity as result of soil Erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity.

(49) "Westwood Design Standards" refers to the most current version of the APWA standards, as amended, including, but not limited to, Sections 2100, 5100, and 5600, except those provisions inconsistent with federal, state, or local law. In the event of an inconsistency, federal, state, or local law shall take precedence over the Westwood Design Standards.

(50) "Site" any lot or parcel of land or a series of lots or parcels of land adjoining or contiguous or joined together under common ownership on which Land Disturbance activity is undertaken.

(51) "Stop Work Order" means an order issued which requires that all Construction activity on a site be stopped.

(52) "Stormwater Drainage System" means surface water and storm sewers and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to: pipes; culverts; bridges; open improved Channels; street gutters; inlets pumping stations; enclosed storm sewers; outfall sewers; surface drains; street; curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; Channels; ditches; rivers; streams; floodplains; water bodies; Detention and retention facilities; and other flood control facilities and works for the collection; conveyance; pumping; infiltration; treating; controlling; managing and disposing of Stormwater.

(53) "Stormwater" or "Stormwater Runoff" means any surface flow, Runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(54) "Stormwater Pollution Prevention Plan" (SWPPP) means a plan for the control of Pollutants, Pollution or soil Erosion and Sediment resulting from or during a Land

Disturbance activity, complying with the Westwood Design Standards and may include, without being limited to, the drawings, specifications, Construction documents, schedules, inspection reports, copies of permits or other related documents upon which Stormwater Water Quality Treatment Best Management Practices to be used on a site are set forth.

(55) "Upstream Tributary Area" means the acreage that discharges Runoff to any area of a Construction site where a Land Disturbance activity is taking place. As used herein, the Construction site shall mean that area described within the Land Disturbance Permit.

(56) "Water Quality Volume (WQv)" means the storage needed to capture and treat ninety percent (90%) of the average annual Stormwater Runoff volume. Numerically (WQv) will vary as a function of long term rainfall statistical data.

(57) "Water Quality Storm" means the storm event that produces less than or equal to ninety percent (90%) Stormwater Runoff volume of all 24-hour storms on an annual basis. In the Kansas City metropolitan area this is the 1.37" storm.

(58) "Water Body" means all surface watercourses and Water Bodies, including all natural and man-made waterways and definite Channels and depressions in the earth that may carry Stormwater or hold water, even though such waterways may only carry water during rains and storms and may not carry Stormwater at and during all times and seasons and including all areas defined at 40 C.F.R. §122.2, and amendments thereto.

(59) "Wetland" means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

(60) "Watershed Studies" means all studies, public or private, that examine a Drainage Area to determine Stormwater surface elevations and/or the condition of streamways or Water Bodies.

(Code 2008, § 15-101)

## **ARTICLE 2. ILLICIT DISCHARGE**

### **15-201. PURPOSE AND FINDINGS.**

(a) The purpose of this Article shall be to prevent the discharge of pollutants from land and activities within the City into the municipal separate storm sewer system (MS4) and / or into surface waters.

(b) The Governing Body of the City hereby finds that pollutants are discharged into surface waters, both through inappropriate non-stormwater discharges into the MS4 or the surface waters directly, and through the wash off and transport of pollutants found on the land and built surfaces by stormwater during rainfall events.

(c) Further, the Governing Body of the City hereby finds that such discharge of pollutants may lead to increased risks of disease and harm to individuals, particularly children, who come into contact with the water; may degrade the quality of such water for human uses, such as drinking, irrigation, recreation, and industry; and may damage the

natural ecosystems of rivers, streams, lakes and wetlands, leading to a decline in the diversity and abundance of plants and animals.

(d) Further, the Governing Body of the City hereby finds that this Article will promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.

(e) Further, the Governing Body of the City hereby finds that such discharges are inconsistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES), and other federal and state requirements for water quality and environmental preservation.

(f) Further, the Governing Body of the City hereby finds that a reasonable establishment of restrictions and regulations on activities within the City is necessary to eliminate or minimize such discharges of pollutants, to protect the health and safety of citizens, to preserve economic and ecological value of existing water resources within the City and within downstream communities, and to comply with the provisions of the City's responsibilities under the Clean Water Act and the NPDES program.  
(Code 2008, § 15-201; Ord. 869, Sec. 3)

### **15-202. ABBREVIATIONS. <sup>2</sup>**

The following abbreviations when used in this Article shall have the designated meanings:

- (a) BMP - Best Management Practice
- (b) CFR - Code of Federal Regulations
- (c) EPA - Environmental Protection Agency
- (d) HHW - Household Hazardous Waste
- (e) KDHE - Kansas Department of Health and Environment
- (f) MS4 - Municipal Separate Storm Sewer System
- (g) NPDES - National Pollutant Discharge Elimination System
- (h) PST - Petroleum Storage Tank  
(Code 2008, § 15-202; Ord. 869, Sec. 4)

### **15-203. DEFINITIONS.**

For the purposes of this Article, the following definitions shall apply:

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<sup>2</sup> **Legal analysis: 15-202. ABBREVIATIONS.** Delete this section and move these to the "definitions" in Article 1. Delete duplicates.

- (a) “Best management practices (BMPs)” - means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. <sup>3</sup>
- (b) “Car” - means any passenger car (as defined in K.S.A. 8-1445 as amended), passenger van, van, pickup truck, motorcycle, recreational vehicle, truck, tractor trailer, conveyance, motor home, or vehicle including, but not limited to, any device defined as a motor vehicle in K.S.A. 8-2401 as amended.
- ~~(c) “City” means the City of Westwood, Kansas. <sup>4</sup>~~
- (d) Clean Water Act - means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.
- ~~(e) “Code” means the City of Westwood City Code. <sup>5</sup>~~
- ~~(f) “Director” means the Director of Public Works or the Director’s authorized representative. <sup>6</sup>~~
- (g) “Discharge” - means the addition or introduction, directly or indirectly, of any pollutant, stormwater, or any other substance into the MSA or surface waters.
- (h) “Domestic sewage” - means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, retail and commercial establishments, factories, and institutions, that is free from industrial waste.
- (i) “Extremely hazardous substance” - means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.
- (j) “Fertilizer” - means a substance or compound that contains a plant nutrient element in a form available to plants and is used primarily for its plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop,

<sup>3</sup> **Legal analysis: 15-203. DEFINITIONS, (a) Best management practices (BMP).** This term is defined in Article 1 with a slightly different definition. Please advise whether to revise and combine these two instances into one definition in Article 1, applicable to the entire chapter.

<sup>4</sup> **Legal analysis: 15-203. DEFINITIONS, (c) City.** Delete as covered by general provisions in Chapter 1.

<sup>5</sup> **Legal analysis: 15-203. DEFINITIONS, (e) Code.** Delete as covered by general provisions in Chapter 1.

<sup>6</sup> **Legal analysis: 15-203. DEFINITIONS, (f) Director.** Delete as covered by the definitions in Article 1 of this chapter, unless the term is to represent a different individual in this article.

or a mixture of two or more fertilizers.

(k) "Hazardous household waste (HHW)" - means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261 or K.A.R 28-29-23b.

(l) "Hazardous substance" - means any substance listed in Table 302.4 of 40 CFR Part 302.

(m) "Hazardous waste" - means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

(n) "Industrial waste" - means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

(o) "Municipal separate storm sewer system (MS4)" - means the system of conveyances, (including roads with drainage systems, municipal streets, private streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage. <sup>7</sup>

(p) "NPDES" - means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the federal Clean Water Act.

(q) "NPDES permit" - means for the purpose of this chapter, a permit issued by United States Environmental Protection Agency (EPA) or the state of Kansas that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(r) "Oil" - means any kind of oil in any form, including but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

~~(s) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local governmental entities.~~<sup>8</sup>

(t) "Pesticide" - means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator,

<sup>7</sup> **Legal analysis: 15-203. DEFINITIONS, (o) Municipal separate storm sewer system (MS4).** Move this definition to Article 1 definitions, as the term is used in multiple articles throughout the chapter.

<sup>8</sup> **Legal analysis: 15-203. DEFINITIONS, (s) person.** Delete as covered by general provisions in Chapter 1.



defoliant, or desiccant.

(u) "Petroleum Product" - means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle, boat or aircraft including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and diesel fuel.

(v) "Pollutant" - means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of the waters including changes in temperature, taste, odor, turbidity, or color of the water. Such substance or material may include but is not limited to, dredged spoil, spoil waste, incinerator residue, sewage, pet and livestock waste, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, oil and petroleum products, used motor oil, anti-freeze, litter, pesticides, and industrial, municipal, and agricultural waste discharged into water. <sup>9</sup>

(w) "Property Owner" - shall mean the named property owner as indicated by the records of the Johnson County, Kansas Office of Records and Tax Administration;

(x) "Release" - means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 and/or surface waters.

(y) "Sanitary sewer" - means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant and to which stormwater, surface water, and groundwater are not intentionally admitted.

(z) "Septic tank waste" - means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(aa) "Sewage" - means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant for treatment.

~~(bb) "State" means the state of Kansas.~~ <sup>10</sup>

~~(cc) "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.~~ <sup>11</sup>

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<sup>9</sup> **Legal analysis: 15-203. DEFINITIONS, (v) Pollutant.** This term was defined differently and more comprehensively in the chapter definitions of Article 1. Please advise whether to retain this as an article-specific definition of pollutant, or delete it as covered by Article 1.

<sup>10</sup> **Legal analysis: 15-203. DEFINITIONS, (bb) State.** Delete as covered by general provisions in Chapter 1.

<sup>11</sup> **Legal analysis: 15-203. DEFINITIONS, (cc) Stormwater.** Delete as covered by the chapter definitions in Article 1.

(dd) "Surface waters" - means any body of water classified as "surface waters" by the state of Kansas, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, cavern streams, alluvial aquifers associated with these surface waters, lakes, man-made reservoirs, oxbow lakes, ponds, and wetlands, as well as any other body of water classified by the federal government as a "water of the United States".

(ee) "Waste" - means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial mining, community and agricultural activities. Waste does not include solid or dissolved materials in domestic sewage or irrigation return flows or solid or dissolved materials or industrial discharges which are point sources subject to permits under the State of Kansas. The Federal definition of solid waste is found at 40 CFR 257.2.

(ff) "Water quality standard" - means the law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an anti-degradation statement.  
(Code 2008, § 15-203; Ord. 869, Sec. 5)

**15-204. GENERAL PROHIBITION.**

(a) No person shall release or cause to be released into the MS4, or into any surface waters within the City, any discharge that is not composed entirely of stormwater that is free of pollutants, except as allowed elsewhere herein.

(b) Notwithstanding any other provisions of this Article, any discharge shall be prohibited by this Article if the discharge in question has been determined by the Director to be a source of a pollutant to the MS4 or to surface waters, written notice of such determination has been provided to the property owner or person responsible for such discharges, and the discharge has occurred more than ten days beyond such notice.  
(Code 2008, § 15-204; Ord. 869, Sec. 6)

**15-205. SPECIFIC PROHIBITIONS AND DUTIES.**

The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition herein, but are provided to address specific discharges that are frequently found or are known to occur:

(a) No Person shall release or allow to be released any of the following substances into the MS4:

- (1) Any new or used petroleum product or oil;
- (2) Any industrial waste;
- (3) Any hazardous substance or hazardous waste, including household hazardous waste;

- (4) Any domestic sewage or septic tank waste, grease trap or grease interceptor waste, holding tank waste, or grit trap waste;
- (5) Any garbage, rubbish or other waste;
- (6) Any new or used paints, including latex-based paints, oil-based paints, stains, varnish, and primers, as well as cleaning solvents and other associated products;
- (7) Any yard wastes which have been moved or gathered by a person;
- (8) Any wastewater that contains soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial motor vehicle wash facility; from any vehicle washing, cleaning, or maintenance at any new or used motor vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment;
- (9) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or any surfactant based cleaner;
- (10) Any wastewater from commercial floor, rug, or carpet cleaning;
- (11) Any wastewater from the washdown or other cleaning of pavement that contains any soap, detergent solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all such materials have been previously removed;
- (12) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;
- (13) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
- (14) Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area or any pet wastes generally;
- (15) Any filter backwash from a swimming pool or fountain, except that nothing in this Article shall be construed as to require the alteration of the filter discharge plumbing of an existing swimming pool, fountain or spa if such plumbing was compliant with applicable state, federal, and local regulations at the time of construction;
- (16) Any swimming pool, fountain or spa water containing a harmful level of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the water or during cleaning of the facility;
- (17) Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or surface waters;

- (18) Any contaminated runoff from a vehicle wrecking or storage yard;
- (19) Any substance or material that will damage, block, or clog the MS4;
- (20) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state;
- (21) Any other discharge that causes or contributes to causing the City to violate a state water quality standard, any City NPDES stormwater permit or authorization, or any state-issued discharge permit for discharges from its MS4.
- (b) No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures, except as allowed for in conformance with the Westwood Municipal Code.
- (c) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4. No property owner shall allow such a connection to continue in use on his or her property.
- (d) No person shall use pesticides, herbicides, or fertilizers except in accordance with manufacturer recommendations. Pesticides, herbicides, and fertilizers shall be stored, transported, and disposed of in a manner to prevent release to the MS4.
- (e) No person shall tamper with, destroy, vandalize, or render inoperable any BMPs which have been installed for the purpose of eliminating or minimizing pollutant discharges, nor shall any person fail to install or fail to properly maintain any BMPs which have been required by the City or by other local, state, or federal jurisdictions.  
(Code 2008, § 15-205; Ord. 869, Sec. 7)

#### **15-206. EXCEPTIONS TO PROHIBITED ACTS.**

- (a) Unless identified by the City or KDHE as a significant source of pollutants to surface water the following non-stormwater discharges are deemed acceptable and not a violation of this Article:
- (1) water line flushing;
  - (2) diverted stream flow;
  - (3) rising groundwater;
  - (4) uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewers;
  - (5) uncontaminated pumped groundwater;

- (6) contaminated groundwater if authorized by KDHE and approved by the City;
- (7) discharges from potable water sources;
- (8) foundation drains;
- (9) air conditioning condensate;
- (10) irrigation waters;
- (11) springs;
- (12) water from crawl space pumps;
- (13) footing drains;
- (14) individual residential car washing;
- (15) flows from riparian habitats and wetlands;
- (16) de-chlorinated swimming pool discharges excluding filter backwash;
- (17) street wash waters (excluding street sweepings which have been removed from the street);
- (18) discharges or flows from emergency fire fighting activities;
- (19) heat pump discharge waters (residential only);
- (20) treated wastewater or other discharges meeting requirements of an NPDES permit;
- (21) periodic and temporary application of substances by the City to the rights-of-way of the City for traffic safety or to protect the health, safety, and welfare of the citizens, as prescribed by the Director of Public Works; and
- (22) other discharges determined not to be a significant source of pollutants to waters of the state, a public health hazard or a nuisance.

(b) Discharges specified in writing by the Director as being necessary to protect public health and safety.

(Code 2008, § 15-206; Ord. 869, Sec. 8)

### **15-207. INSPECTION AND DETECTION PROGRAM.**

The Director is authorized to develop and implement a plan to actively detect and eliminate prohibited discharges and connections to the MS4 or surface waters within the City. Such plan may include, but is not limited to, periodic and random inspections of facilities and businesses, particularly those most associated with potentially prohibited

discharges; visual surveys of exterior practices; inspection, sampling and analyses of discharges from outfalls of the MS4, particularly during dry weather periods; manhole and pipe inspections to trace discharges through the system to point of origin; education on pollution prevention; and receipt of complaints and information from the public regarding known or suspected discharges.  
(Code 2008, § 15-207; Ord. 869, Sec. 9)

**15-208. RELEASE REPORTING AND CLEANUP.**

(a) Any person responsible for the release of any prohibited material that may flow, leach, enter, or otherwise be introduced into the MS4 or surface waters shall take all necessary steps to ensure the containment and cleanup of such release.

(b) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

(c) In the event of a release of non-hazardous materials, said person shall notify the Director in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director within three business days of the phone notice. **12**  
(Code 2008, § 15-208; Ord. 869, Sec. 10)

**15-209. ENFORCEMENT; DESIGNATION OF OFFICER; ABATEMENT; RIGHT OF ENTRY; PENALTY.**

The Director or his or her appointed representative shall be designated as the public officer charged with the administration and enforcement of this Article. The public officer shall authorize the investigation of violations of the Article. If it is determined that a violation of this Article exists, then the officer shall declare such condition a nuisance and is authorized to pursue abatement and enforcement procedures as specified in the Westwood Municipal Code. Further, any violation of this Article shall constitute an Ordinance violation offense and shall also be subject to the penalties set forth in Westwood Municipal Code Section 1-116 in addition to, and not in lieu of, any and all remedies and penalties available to the City. Each day during which any act violative of this Article takes place shall constitute a separate violation of this Article.  
(Code 2008, § 15-209; Ord. 869, Sec. 11)

**ARTICLE 3. SEDIMENT AND EROSION CONTROL**

**15-301 OUTLINE OF SECTIONS**

- 15-302 Purpose.
- 15-303 Definitions.
- 15-304 Land Disturbance Activity.

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**12 Legal analysis: 15-208. RELEASE REPORTING AND CLEANUP, (c).** Please advise if the city wishes to include a provision allowing for email notification to the Director.

- 15-305 Land Disturbance Permit.
- 15-306 Land Disturbance Permit Inspections.
- 15-307 For Land Disturbances Of Less Than One Acre.
- 15-308 Fees.
- 15-309 Additional Persons Responsible for Compliance.
- 15-310 Compliance and Use.
- 15.311 Enforcement of Code Provisions.
- 15-312 Severability.
- 15-313 Savings.

### **15-302. PURPOSE.**

The Congress of the United States has amended the Clean Water Act of 1972 to reduce Pollutants discharged into the waters of the United States by extending National Pollutant Discharge Elimination System (hereinafter "NPDES") requirements to regulate stormwater and urban runoff discharge from Land Disturbance and Construction activities, into the City's Stormwater Drainage Systems.

The City of Westwood is subject to the NPDES requirements of federal law as an operator of a Small Municipal Separate Storm Sewer System, and the City is therefore obligated by federal law to develop, implement, and enforce minimum Erosion and Sediment control standards in compliance with the City's Kansas Water Pollution Control General MS4 Permit.

The purpose of this Article is to implement and provide for enforcement of a program to regulate Land Disturbance and Construction activities related to grading and to control Erosion and Sediment resulting from these activities.  
(Code 2008, § 15-302)

### **15-303 DEFINITIONS.**

As used in this Article, unless from the context a different meaning is intended, or the Code directs that a different definition is to be applied to a provision, the terms or phrases used herein shall have those meanings and definitions as set forth in Section 15-101, et seq., of the Code of the City of Westwood.  
(Code 2008, § 15-303)

### **15-304 LAND DISTURBANCE ACTIVITY.**

(a) No Person shall authorize or maintain a Land Disturbance activity or Construction Site that fails to comply with the Westwood Design Standards and the requirements of this Article.

(b) No Person shall authorize or maintain a Land Disturbance activity or a Site of Construction that fails to provide and implement Erosion and Sediment Control Best Management Practices to the Maximum Extent Practicable to prevent the discharge of Sediment, Construction materials, concrete truck washout, fuel or other Pollutants beyond the project Construction limits, adjacent staging, storage or parking areas and/or property boundaries or into the City's Stormwater Drainage System, rights-of-way, drainage easements, alleys, or other property of the City.

(c) No Person shall authorize or maintain a Land Disturbance activity or Site of Construction without a Land Disturbance Permit (LDP) and/or a Site -specific Erosion and Sediment Control Plan approved by the Director prior to any Construction or Land Disturbance activity as required by this Article.

(1) No Person shall fail to immediately take all action necessary to completely abate any violation of this Article including but not limited to the establishment or restoration of Erosion and Sediment Control BMP's as required by this Article and remedial action to clean and/or remove Sediment and other Pollutants in violation of Chapter 15.  
(Code 2008, § 15-304)

### **15-305 LAND DISTURBANCE PERMIT.**

The issuance and approval of a Land Disturbance Permit is subject to and contingent upon compliance with this Article and all other City permits, Code of the City of Westwood, other City Regulations and other requirements specific to the Development during the duration of the Land Disturbance, and such Land Disturbance Permit may be revoked or withdrawn upon a failure to comply with this Article. The failure to comply with the requirements stated in this Article shall be unlawful and shall constitute a violation of this Article. No Person shall authorize or maintain a Land Disturbance activity without first obtaining any Land Disturbance Permit required by this Article. The Landowner of the land upon which a Land Disturbance activity takes place, shall be the Person responsible for obtaining any required Land Disturbance Permit except for work conducted in the Right-of-Way or Utility Easements. The Person or Construction Site Operator conducting Land Disturbance activities in the Right-of-Way or in a Utility Easement shall be responsible for obtaining any required Land Disturbance Permit.

(a) A Land Disturbance Permit is required as necessary to permit the City to meet its permit requirements under the National Pollutant Discharge Elimination System permit or as required by law, or for the following Land Disturbance activities (specific requirements may vary pursuant to the Westwood Design Standards):

(1) The cumulative disturbance of an area greater than or equal to one (1) acre; or

(2) The disturbance of any part of a larger common plan of Development or sale that; when completed; will disturb a cumulative area of greater than or equal to one (1) acre.

(b) A Land Disturbance Permit is not required for the following:

(1) Work to correct or remedy emergencies, including situations that pose an immediate danger to life or property;

(2) Landscaping or home gardening;

(3) Re-establishment of lawn areas; or

(4) Agricultural uses with the exception that if the Director determines that Erosion and Sediment controls are needed then the following standards or permits may be required to be implemented and maintained:



- (i) United States Department of Agriculture Natural Resources Conservation Service Erosion and Sediment Control Standards or
- (ii) Land Disturbance Permit may be required.
- (c) A Land Disturbance Permit application shall include, but is not limited to, the following minimum submittal requirements:
- (1) A Site-specific Erosion and Sediment Control Plan that complies with this Article and the Westwood Design Standards;
  - (2) A Site-specific grading plan that complies with this Article and the Code of the City of Westwood, the Westwood Design Standards, and other applicable Westwood Policies and Administrative Statements;
  - (3) A Stormwater Pollution Prevention Plan (SWPPP) that complies with this Article and the Westwood Design Standards. The SWPPP must be in compliance with the State of Kansas KDHE General Permit for NPDES Stormwater Runoff from Construction Activities;
  - (4) Contact information for the Applicant, Construction Site Operator, Project Owner, Qualified Erosion Control Specialist, and Inspector;
  - (5) Area to be disturbed;
  - (6) Duration of Land Disturbance;
  - (7) Security as required by this Article;
  - (8) Permit Fee as authorized by this Article.
- (d) The Construction Site Operators required to be identified in the application shall be trained in Erosion and Sediment control practices, shall maintain a copy of the SWPPP on the project Site and shall comply with all the requirements of the LDP.
- (e) The Land Disturbance activity described in the Land Disturbance Permit application shall be commenced within the time limits defined on the application. The Land Disturbance activity described and authorized in the Land Disturbance Permit application shall adhere to the schedule defined in the Land Disturbance Permit application or be subject to additional fees defined in this Article.
- (f) The Land Disturbance Permit application, Erosion and Sediment Control plans and all other LDP requirements shall be prepared under the supervision of and sealed by a Professional Engineer or Landscape Architect licensed in the state of Kansas who has received a minimum of eight (8) hours classroom instruction in Sediment and Erosion control taught by a Qualified Erosion Control Specialist.
- (g) A Qualified Erosion Control Specialist shall be authorized by the Permit Holder of the Land Disturbance Permit and identified on the Land Disturbance application as the

Person responsible to manage and ensure that all work is in compliance with the SWPPP and all requirements of the Land Disturbance Permit approved by the City.

- (h) A Land Disturbance Permit not being required for a Site does not exempt a Site from following the basic Erosion control practices defined in the Westwood Design Standards.
- (i) If the Land Disturbance activity threatens or impedes the ability of the City to meet its own permit requirements under the NPDES Stormwater Discharge Permit the Director may require any Person to obtain a Land Disturbance Permit in full compliance with this Article.
- (j) Every permit shall expire based on the time limits defined in the application.
- (k) No Person required by this Article to obtain a Land Disturbance Permit shall authorize or maintain a Land Disturbance activity or a Site of Construction, which is not maintained at all times, in compliance with the Site -specific Erosion and Sediment Control Plan approved by the Director.
- (l) No Person shall permit, authorize or maintain a Land Disturbance activity or a Construction activity until all Erosion and Sediment control measures identified in this Article have been installed, inspected, and approved in accordance with this Article.
- (m) No Person required by this Article to obtain a Land Disturbance Permit shall fail to obtain a satisfactory final inspection and City approval of the full Site restoration in compliance with all requirements of this Article, prior to the expiration of the Land Disturbance Permit.  
(Code 2008, § 15-305)

### **15-306 LAND DISTURBANCE PERMIT INSPECTIONS.**

- (a) Maintenance of Control Measures. All required Erosion and Sediment Control measures shall be maintained in good order and in compliance with the Erosion and Sediment Control Plan at all times.
- (b) Routine Inspection. It shall be the duty of the Permit Holder to provide routine inspections of the Construction Site and maintain effective Erosion and Sediment Control measures. Routine inspections shall be performed once per week, more frequently if required on the Plan, and within twenty-four (24) hours following each rainfall event of half an inch (1/2") or more within any twenty-four (24) hour period. A log shall be kept of these inspections by the Qualified Erosion Control Specialist as a part of the SWPPP. Any deficiencies shall be noted in a report of the inspection and include the action taken to correct the deficiency
- (c) The LDP application shall designate the Qualified Erosion Control Specialist who shall provide the routine inspections required by this Section and/or designate a qualified inspector. The designation shall be made, in writing, to the Director at the time the Land Disturbance Permit application is submitted for approval. The Qualified Erosion Control Specialist and or their assigned Inspector that performs the Routine Inspections shall maintain a copy of the most current Erosion and Sediment Control Plan at the

Construction Site at all times. The Inspection shall be done under the supervision of the Qualified Erosion Control Specialist. The written reports shall be submitted by the Qualified Erosion Control Specialist to City as required by and in compliance with the Westwood Design Standards. The City shall not be designated as an inspector.

(d) Initial Inspection. The Permit Holder shall notify the Director when initial Erosion and Sediment Control measures are installed in accordance with the Erosion and Sediment Control Plan. No Land Disturbance activities shall begin prior to written approval by the Director of the certification, by the Qualified Erosion Control Specialist, that all pre-Construction Erosion and Sediment Control measures are correctly installed per the Approved Plan.

(e) A Land Disturbance Permit shall not be closed until a final inspection and approval of the site stabilization is issued by the City. No final certificate of occupancy shall be issued until a Site is stabilized, restored and the Land Disturbance Permit's requirements have been satisfied and the permit closed. A Site shall be considered stabilized and restored when Perennial Vegetation, pavement, buildings or structures using permanent materials, cover seventy percent (70%) of the Upstream Tributary Area found within the area defined by the Land Disturbance Permit and as required by the Director. All portions of the Site using Perennial Vegetation for ground stabilization shall be homogeneously covered with at least a seventy percent (70%) vegetation density. Restoration includes the removal of all non- permanent Erosion and Sediment Control devices for the Site. Final Certification of the Restoration and Stabilization of the Site shall be submitted for approval to the Director by the Qualified Erosion Control Specialist.

(f) A Land Disturbance Permit acknowledges and conveys to the Director the right to enter upon property described in the Land Disturbance Permit, as necessary to enforce and carryout the provisions of this Article.  
(Code 2008, § 15-306)

**15-307 FOR LAND DISTURBANCES OF LESS THAN ONE ACRE.**

(a) Land Disturbances less than one (1) acre that are not covered by a LDP and require a building permit or work in the right-of-way permit will require an Erosion and Sediment Control Plan to be submitted in compliance with the Westwood Design Standards.

(b) Franchised and/or Public Utilities shall obtain a General Land Disturbance Permit for Land Disturbances of less than one (1) acre in-lieu of obtaining individual project Land Disturbance Permit. The General Land Disturbance Permits for franchised and public utilities will be renewed annually and shall include the effective erosion control standards and construction methods that are to be implemented on the utility's projects, conforming to the Westwood Design Standards. The Fee and performance surety for a General Land Disturbance Permit will be as shown in the latest schedule of fees established administratively by the City of Westwood.  
(Code 2008, § 15-307)

**15-308 FEES.**

(a) Prior to the issuance of Land Disturbance Permit each Applicant shall pay to the City a fee as established by the Governing Body. Fees paid for a Land Disturbance Permit,

which is subsequently revoked by the Director, are not refundable. A Person operating in compliance with the regulations of this Article shall not be charged a permit fee when obtaining a Land Disturbance Permit for Construction or re-Construction of City owned and financed capital improvement projects.

(b) Any Person who permits, authorizes, or maintains a Land Disturbance activity without first obtaining a valid Land Disturbance Permit required by this Article, shall pay additional permit fees as indicated in the latest schedule of fees established administratively by the City of Westwood Code.

(c) The Applicant shall establish and maintain throughout the permit period an escrow account, issue a letter of credit, or a surety bond in the City's name, as a sufficient surety for the City to requirements of this Article. The Director may determine that a specific type of surety instrument be required of an Applicant based on the project proposed and past performance of the Applicant. The amount of the required surety shall be as defined in the latest schedule of fees established administratively by the City of Westwood. The amount of the letter of credit or escrow account may be reduced with the approval, in writing, of the Director by amending the letter of credit or escrow account.  
(Code 2008, § 15-308)

#### **15-309      ADDITIONAL PERSONS RESPONSIBLE FOR COMPLIANCE.**

The Person responsible for compliance with this Article shall include, jointly and severally:

(a) The Landowner and/or occupant of the property upon which a Land Disturbance or Construction activity takes place. When a Land Disturbance Permit and/or Site Development Permit is issued, the Landowner is responsible for Land Disturbance activities from permit issuance to closure, unless the City approves a transfer of responsibility to a new Landowner when land is sold;

(b) The Person who submits or to whom a Land Disturbance Permit is issued that relates to the property upon which a Land Disturbance activity or Construction activity takes place;

(c) The Person who submits, or requests a waiver of, the Site specific Erosion and Sediment Control Plan that relates to the property upon which a Land Disturbance activity or Construction activity takes place;

(d) Any Person, who engages in, permits, manages, or participates in a Land Disturbance activity or Construction activity;

(e) Construction Site Operators.  
(Code 2008, § 15-309)

#### **15-310      Compliance and Use.**

The property described in a Land Disturbance Permit shall be maintained at all times in compliance with all provisions of the Code of the City of Westwood, state and federal laws, Westwood Design Standards, applicable laws or regulations, the conditions or requirements for approval of a Site plan, plat, or special use permit, including required

drainage, grade or elevation plans. The property described in a Land Disturbance Permit shall be maintained at all times in compliance with the provisions of any application, plans or specifications upon which such permit was issued.

The approval of the Erosion and Sediment Control Plan and the Stormwater Pollution Prevention Plan (SWPPP) is contingent upon compliance with the requirements stated in this Article, and shall comply with the Westwood Design Standards to the Maximum Extent Practicable in order to prevent the escape of Sediment and other Pollutants from the Site.

The failure to comply with the requirements stated in this Article shall be unlawful and shall constitute a violation of this Article.

~~The provisions of this Article shall be in effect upon passage and publication as provided by law. A LDP shall not be required for any Land Disturbance activities that have a valid City permit issued prior to the effective date herein.~~ **13**  
(Code 2008, § 15-310)

### **15-311 Enforcement of Code Provisions.**

Any Person that fails to provide and implement Erosion and Sediment Control Best Management Practices to the Maximum Extent Practicable as required by this Article, shall be ordered by the Director to take remedial action on said land to prevent the occurrence or recurrence of a violation of this Article. Remedial action shall include, but not be limited to, conformance to the requirements of this Article. When failed or absent Erosion control has resulted in mud, silt, gravel, dust or other debris entering into the public rights of way, drainage Easements, alleys, or other property of the City, the remedial action required also shall include the restoration of the area disturbed to a neat and presentable condition and removal of any debris or other Pollutants.

Whenever the Director finds a violation of this Article, the Director shall order the Landowner of the land upon which a Land Disturbance activity takes place, the Construction Site Operator, and/or the Permit Holder to take action within three (3) days after service of such order to comply with the provisions of this Article. The order may direct the removal of any dirt, debris or mud that has been deposited in the rights of way, drainage easements, alleys, or other properties owned by the City, within four (4) hours after service of such notice. Notice may be given in person, by posting at the Site, by telephone call, or by facsimile contacts as provided in the Land Disturbance Permit application. **14**

In addition to the enforcement provisions of the Code of the City of Westwood, the Director may issue a Stop Work Order if the Director determines that work authorized by a Land Disturbance Permit is in violation of this Article or the Erosion and Sediment Control Plan, including required drainage, grade or elevation plans, or not in compliance

**13 Legal analysis: 15-310 Compliance and Use.** Delete effective date language as no longer needed. Assuming any work commenced under a permit prior to the effective date has concluded, also delete last sentence as no longer needed.

**14 Legal analysis: 15-311 Enforcement of Code Provisions.** In paragraph 2, please advise if the city would like to add a provision allowing for notice by email.

with the provisions of the application, plans or specifications, or conditions upon which a permit was issued, including but not limited to the following:

- (a) Applicant fails to submit reports in accordance with the Westwood Design Standards;
- (b) Inspection by the Director reveals the Site defined by the Land Disturbance Permit is not in substantial compliance with the Erosion and Sediment Control Plan, as determined by the Director;
- (c) Failure to comply with a written order from the Director to bring the Site into compliance with the Land Disturbance Permit, correct a violation of this Article, or restore a disturbed area within the time limits defined by the Director; or
- (d) Applicant fails to pay any fee.

In the event a Stop Work Order is issued by the Director, the Director shall order and direct the Landowner of the property, or the Landowner's agent, or any party in possession of such property described in the Land Disturbance Permit application, or the Construction Site Operator performing the work, or any work authorized by a City Permit in the Development to immediately suspend work within the area defined in the Land Disturbance Permit.

Such Stop Work Order shall be in writing, shall state the conditions under which the work may be resumed, and may be served upon a Person to whom it is directed either by personal delivery, or by posting the area defined by the Land Disturbance Permit and/or mailing a copy of the same to the address identified within the Land Disturbance Permit application for the Permit Holder, Landowner, and/or any party in possession of such property. In the event the Director issues a written Stop Work Order, all Persons shall cease all work on the Development Site, except work necessary to remedy the cause of the suspension.

It shall be unlawful for a Land Disturbance Permit Applicant, Construction Site Operator, party in possession of property subject to a Stop Work Order, or Landowner subject to a Stop Work Order, to allow, consent, or permit any Person to perform work described within the Land Disturbance Permit or any other work requiring a City permit, upon property subject to a Stop Work Order.

Upon written notice by the Director as required herein for a Stop Work Order, the Director may revoke the Land Disturbance Permit if the Applicant fails or refuses to remedy the cause of the suspension set forth in a Stop Work Order.

In the event the Land Disturbance Permit is revoked by the Director, no Person shall permit or continue any work described in the Land Disturbance Permit without first obtaining a new Land Disturbance Permit and paying a new permit fee as required by this Article.

(Code 2008, § 15-311)

**~~15-312 SEVERABILITY.~~<sup>15</sup>**

~~If any part or parts of this Article shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Article. The Governing Body hereby declares that it would have passed the remaining parts of this Article if it had known that such part or parts thereof would be declared invalid.  
(Code 2008, § 15-312)~~

**15-313 SAVINGS CLAUSE.**

Neither the adoption of this Article, nor the future repeal or amendment of any section or part or portion thereof, shall in any manner affect the prosecution for violation of this Article, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under any provision of the Code of the City of Westwood, nor be construed as affecting any of the provisions of the Code of the City of Westwood relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any provision of the Code of the City of Westwood, and all rights and obligations thereunder shall continue in full force and effect.  
(Code 2008, § 15-313)

**ARTICLE 4. POST CONSTRUCTION STORM WATER QUALITY TREATMENT****15-401 OUTLINE OF SECTIONS**

- 15-402 Purpose and Intent.
- 15-403 Interpretations.
- 15-404 Relationship to Other Laws.
- 15-405 Disclaimer of Liability.
- 15-406 Applicability.
- 15-407 Technical Specifications and Design Criteria Adopted.
- 15-408 Submittal of Studies, Plans, and Specifications.
- 15-409 Certification of Studies, Plans, and Specifications.
- 15-410 Stormwater Management Permit Required.
- 15-411 Easements.
- 15-412 Issuance of Permit.
- 15-413 Repairs During Maintenance Period.
- 15-414 Notice of Acceptance.
- 15-415 As-Built Plans.
- 15-416 Facility Maintenance.
- 15-417 Annual Certification.
- 15-418 Disturbance of Constructed Facilities.
- 15-419 Severability
- 15-420 Savings Clause.

**15-402. PURPOSE AND INTENT.**


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<sup>15</sup> **Legal analysis: 15-312 SEVERABILITY.** Delete as covered by general provisions in Chapter 1.

The Congress of the United States has amended the Clean Water Act of 1972 to reduce Pollutants discharged into the waters of the United States by extending National Pollutant Discharge Elimination System (hereinafter "NPDES") requirements to regulate Stormwater and urban runoff discharge from Land Disturbance and Construction activities, into the City's Stormwater Drainage Systems.

The City of Westwood is subject to the NPDES requirements of federal law as an operator of a Small Municipal Separate Storm Sewer System (MS4), and the City is therefore obligated by federal law to develop, implement, and enforce minimum post-Construction Stormwater quality treatment standards in compliance with the City's Kansas Water Pollution Control General MS4 Permit.

The purpose of this Article shall be to establish post-Construction minimum Stormwater management requirements and controls on any new Development or redevelopment projects that disturb greater than or equal to one (1) acre. This Article also will establish requirements for long-term maintenance of structural controls within the City for drainages into the Municipal Separate Storm Sewer System (MS4) and/or into surface waters. This Article seeks to meet this purpose through the following objectives:

- (a) Minimize increases in Stormwater Runoff from any development in order to reduce non-point source Pollution, siltation, and streambank Erosion and maintain the integrity of stream channels;
- (b) Minimize increases in non-point source Pollution caused by Stormwater Runoff from development which would otherwise degrade local water quality, particularly if receiving water bodies are classified as impaired on the current version of the 303d listing of impaired waters in Kansas as identified by the Kansas Department of Health and Environment (KDHE); and
- (c) Reduce Stormwater runoff rates, soil Erosion, and non-point source Pollution, wherever possible, through Stormwater quality Best Management Practices (BMPs) and to ensure that these BMPs are properly maintained and pose no threat to public safety.

Within this Article, the term Stormwater Quality Facility shall mean BMPs that are implemented or constructed in order to comply with this Article.

(Code 2008, § 15-402)

### **15-403. INTERPRETATIONS.** <sup>16</sup>

In their interpretation and application, the provisions of this Article are hereby adopted as the minimum requirements for the promotion of the public health, safety, and general welfare. Whenever the requirements of this Article are at variance with the requirements of any lawfully-adopted statute, ordinance, resolution, regulation, rule, or other provision of law, the most restrictive, or that imposing the higher standard, shall govern.

(Code 2008, § 15-403)

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<sup>16</sup> **Legal analysis: 15-403. INTERPRETATIONS.** Move this section to Article 1 as a general chapter provision; delete this and duplicate provisions in other articles.



**15-404. RELATIONSHIP TO OTHER LAWS.**

This Article shall not be construed as abating any action now pending under, or by virtue of, prior existing regulations; or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue; or as affecting the liability of any Person; or as vacating or annulling any rights obtained by any Person by lawful action of the City, except as shall be expressly provided for in this Article.  
(Code 2008, § 15-404)

**15-405. DISCLAIMER OF LIABILITY.**

The requirements set forth in this Article establish minimum requirements, which must be implemented with good engineering practice and workmanship. Use of these requirements shall not constitute a representation, guarantee or warranty of any kind by the City, or its officers and employees, of the adequacy or safety of any post-Construction Stormwater Quality Facility or use of land, nor shall the acceptance of a preliminary or final Stormwater Quality Facility or the issuance of any City permit imply that the land uses permitted will be free from adverse impacts to Stormwater quality. This Article, therefore, shall not create liability on the part of the City or any officer or employee with respect to any legislative or administrative decision lawfully made hereunder.  
(Code 2008, § 15-405)

**15-406. APPLICABILITY.**

The provisions of this Article shall extend and apply to all land within the corporate limits of the City, with the following conditions.

(a) The provisions of this Article shall apply to all activities that meet the definition of Development in Section 15-101, et seq., of the Code of the City of Westwood and disturb an area equal to or greater than one (1) acre in area, and shall also include projects of less than one (1) acre that are part of a larger common plan of Development or sale.

(b) Notwithstanding any other requirements of this Article, this Article shall not apply, unless superseded by state or federal regulation, to properties on which a preliminary plat has been approved by the Planning Commission prior to February 14, 2008, and a final plat containing a portion of that plat has been recorded in the Johnson County Office of Records and Tax Administration prior to February 14, 2009. If Public Improvement or Stormwater Management Permits are not obtained for all parts of the Development within two (2) years of the Final Plat approval, all requirements of this Article shall apply to all subsequent Construction permits, and Plats and Plans shall be revised accordingly.

This Article shall not apply to a site plan approved by the Planning Commission prior to February 14, 2008, and for which a building permit has been obtained and Construction begun prior to January 1, 2010. **17**

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**17 Legal analysis: 15-406. APPLICABILITY, subsection (b).** If obsolete, delete.

(c) The provisions of this Article shall apply to City administered street Construction as directed by the Governing Body at the completion of preliminary plans and studies for these projects.

(Code 2008, § 15-406)

#### **15-407. TECHNICAL SPECIFICATIONS AND DESIGN CRITERIA.**

Unless specifically stated and amended by a formal written Policy Statement issued by the Director, all Stormwater Quality Facilities required or constructed within the City shall be designed and constructed in accordance with the latest edition of the Westwood Design Standards. In addition, there may be a reduced treatment requirement than is otherwise indicated on all developments that have a gross site area of less than five (5) acres and are otherwise subject to this Article. The Westwood Design Standards is hereby incorporated by reference into this Article.

If hydrologic or topographic conditions warrant greater control than provided by the minimum control requirements set forth in the Westwood Design Standards, the Director may impose additional requirements deemed necessary to control the Pollutants in Stormwater Runoff. It shall be unlawful for any Person to fail to comply with any additional requirements imposed by the Director as necessary to control the Pollutants.

(Code 2008, § 15-407)

#### **15-408. SUBMITTAL OF STUDIES, PLANS, AND SPECIFICATIONS.**

In accordance with the design criteria and this Article, the Applicant shall submit all preliminary and final studies, plans, and specifications prior to receiving a Stormwater Management Permit.

(Code 2008, § 15-408)

#### **15-409. CERTIFICATION OF STUDIES, PLANS, AND SPECIFICATIONS.**

Prior to commencing Construction of a Stormwater Quality Facility, a Professional Engineer shall submit a certification stating that the final Stormwater management studies, Construction plans, and specifications for Constructing required Stormwater Quality Facilities are in conformance with the standards, requirements, and specifications of this Article. The certifying Professional Engineer shall demonstrate conformance to the qualifications enumerated in the Westwood Design Standards. Certification shall be submitted prior to issuing a Stormwater Management Permit for improvements required by this Article. If the Director finds that a proposed Stormwater Quality Facility(ies) will not conform to accepted standards, the Director shall issue a written notice of disapproval.

(Code 2008, § 15-409)

#### **15-410. STORMWATER MANAGEMENT PERMIT REQUIRED.**

A Stormwater Management Permit shall be required for the Construction of all Stormwater Quality Facilities within the City. Upon acceptance of the final Stormwater management plan, Construction plans, and specifications, and payment of a fee to be set administratively by the City, the Applicant shall submit a copy of the contractor's bid proposal identifying the total Construction cost of the Stormwater Quality Facility to the

Director, who shall review the proposal and determine the amount required for performance and maintenance sureties. An application for the Stormwater Management Permit for facilities required by this Article shall be submitted to the Director with written documentation of the Performance and Maintenance Surety.

The Applicant shall post a performance and maintenance bond, cash escrow paid to an approved escrow agent, or letter of credit from a bank in the amount of one hundred twenty-five percent (125%) of the total construction cost of the facility. The surety shall contain forfeiture provisions for failure to complete work specified in the Stormwater management plan. The performance and maintenance escrow shall be released in full, after a three (3) year period following notice of acceptance of the Stormwater Quality Facility. Provisions for a partial pro- rata release of the performance security based on issuance of a Notice of Acceptance for the completed Stormwater Quality Facility may be done at the discretion of the Director. However, the remaining amount of the surety shall at no time be less than fifty percent (50%) of the actual construction cost of the Stormwater Quality Facility and shall be maintained until released by the Director following the three (3) year maintenance period.

Whenever necessary, the City may engage professionals necessary to administer the requirements of this enactment and the City's other stormwater ordinances and regulations. The City may, in its reasonable discretion, include the costs of such professionals as part of the requirements of a Stormwater Management Permit or other permits or requirements of the City, and such costs may be required to be paid by an applicant.

(Code 2008, § 15-410)

#### **15-411. DEDICATED TRACTS AND EASEMENTS.**

All Stormwater Quality Facilities shall be located in a separate tract dedicated for this purpose. If the Stormwater Quality Facility serves lands from only one lot and is located on the lot served, the facility may alternatively be located in an Easement dedicated for this purpose. In all cases, the tract or Easement shall include provisions for access from public Right of Way to the Stormwater Quality Facility by Landowners legally responsible for the Facility and/or the Director for periodic inspection and maintenance of the treatment facility. All tract and Easement uses and restrictions shall be binding on future Landowners on which the Stormwater Quality Facility is located, and all Easements or tracts shall be recorded by the Applicant in the land records.

(Code 2008, § 15-411)

#### **15-412. ISSUANCE OF PERMIT.**

Upon acceptance of the Applicant's assurances of performance and maintenance as provided in this Article and after all Easements have been dedicated, accepted, and recorded, the Director may issue a Stormwater Management Permit for facilities required by this Article. The permit shall set forth the terms and conditions of the approved Stormwater management plan.

(Code 2008, § 15-412)

#### **15-413. REPAIRS DURING MAINTENANCE PERIOD.**

During the three (3) year maintenance period following the date of completion and acceptance by the Director of the work embraced by this Article, the Permit Holder shall make all needed repairs arising out of defective workmanship or materials which, in the judgment of the Director or the certifying Professional Engineer, become necessary during the maintenance period. If within ten (10) days after the mailing of a written notice, the Permit Holder shall neglect to make or undertake with due diligence to make these repairs, the City is hereby authorized to make such repairs at the Permit Holder's expense; provided, however, that in case of an emergency where, in the judgment of the Director, a delay would cause serious loss, hazard, or damage, such repairs may be made without prior notice being sent to the Permit Holder, and the Permit Holder shall pay the cost thereof.

(Code 2008, § 15-413)

#### **15-414. NOTICE OF ACCEPTANCE.**

The Permit Holder shall notify the Director before beginning construction of any Stormwater Quality Facility. The Permit Holder shall keep the Director advised as to the progress of the work and any changes in the schedule.

Following completion of construction activities for the Stormwater Quality Facility, the Director will issue a Notice of Acceptance only upon submission of "as-built plans," as indicated herein, and written certification by a qualified Professional Engineer that the Stormwater Quality Facility has been installed in accordance with the approved plan and other applicable provisions of this Article.

(Code 2008, § 15-414)

#### **15-415. AS-BUILT PLANS.**

Prior to the Director issuing a written Notice of Acceptance, the Permit Holder shall submit an "as-built" or corrected plan showing in detail all construction changes from the approved plans and specifications, and furnish certification by a qualified Professional Engineer to the Director that the materials and construction of the Stormwater Quality Facility fully comply with the construction plans and specifications and the provisions and intent of this Article, and that the facility is fully functional.

(Code 2008, § 15-415)

#### **15-416. FACILITY MAINTENANCE.**

(a) Maintenance Agreement

(1) Prior to the issuance of a Stormwater Management Permit for property for which a Stormwater Quality Facility is required, the Landowner shall execute an inspection and maintenance agreement binding on all subsequent Landowners of land served by a Stormwater Quality Facility. Such agreement shall provide for access to the facility at reasonable times for regular or occasional inspections by the Director to ensure that the facility is maintained in proper working condition to meet design standards.

(2) The agreement shall be recorded by the applicant and/or Landowner in the land records of the County.

(3) The agreement shall also provide that if, after notice by the Director to correct a violation requiring maintenance work, satisfactory corrections are not made by the Landowner(s) within a reasonable period of time (30 days maximum), the City may perform all necessary work to place the facility in proper working condition. The Landowner(s) of the lands served by the facility, excluding public Right of Way, shall be assessed the cost of the work, including administrative costs, materials, personnel, and any penalties. Costs shall be proportioned to each Landowner based on a ratio of the area of land owned to the total area of land assessed. This assessment may be accomplished by placing a special assessment on the property(ies), which may be placed on the tax bill and collected in the same manner as ordinary taxes.

(b) Maintenance Responsibility

(1) The Landowner of the property on which the Stormwater Quality Facility has been constructed pursuant to this Article, or any other Person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, Erosion and Sediment control measures, and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.

(2) A maintenance schedule shall be developed for any Stormwater Quality Facility and shall state the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be printed on the approved stormwater management plan, incorporated into the maintenance agreement, and shall be followed by subsequent responsible parties.

(3) Annual inspections of Stormwater Quality Facilities shall be an integral part of the maintenance plan and schedule and shall be conducted annually by a qualified Professional Engineer.

(Code 2008, § 15-416)

**15-417. ANNUAL CERTIFICATION.**

On or before the first (1st) day of October of each year, the Person responsible for maintaining each Stormwater Quality Facility shall furnish certification by a qualified Professional Engineer, as defined in the Westwood Design Standards, to the Director that the facility is working properly and that the scope and timing of the prescribed maintenance is being completed.

(Code 2008, § 15-417)

**15-418. DISTURBANCE OF CONSTRUCTED FACILITIES.**

It shall be unlawful for any Person to obstruct, damage, or materially interfere with the use or operation of a Post- Construction Stormwater Quality Facility required by this Article, unless such Facility is fully restored and repaired, and such restoration or repairs have been certified in writing to the Director by a qualified Professional Engineer, within forty-eight (48) hours of the obstruction, damage, or interference.

(Code 2008, § 15-418)

~~15-419. SEVERABILITY.~~<sup>18</sup>

~~If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this Ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it had known that such part or parts thereof would be declared invalid.  
(Code 2008, § 15-419)~~

**15-420. SAVINGS CLAUSE.**<sup>19</sup>

Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, shall in any manner affect the prosecution for violation of this Ordinance, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either Ordinance, nor be construed as affecting any of the provisions of these Ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any Ordinance, and all rights and obligations there under shall continue in full force and effect.  
(Code 2008, § 15-420)

**ARTICLE 5. STORM WATER UTILITY**

(Reserved for Future Use)

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<sup>18</sup> **Legal analysis: 15-419. SEVERABILITY.** Delete as covered by general provisions in Chapter 1.  
<sup>19</sup> **Legal analysis: 15-420. SAVINGS CLAUSE.** Move this to Article 1 as a general chapter provision; delete this section.

## CHAPTER 16

**ZONING****Article One: Purpose, Responsibilities, and Procedures**

## 1.1 ZONING ORDINANCE

**~~1.1.1 Zoning Ordinance Incorporated~~<sup>1</sup>**

~~This Ordinance is adopted under the authority of the Kansas Statutes and any amendments thereto and other applicable authority, and is enacted by Ordinance 1024 which incorporates this by reference, together with any amendments to said Ordinance. (Code 2008, ch. 16, § 1.1.1; Ordinance 881; Ord. No. 1024, § 1(1.1.1), 2-10-2022)~~

**1.1.2 Title**

This Ordinance is officially titled, "The Zoning Ordinance of the City of Westwood, Kansas," and shall be known as the "Zoning Ordinance" or, herein, "this Ordinance". The official map designating the various regulating districts shall be titled, "The City of Westwood Zoning Map," and shall be known as the "Zoning Map."  
(Code 2008, ch. 16, § 1.1.2; Ord. No. 1024, § 1(1.1.2), 2-10-2022)

**~~1.1.3 Effective Date~~<sup>2</sup>**

~~These regulations shall become effective upon adoption and publication by reference. Upon such date, these regulations shall replace the Westwood Zoning Ordinance 883, adopted February 14, 2008, and any amendments to said Ordinance made after said date. (Code 2008, ch. 16, § 1.1.3; Ord. No. 1024, § 1(1.1.3), 2-10-2022)~~

## 1.2 ZONING DISTRICT MAP

**1.2.1 District Map Incorporated**

There is hereby adopted and herein incorporated by reference the City of Westwood Zoning Map, which shall be the official map defining the boundaries of zones and showing the district boundaries and classification of such districts. Said map shall be marked, "Official Map with copies thereof as Incorporated by the Westwood City Code," with modification date. Said map shall be filed with the City Clerk and open for public use at all reasonable business hours. The map, and all subsequent amendments to the map, shall also be on file at the office of the City Clerk and made available to the public.  
(Code 2008, ch. 16, § 1.2.1)

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<sup>1</sup> **Legal analysis: 1.1.1 Zoning Ordinance Incorporated.** Delete as not needed.

<sup>2</sup> **Legal analysis: 1.1.3 Effective Date.** Delete as no longer needed.

### 1.2.2 Zoning District Use Regulations

Except as hereinafter provided, no building or premises shall be used for any purpose other than as permitted in the Zoning District in which said building or premises is located. No lot area shall be so diminished or reduced that the yards or open spaces shall be smaller than prescribed herein, nor shall the lot area for any family dwelling or residence be reduced in any manner except in conformity to area regulations hereby established for the district in which such building is located.

(Code 2008, ch. 16, § 1.2.2)

### 1.2.3 Zoning District Map Interpretation

The map entitled "Official Zoning District Map of Westwood, Kansas," certified as such by the City Clerk, is hereby declared to be the proper zoning for said districts. ~~as of the effective date of this Ordinance.~~ <sup>3</sup>

For purposes of interpretation of district boundaries as shown on the zoning map, the following rules shall apply:

- A. Boundaries indicated as following approximately the centerline of streets, highways, or alleys shall be construed to follow such centerlines.
- B. Boundaries indicated as following approximately lot lines shall be construed as following such lot lines.
- C. Boundaries indicated as following approximately corporate limits shall be construed as following such corporate limits.
- D. Boundaries indicated as parallel to or extensions of features indicated in this Section shall be construed as such. Distances not specifically indicated on the Official Zoning District Map shall be determined by using the scale of the map.
- E. Boundaries indicated as following the boundary limits of Westwood shall be construed as following such boundaries.
- F. Where physical or cultural features existing on the ground are at variance with those shown on the Official Regulating Map, or in other circumstances not covered by this Section, the Governing Body shall have authority to interpret the district boundaries.  
(Code 2008, ch. 16, § 1.2.3)

### 1.2.4 Zoning District Map

The boundaries of such zoning districts are shown upon the City of Westwood Zoning Map on file in the office of the City Clerk, and made a part of this article. Said map and all of the notations, references, and other features shown thereon shall be incorporated into this

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<sup>3</sup> **Legal analysis: 1.2.3 Zoning District Map Interpretation.** Delete language as no longer needed.



ordinance as if such notations, references, and features set forth on said map are all fully described herein.

(Code 2008, ch. 16, § 1.2.4)

### 1.3 GENERAL PROVISIONS

#### 1.3.1 Enforcement

The Building Official shall enforce the provisions of this Ordinance.

(Code 2008, ch. 16, § 1.3.1)

#### 1.3.2 Procedure

The Governing Body may adopt additional rules of procedure governing the administration of the Zoning Ordinance herein provided.

(Code 2008, ch. 16, § 1.3.2)

#### ~~1.3.3 Validity~~<sup>4</sup>

~~Should any section, clause, or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the same shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared to be invalid or unconstitutional.~~

~~(Code 2008, ch. 16, § 1.3.3; Ord. No. 1024, § 2, 2-10-2022)~~

#### 1.3.4 Jurisdiction

These regulations govern the development and use of all land and structures within the corporate limits of the City of Westwood, Kansas, and any extraterritorial jurisdiction defined by Ordinance and as now or hereafter fixed, said territory being indicated on the Zoning Map as is on file at the Westwood City Hall. This map and its boundaries shall be incorporated and made part of this Ordinance.

(Code 2008, ch. 16, § 1.3.4)

#### 1.3.5 Vesting of Development Rights

A. For the purpose of single-family residential developments, development rights in such land use shall vest upon recording of a plat of such land. If construction is not commenced on such land within five years of recording of the plat, the development rights in such shall expire at that time.

B. For all purposes other than single-family developments, the right to use land for a particular purpose shall vest after the issuance of all permits required for such use by the City, county, and/or state and construction has begun and substantial amounts of work have been completed lawfully under a validly issued permit.

(Code 2008, ch. 16, § 1.3.5; Ord. No. 1024, § 3, 2-10-2022)

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<sup>4</sup> **Legal analysis: 1.3.3 Validity.** Delete as covered by general provisions in Chapter 1.

### **1.3.6 Building Permit Process**

[GRAPHIC]

### **1.3.7 Penalty**

It shall be unlawful for any party to violate the provisions of this Ordinance, and any violation thereof shall be punishable by a fine not to exceed \$500, or by imprisonment for not more than six months, or by both, for each offense. Each day's violation shall constitute a separate offense. Nothing in this section shall be construed as to affect any other remedy the City may have to abate such violation, or any other remedy or authority at law or equity.

(Code 2008, ch. 16, § 1.3.7; Ord. No. 1024, § 4, 2-10-2022)

## **1.4 PLANNING COMMISSION**

### **1.4.1 Commission Created**

A Planning Commission for the City of Westwood is hereby created.

(Code 2008, ch. 16, § 1.4.1)

### **1.4.2 Commission Membership and Appointment**

The Planning Commission shall consist of nine members. All nine members shall be appointed by the mayor, with the consent of the Governing Body. The members of the Planning Commission shall be appointed for a term of three years each. Appointments made to fill current vacancies shall be for the balance of the unexpired term only. Members of the Planning Commission shall serve without compensation for their services. Members of the Planning Commission may be removed for cause as provided by law.

(Code 2008, ch. 16, § 1.4.2; Ord. No. 1024, § 5(1.4.2), 2-10-2022)

### **1.4.3 Planning Commission Bylaws**

The Planning Commission shall adopt bylaws for the transaction of business and hearing procedures. Except as otherwise provided in this code, and unless otherwise provided by law, action shall be taken by the Planning Commission by a favorable vote of a majority of the members present. A quorum consisting of a majority of the voting members of the Planning Commission shall be necessary for the Planning Commission to conduct any business.

(Code 2008, ch. 16, § 1.4.3)

### **1.4.4 Comprehensive Plan Adoption and Amendment**

A. The Planning Commission is hereby authorized to make or cause to be made a comprehensive plan for the development of the City.

B. The Planning Commission may recommend adopting and amending the Comprehensive Plan as a whole by a single resolution or by successive resolutions. Such resolution(s) shall identify specifically any written presentations, maps, plats, charts, or

other materials made a part of such plan. In the preparation of such plan, the Planning Commission shall make or cause to be made comprehensive surveys and studies of past and present conditions and trends relating to land use, population and building intensity, public facilities, transportation and transportation facilities, economic conditions, and natural resources, and may include any other element deemed necessary to the Comprehensive Plan. Such a proposed plan shall show the Commission's recommendations for the development or redevelopment of the City, including the following:

1. The general location, extent, and relationship of the use of land for agriculture, residence, business, industry, recreation, education, public buildings and other community facilities, major utility facilities, both public and private, and any other use deemed necessary;
2. The population, building intensity standards, restrictions, and the application of the same;
3. Public facilities, including transportation facilities of all types, whether publicly or privately owned, which relate to the transportation of persons or goods; and
4. Public improvement, based upon a determination of relative urgency.  
(Code 2008, ch. 16, § 1.4.5; Ord. No. 1024, § 5(1.4.4), 2-10-2022)

#### **1.4.5 Review of the Comprehensive Plan**

At least once each year the Planning Commission shall review or reconsider the Comprehensive Plan or any part thereof and may propose amendments, extensions, or additions to the same. The procedure for the adoption of any such amendment, extension, or addition to the plan or any part thereof shall be the same as that required for the adoption of the original plan or part thereof.

(Code 2008, ch. 16, § 1.4.6; Ord. No. 1024, § 5(1.45.), 2-10-2022)

#### **1.4.6 Recommendations as to Zoning Regulations**

The Planning Commission shall recommend the boundaries of City zones and districts to the Governing Body as required by K.S.A. 12-753, et seq. as amended.

(Code 2008, ch. 16, § 1.4.7; Ord. No. 1024, § 5(1.4.6), 2-10-2022)

### **1.5 PLANS, PLATS, AND LOT SPLITS**

#### **1.5.1 Procedures**

- A. Plats shall be required on any land in the City for which the following is proposed:
  1. The subdivision or merger of tracts into new lots, blocks, tracts or parcels;
  2. The establishment of any street, alley, right-of-way, park, or other property intended for public use.
- B. Such plat shall accurately describe the subdivision, lots, tracts, or parcels of land, giving the location and dimensions thereof, and the location and dimensions of all streets,

alleys, parks, or other properties intended to be dedicated to public use or for the use of purchasers or owners of lots, blocks, tracts, or parcels of land fronting thereon or adjacent thereto.

C. All plats shall be verified by the owner(s) thereof. All such plats shall be submitted to the Planning Commission.

D. The Planning Commission shall determine if the plat conforms to the provisions of the Zoning Ordinance. If such determination is not made within sixty days after the first meeting of such Commission following the date of the submission of the plat to the City Clerk, such plat shall be deemed to have been approved, and a certificate shall be issued by the City Clerk upon demand. If the Planning Commission finds that the plat does not conform to the requirements of the Zoning Ordinance, the Planning Commission shall notify the owner(s) of such fact. If the Planning Commission finds that the plat conforms to the requirements of such regulations, the Commission's seal and approval shall be affixed thereto.

E. The Governing Body shall accept or refuse the dedication of land for public purposes within thirty days after the first meeting of the Governing Body following the date of the submission of the plat to the City Clerk. The Governing Body may defer action for an additional thirty days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. If the Governing Body defers or refuses such dedication, it shall advise the Planning Commission of the reasons therefor.

F. The City of Westwood may establish a scale of reasonable fees to be paid to the City by the applicant for approval for each plat filed. The Register of Deeds shall not file any plat until such plat shall bear the approval hereinbefore provided.

G. The Register of Deeds shall not file any plat until such plat shall bear the approval hereinbefore provided and any land dedicated for public purposes shall have been accepted by the Governing Body.

H. Any lot already platted as of the effective date of this Ordinance may be divided into not more than two lots or tracts without having to replat the original lot, provided that the resulting lots or tracts shall not again be divided without replatting, subject to the following conditions and procedures:

1. Each resulting lot or tract must have the minimum frontage required within the zoning district.

2. A certificate of survey for each resulting lot or tract, including the certificate by a registered engineer or surveyor that the details contained on the survey are correct, shall be submitted to the City Clerk and shall contain the following information:

a. the dimension and location of each of the lots or tracts, including a metes and bounds description of each lot or tract on the plat;

b. the location and character of all proposed and existing public utility lines and easements, including sewers (storm and sanitary), water, gas, and power lines;

- c. building setback lines with dimensions;
  - d. the location of proposed or existing streets and driveways providing access to said lots or tracts; and
  - e. a physical property survey, including topography with contour intervals of not more than two feet and including the location of water courses, ravines, existing significant trees, permanent structures, and proposed drainage structures.
3. Any building or structures existing on the lot or tract at the time of the lot or tract split must remain in compliance with other ordinances of the City after the lot or tract split has been completed.
  4. All costs resulting from an application for a lot or tract split shall be paid by the applicant.
  5. All applications will be referred to the Planning Commission for a recommendation to the Governing Body.
  6. Conveyances by an adjacent property owner of a tract less than fifteen feet in width is exempt from the above approval process, provided that both tracts remain large enough to be built upon lawfully, and, if the tracts are in a residentially zoned area, each tract must remain in the same frontage size category, provided that the resulting lots or tracts shall not be divided without replatting.
- I. No lot can be platted or replatted as an R-1(A), R-1(B), or R-1(E) residential category lot.

Plats approved by the Governing Body shall be filed with the County within thirty days of approval by the Governing Body. Failure to file is a violation of this code. No building permit shall be issued before filing is complete.  
(Code 2008, ch. 16, § 1.5.1; Ord. No. 1024, § 6, 2-10-2022)

### **1.5.2 Subdivision Provisions**

The following policies shall be used in the design and review of all re-platting within the jurisdiction of this Ordinance:

- A. All new subdivisions shall be designed so as to facilitate the most advantageous development of the entire neighboring area by protecting and enhancing the stability, character, and environment of the area.
- B. All subdivisions shall be consistent with adopted public plans, such as the Westwood Comprehensive Plan.
- C. All residential subdivisions shall provide specialized open space as defined in the Ordinance, which encourages frequent use, attention, and the presence of people through placement and design. Where possible, the natural terrain, drainage, and vegetation of a site shall be preserved.

- D. Streets and development sites shall be designed to protect and preserve stands of significant trees from high ground or water.
- E. Bike paths and pedestrian paths shall be designed to connect with similar planned or existing local and/or regional facilities as shown on official plans and maps of the City of Westwood, neighboring municipalities, or Johnson County. Streets, pedestrian paths, and bike paths shall contribute to a system of fully connected and interesting routes to all destinations. Their design should encourage pedestrian and bicycle use by being small and spatially defined by buildings, trees, and lighting; and by discouraging high speed traffic.
- F. All streets shall be paved to current City standards.
- G. All residential streets may have sidewalks on at least one side, and cul de sacs may have a sidewalk around their entire perimeter.
- H. Curbs and gutters shall front all lots and shall be built to current City standards.
- I. Sidewalks shall be concrete or similar material and ADA compliant.
- J. All new subdivisions shall be subject to site plan review.
- K. These regulations may provide for the payment of a fee in lieu of dedication of land and may provide that, in lieu of the completion of any work or improvements prior to the final approval of the plat, the Governing Body may accept a corporate surety bond, cashier's check, escrow account, letter of credit, or other like security in an amount to be fixed by the Governing Body and conditioned upon completion of the work or improvements within a specified period, in accordance with these regulations, and the Governing Body may enforce such bond by all legal or equitable remedies.  
(Code 2008, ch. 16, § 1.5.2; Ord. No. 1024, § 7, 2-10-2022)

### **1.5.3 Additional Requirements**

- A. Dedication of Right-of-way for Abutting Streets
1. Whenever a proposed plat or subdivision abuts a public street, or a proposed public street as indicated on the plat or the Zoning Map, and adequate right-of-way does not exist for such street or proposed street in accordance with the standards set forth by the City or such other right-of-way requirements established by a transportation corridor study, traffic analysis, preliminary engineering study or area plan accepted and/or approved by the City, the subdivider shall dedicate to the City, without charge, such right-of-way as is necessary to provide conformity with such standards up to a total of one half of the indicated right-of-way requirements. New rights-of-way shall have a width of not less than fifty feet.
  2. If the street alignment shown in a transportation corridor study, traffic analysis, preliminary engineering study or area plan requires a dedication of more than one-half of the indicated total right-of-way requirements for a particular property, the subdivider shall be required to dedicate the additional right-of-way only if the transportation corridor study, traffic analysis, preliminary engineering study or area plan was the subject of a

public hearing with notice to the abutting property owners prior to its acceptance and approval by the City Council.

3. However, such dedication requirements shall not apply to thoroughfares unless such dedication can be shown to be reasonably related to the development of the proposed plat or subdivision and the cost of such dedication can be shown to be roughly proportional to the traffic impact of the proposed development. Such dedication shall be shown on the preliminary and final plat.

B. Dedication of Green Space

The City may require reasonable dedication of green space.

C. Construction of Required Public Improvements

The subdivider shall be required to construct certain public improvements within the subdivision as hereinafter provided. Such improvements shall not be installed prior to proper recording of the final plat by the City. All improvements installed by the developer shall comply with the specifications and standards of the City as set forth in this Ordinance or elsewhere in the City's ordinances.

D. Required Improvements — Streets

1. Subdivider shall be responsible for the installation of all streets, including curbs and gutters, within the boundaries of the subdivision. No grading or other construction shall take place within a street right-of-way until the construction plans have been approved by the City Engineer. All street construction shall conform to the specifications of the City and compliance therewith shall be confirmed by the City Engineer prior to release of any surety required hereinafter.

2. The subdivider shall perform whatever grading is necessary so that the subdivision grades are compatible with those depicted for any adjacent existing collector or thoroughfare street in street plans available from the City. Preliminary street plans shall be approved by the City and will be kept on file in the office of the City.

E. Required Improvements — Sidewalks

Within the boundaries of a subdivision, sidewalks shall be installed by the subdivider as required by the City. Sidewalks shall be located in the platted street right-of-way, abutting the property line or in any pedestrian easements.

F. Required Improvements — Storm Water and Drainage

1. The subdivider shall install culverts, storm sewers, rip-rap slopes, stabilized ditches, storm water retention and/or detention facilities, including, but not limited to, providing for any necessary off-site improvements, and other improvements necessary to adequately handle storm water. A stormwater study may be required to ensure improvements adequately handle anticipated stormwater runoff resulting from the development.

2. All improvements shall comply with the minimum standards of the City and shall be approved by the City Engineer prior to construction. Where developments are determined by the City Engineer to be in close proximity to unimproved stream channels, an engineering study may be required to determine the stability of the stream banks. The study shall evaluate the likelihood that normal stream bank slippage failure and erosion will endanger structures proposed as a part of the development or the yards of residential lots. Such studies may analyze the impact of full upstream development and include a complete identification and analysis of the soil profile and underlying bedrock upon which the development is to take place. Based on this analysis, engineering plans shall be submitted showing the structural measures to be used to stabilize those banks which are determined to be unstable. The study shall be submitted concurrent with the application for final plat approval and shall be reviewed and approved by the City Engineer prior to recording the plat. Storm drainage easements may be required where necessary to allow on-going maintenance of the stream channel and any stabilization measures.

G. Required Improvements — Underground Utilities

1. Except as otherwise provided in this section, all utilities shall be installed underground within designated easements by the subdivider or utility company prior to the issuance of a certificate of occupancy. For purposes of this section, the term “utilities” shall include, but not be limited to, all pipes, poles, wires, connections, conductors, switchers, line transformers and insulators which supply natural gas, electricity, sewage or water, or which may be used for communications transmission.

2. The subdivider, developer or owner of any such area or portion thereof shall make the necessary arrangements for the installation of underground utilities. Such arrangements shall be made with the utility company. A letter from the utility company confirming that such underground insulation as required by this section has been completed shall be submitted to the Building Official at the time that a certificate of occupancy is requested. A certificate of occupancy shall not be granted absent such confirmation.

3. The provisions of this section shall not apply to any of the following uses:

a. All electrical power lines rated at or above “feeder” line class. For purposes hereof, a “feeder” line is defined as that portion of an electrical circuit which provides power from a power substation and which has a rated capacity of 3,000 KVA or more.

b. All telecable lines rated at or above “trunk” line class. For purposes hereof, a “trunk” line is defined as that portion of a telecable systems line that is .750 inches in diameter.

c. Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from such existing overhead lines that are within a subdivision previously approved in accordance and in conformance with existing regulations.

d. Existing poles, overhead wires, and associated overhead structures, when part of a continuous line, or services to individual properties from such existing overhead lines that serve properties adjacent to but not within areas being subdivided.



- e. Any communication line which would otherwise be required by this Section to be underground that uses an overhead pole or structure exempted by this Section.
  - f. Radio and television antennas.
  - g. Structures on corner lots, in streets and alleys, and on easements adjacent thereto, and in cases where electrical and communication wires cross a street or other district boundary from an area where overhead wires are not prohibited, may be connected to said overhead wires.
  - h. Overhead lines attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location of the building to another location of the building or to an adjacent building without crossing a property line.
  - i. Poles used exclusively for street or area lighting or for traffic control facilities.
  - j. Service terminals, transformers, regulators, meters or other on and above-ground appurtenance normally ~~sued~~ used with and as a part of an underground distribution system. <sup>5</sup>
4. Nothing in this section will prevent the replacement of poles, overhead wires, and associated overhead structures on these lines when necessary for the purpose of maintaining the line or upgrading the capacity thereof, or in the case of single-phase lines, the addition of the necessary facilities to three- phasing of the line.

#### H. Required Improvements — Sanitary Sewers and Other Utilities

The subdivider shall be responsible for the proper installation of all utilities and sanitary sewers and connection to approved treatment facilities, water supply approved by the Kansas Board of Health, natural gas, electricity and telephone services. Such utility shall be installed according to the specifications and minimum standards of the controlling utility company or public agency except as otherwise provided by this Ordinance.

#### I. Required Improvements — Street Signs

- 1. The subdivider shall be responsible for paying the cost of fabrication and installation of street name signs as determined by the Public Works Department at all street intersections within the subdivision.
- 2. Such signs shall follow the street names designated on the approved final plat.
- 3. Signs on public property shall be installed by the City.
- 4. Signs on private property shall be installed by the developer.

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<sup>5</sup> **Legal analysis: 1.5.3 Additional Requirements (G)(3)(j).** Revised "sued" to "used," assuming this was the intended language. If incorrect, please advise.

5. Payment for all signage fabrication and installation charges for work performed by the City shall be made in full prior to approval of construction plans for each phase of development.

J. Required improvements — Street Lighting

Street lighting shall be installed by the subdivider as required by the City.

K. Improvement Bonds

The proper installation of streets, curbs and gutters, sidewalks, storm drainage facilities, pedestrian walkways, street lights, right-of-way and lot grading and other required improvements shall be guaranteed by the subdivider or his agent by furnishing surety in the form of a performance and maintenance bond.

Said bond shall be to the favor of the City and shall be furnished at the time construction plans are submitted for approval. The amount of the bond shall be for the full cost of the improvements and shall remain in effect for two years from the date of completion and acceptance by the City. Said bond shall be properly executed prior to any grading or construction and shall be released upon written approval of the City Engineer.

A building permit shall not be issued for a lot or tract in a subdivision which abuts a street for which a bond has not been furnished.

L. Funds for Improvement of Abutting Thoroughfares and Collectors

In the event any development or subdivision shall necessitate modification to or improvement of any other public infrastructure in the City, the subdivider may be required to pay for some or all of such modification, including, but not limited to, all engineering, planning, legal, design, or construction costs of such modification or improvement. Examples of such improvements may include, but shall not be limited to, paying for enhancements to nearby or adjacent sanitary sewers, storm water drainage, or street facilities.

All such modifications shall be reasonably proportionate to the imprint of the subdivision or development upon the other public infrastructures. If the amount of work required herein will cost, in the professional opinion of the City Engineer, \$50,000 or more, the subdivider shall deposit with the City funds equal to the estimated costs of the improvements, either in cash or an irrevocable letter of credit from a financial institution acceptable to the City, such funds to be collectible no later than two years from the date of issuance.

(Code 2008, ch. 16, § 1.5.3; Ord. No. 1024, § 8, 2-10-2022)

## 1.6 APPLICATIONS AND PROCEDURES

### 1.6.1 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 Chapter 16 Westwood Zoning Code.
- 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 by the City Clerk.  
(Code 2008, ch. 16, § 1.6.1; Ord. No. 960, § 1(1.6.1), 7-9-2015)

### **1.6.2 Application Fees**

Fees for all applications provided for in this chapter shall be established by the Governing Body by resolution.  
(Code 2008, ch. 16, § 1.6.2; Ord. No. 960, § 1(1.6.2), 7-9-2015)

### **1.6.3 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 City Clerk, and shall be submitted at the time of filing the application.  
(Code 2008, ch. 16, § 1.6.3; Ord. No. 960, § 1(1.6.3), 7-9-2015)

### **1.6.4 Preapplication Conference.**

A preapplication conference with City staff may, at the discretion of the Mayor or Building Official, be required prior to submission of any application for a rezoning request, special use permit, preliminary development plan or site plan. 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 City's Comprehensive 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. Specific requirements and provisions related to the proposed development, building, and standards for Communication Facilities for Wireless Services are contained within Article

Ten of the Zoning Ordinance.

(Code 2008, ch. 16, § 1.6.4; Ord. No. 960, § 1(1.6.4), 7-9-2015; Ord. No. 984, § 1, 9-21-2017); Ord. No. 1024, § 9, 2-10-2022

### **1.6.5 Submission of Technical Studies.**

A. City staff may require applicants for rezoning requests, special use permits, preliminary development plans, site plans or plats to submit such technical studies as may be necessary to enable the Planning Commission or Governing Body to evaluate the application. The determination of the need and requirement for technical studies shall be made in a reasonable and nondiscriminatory manner. Technical studies reasonably required for applications for communication facilities or applications for special use permits for communication facilities for wireless services shall be subject to the applicable provisions of state and federal law and regulations. 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 City staff. The costs of all studies shall be borne by the applicant. Any decision of City staff 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, subject to the applicable provisions of state and federal law and regulations.

B. Notwithstanding the fact that City staff 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.

(Code 2008, ch. 16, § 1.6.5; Ord. No. 960, § 1(1.6.5), 7-9-2015; Ord. No. 984, § 2, 9-21-2017; Ord. No. 1024, § 10, 2-10-2022)

### **1.6.6 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; provided that, requirements and provisions related to applications for and the definitions, proposed development, and building standards for Communication Facilities for Wireless Services contained within Article Ten of the Zoning Ordinance.

(Code 2008, ch. 16, § 1.6.6; Ord. No. 960, § 1(1.6.6), 7-9-2015; Ord. No. 984, § 3, 9-21-2017)

### **1.6.7 Application Submission Deadlines.**

The Building Official 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.

(Code 2008, ch. 16, § 1.6.7; Ord. No. 960, § 1(1.6.7), 7-9-2015)

### **1.6.8 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 prior to the date set for hearing. 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.

(Code 2008, ch. 16, § 1.6.8; Ord. No. 960, § 1(1.6.8), 7-9-2015)

### **1.6.9 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. 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 County department, 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.

(Code 2008, ch. 16, § 1.6.9; Ord. No. 960, § 1(1.6.9), 7-9-2015)

### **1.6.10. Posting of Signs for Rezoning Requests and Initial Special Use Permits.**

In the case of rezoning requests and initial 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 so as to face each of the

streets abutting thereto 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. The applicant shall file an affidavit with the City Clerk 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.  
(Code 2008, ch. 16, § 1.6.10; Ord. No. 960, § 1(1.6.10), 7-9-2015)

### **1.6.11 Public Hearing Process.**

- A. When the consideration of an application requires a public hearing, the following provisions shall apply:
- B. 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.
- C. An accurate written summary of the proceedings shall be made for all public hearings.
- D. The Governing Body, Planning Commission, and Board of Zoning Appeals may adopt rules of procedure for public hearings by resolution or bylaws.
- E. 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.  
(Code 2008, ch. 16, § 1.6.11; Ord. No. 960, § 1(1.6.11), 7-9-2015)

### **1.6.12 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.

(Code 2008, ch. 16, § 1.6.12; Ord. No. 960, § 1(1.6.12), 7-9-2015)

### **1.6.13 Consideration of Text Amendments, Rezoning Requests, and Special Use Permits – Process.**

- A. **Public Hearing Required.** Consideration of zoning text amendments, rezoning requests, and special use permits shall require a public hearing before the Planning Commission following publication notice as provided in Section 1.6.8 through 1.6.11. Applications for communication facilities or applications for special use permits for communication facilities for wireless services shall be processed within the applicable timeframes set forth in Article Ten, Section 10.4.C.
- B. **Action by Planning Commission.** A vote either for or against a zoning text amendment, rezoning request, or special 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, or special 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, or Special 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.

F. Notwithstanding the above, applications for special use permits for communication facilities shall follow the process contained in and be subject to the provisions, definitions, time limits and requirements of Article Ten of the Westwood Zoning Ordinance. (Code 2008, ch. 16, § 1.6.13; Ord. No. 960, § 1(1.6.13), 7-9-2015; Ord. No. 984, § 4, 9-21-2017)

#### **1.6.14 Protest Petition Procedures.**

A. A protest against any rezoning request 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 Section 1.6.9.

C. Verification of the genuineness and correctness of the signatures on the protest petition, either individually or collectively, shall be made by the City Clerk.

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.  
(Code 2008, ch. 16, § 16.14; Ord. No. 960, § 1(1.6.14), 7-9-2015)

#### **1.6.15 Consideration of Appeals.**

A. Appeals from the decision of any official administering the provisions of this Ordinance shall be filed with the City Clerk within 30 days from the date of the decision by the officer whose decision is being appealed. A copy of the notice of appeal shall also be served upon the officer whose decision is being appealed. Thereafter, the officer whose decision is being appealed shall prepare and transmit to the Secretary of the Board of Zoning Appeals a complete record of all proceedings relating to the appeal.

B. Consideration of appeals by the Board of Zoning Appeals shall be at a public hearing, following publication notice as provided by Section 1.6.8.

C. This section shall not apply to any person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019 (h)(6).



(Code 2008, ch. 16, § 1.6.15; Ord. No. 960, § 1(1.6.15), 7-9-2015; Ord. No. 984, § 5, 9-21-2017; Ord. No. 1024, § 11, 2-10-2022)

### **1.6.16 Consideration of Variances.**

A. The Board of Zoning Appeals may grant a variance from the specific terms of this Ordinance which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship for the applicant, and provided that the spirit of this Ordinance shall be observed, the public safety and welfare secured and substantial justice done of the applicant. Provided, however, that the Board shall not have jurisdiction to grant a variance for property zoned under a planned zoning district.

B. Variances shall only be considered after a public hearing has been held, following publication notice and notice to surrounding property owners as provided by Section 1.6.8 through 1.6.9.

C. An application for a variance may only be granted upon a finding by the Board that all the provisions of Section 1.8.4 have been met.  
(Code 2008, ch. 16, § 1.6.16; Ord. No. 960, § 1(1.6.16), 7-9-2015; Ord. No. 1024, § 12, 2-10-2022)

### **1.6.17 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; provided that, any denial of an application for communication facilities or an application for a special use permit for communication facilities for wireless services shall not discriminate against the applicant with respect to the placement of communications facilities of other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers as defined and required by Article Ten of the Westwood Zoning Ordinance and applicable law. 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 City's Comprehensive 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.  
(Code 2008, ch. 16, § 1.6.17; Ord. No. 960, § 1(1.6.17), 7-9-2015; Ord. No. 984, § 6, 9-21-2017; Ord. No. 1024, § 13, 2-10-2022)

#### **1.6.18 Rezoning Applications – Submission Requirements.**

The Planning Commission shall adopt 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 Section 1.6.9), and shall list additional documents and information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application pursuant to Section 1.6.5. The Building Official 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.

(Code 2008, ch. 16, § 1.6.18; Ord. No. 960, § 1(1.6.18), 7-9-2015)

#### **1.6.19 Special Use Permit Applications – Submission Requirements.**

The Planning Commission shall adopt a document outlining submission requirements for special use permit applications. This document shall require a site plan, a legal description, adequate information to provide notice to surrounding property owners, and shall list additional documents and information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application pursuant to Section 1.6.5. The Building Official 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. Notwithstanding the above, applications for special use permits for communication facilities shall follow the process contained in and be subject to the provisions, definitions, requirements and timeframes set forth in Article Ten of the

Westwood Zoning Ordinance.

(Code 2008, ch. 16, § 1.6.19; Ord. No. 960, § 1(1.6.19), 7-9-2015; Ord. No. 984, § 7, 9-21-2017)

### **1.6.20 Site Plan Approval.**

A site plan is required for property zoned C-0, C-1, P-1, or for non-residential developments within an R-1 zoning district.

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 Building Official 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: **6**

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 10 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 standards;
4. The intensification of property by a change of use which increases off-street parking requirements pursuant to Section 5.4.

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 City Clerk 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 buildings are hereby expressly exempted.

D. Modifications to a valid site plan may be approved administratively by the Building Official 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:

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<sup>6</sup> **Legal analysis: 1.6.20 Site Plan Approval.** Delete effective date language as no longer needed.

1. An increase in floor area 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.  
(Code 2008, ch. 16, § 1.6.20; Ord. No. 960, § 1(1.6.20), 7-9-2015; Ord. No. 1024, § 14, 2-10-2022)

### **1.6.21 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 City standards;
- I. The plan represents an overall development pattern that is consistent with the City's Comprehensive Plan, the official street map, and other adopted planning policies.  
(Code 2008, ch. 16, § 1.6.21; Ord. No. 960, § 1(1.6.21), 7-9-2015)

### **1.6.22 Site Plans and Final Development Plans – Contents and Submission Requirements.**

The Planning Commission shall adopt a document outlining submission requirements for a site plan for a conventional zoning district classification, and for final development plan applications for planned zoning districts. 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. City staff may also require additional technical studies not listed on the application, pursuant to Section 1.6.5. The Building Official 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.

(Code 2008, ch. 16, § 1.6.22; Ord. No. 960, § 1(1.6.22), 7-9-2015)

### **1.6.23 Preliminary Development Plan – Submission Requirements.**

The Planning Commission shall adopt 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 Section 1.6.9), and list additional documents or information required to be submitted in support of the application. City staff may also require additional technical studies not listed on the application, pursuant to Section 1.6.5. The Building Official 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.

(Code 2008, ch. 16, § 1.6.23; Ord. No. 960, § 1(1.6.23), 7-9-2015)

### **1.6.24 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. In the process of approving preliminary and final plans, the Planning Commission and Governing Body may approve deviations from the standard requirements set forth hereinafter or as set forth in an applicable Commercial Overlay District, provided any approved deviation is in keeping with accepted land planning principles and is clearly set out in the minutes and on the exhibits in the record. 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 Building Official, and disapproval of such changes by the Building Official 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 Section 1.6.8 through 1.6.9.

(Code 2008, ch. 16, § 1.6.24; Ord. No. 960, § 1(1.6.24), 7-9-2015)

### **1.6.25 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 ten (10) percent;
  3. Increases of lot coverage by more than five percent;
  4. Increases in the height of any buildings by more than ten (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 Building Official within five business days following the filing of the application. The determination of the Building Official may be appealed to the Planning Commission, whose decision shall be final.
- C. In the event that the application for the revised preliminary development plan is denied, the previously approved preliminary development plan will remain in effect. (Code 2008, ch. 16, § 1.6.25; Ord. No. 960, § 1(1.6.25), 7-9-2015)

### **1.6.26 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 Section 1.6.25. 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 Section 1.6.8 through 1.6.9.

D. Revisions to approved final development plans which are insignificant in nature may be approved administratively by the Building Official. 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 Section 1.6.25.

E. The Building Official 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.

(Code 2008, ch. 16, § 1.6.26; Ord. No. 960, § 1(1.6.26), 7-9-2015)

### **1.6.27 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.

(Code 2008, ch. 16, § 1.6.27; Ord. No. 960, § 1(1.6.27), 7-9-2015)

### **1.6.28 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.

(Code 2008, ch. 16, § 1.6.28; Ord. No. 960, § 1(1.6.28), 7-9-2015)

### **1.6.29 Written Findings.**

Unless otherwise specifically provided in this title, written findings are not required for a final decision on any application; provided that, in the event of a denial of an application for communication facilities or an application for a special use permit for communication facilities for wireless services, the City shall notify the applicant in writing of the City's final decision, supported by substantial evidence contained in a written record and issued contemporaneously. 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.

(Code 2008, ch. 16, § 1.6.29; Ord. No. 960, § 1(1.6.29), 7-9-2015; Ord. No. 984, § 8; 9-21-2017)

### **1.6.30 Final Decision When Ordinance Required.**

In the case of approval of a zoning text amendment, rezoning request, special 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.

(Code 2008, ch. 16, § 1.6.30; Ord. No. 960, § 1(1.6.30), 7-9-2015)

### **1.6.31 Revocation of Special Use Permits.**

A. Any special 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. 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 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 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.  
(Code 2008, ch. 16, § 1.6.31; Ord. No. 960, § 1(1.6.31), 7-9-2015)

### **1.6.32 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; provided that, this section shall not apply to any person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019 (h)(6).  
(Code 2008, ch. 16, § 1.6.32; Ord. No. 960, § 1(1.6.32), 7-9-2015; Ord. No. 984, § 9, 9-21-2017)

### 1.7 RESERVED

(Ord. No. 960, § 2, 7-9-2015)

## **1.8 BOARD OF ZONING APPEALS**

### **1.8.1 Board of Zoning Appeals Created**

A Board of Zoning Appeals for the City of Westwood is hereby created. The members of

the Planning Commission of the City of Westwood shall sit as the Board of Zoning Appeals. (Code 2008, ch. 16, § 1.8.1)

### **1.8.2 Meetings**

Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine. The Board shall annually elect one of its members as chairperson and shall appoint a secretary who may be an officer or employee of the City. The Board shall fix a reasonable time for the hearing of appeals or any other matters referred to it. Notice of the time, place and subject of such hearing shall be published once in the official city newspaper at least twenty days prior to the date fixed for the hearing. A copy of the notice shall be mailed to each party to the appeal and to the City Planning Commission.

(Code 2008, ch. 16, § 1.8.2)

### **1.8.3 Minutes**

The Board shall keep minutes of such proceedings, showing evidence presented, findings of fact by the Board, decisions of the Board, and a vote upon each question. Records of all official actions of the Board shall be filed in the Office of the City Clerk and shall be a public record.

(Code 2008, ch. 16, § 1.8.3)

### **1.8.4 Appeals, Exceptions, Variances Generally: Procedure**

A. Appeals to the Board of Zoning Appeals may be taken by any person aggrieved, or by any officer of the city, county, or any governmental agency or body affected by any decision of the officer administering the provisions of the Zoning Ordinance or resolution. Such appeal shall be taken within a reasonable time as provided by the rules of the board, by filing a notice of appeal specifying the grounds thereof and the payment of the fee required therefore. The officer from whom the appeal is taken, when notified by the board or its agent, shall transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall have power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the Zoning Ordinance or resolution. In exercising the foregoing powers, the board, in conformity with the provisions of this act, may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit.

B. Any request for an appeal, variance or exception shall state with specificity the relief sought and all basis or reasons for the relief. All required notices shall state the relief sought with specificity but need not elaborate on the factual or legal bases for the variance, appeal or exception.

C. When deemed necessary by the board of zoning appeals, the board may grant variances and exceptions from the zoning regulations on the basis and in the manner hereinafter provided:

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

- 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 regulations of 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 granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

2. To grant exceptions to the provisions of the zoning regulation in those instances where the board is specifically authorized to grant such exceptions and only under the terms of the zoning regulation. Further, under no conditions shall the board of zoning appeals have the power to grant an exception when conditions of this exception, as established in the zoning regulation by the Governing Body, are not found to be present.

D. No variance or exception shall be granted except as explicitly provided by law.

E. Any person, official or governmental agency dissatisfied with any order or determination of the Board may bring an action in the Johnson County District Court to determine the reasonableness of any such order or determination. Such appeal shall be filed within thirty days of the final decision of the Board.

(Code 2008, ch. 16, § 1.8.4; Ord. No. 1024, § 15, 2-10-2022)

## **ARTICLE TWO: DEFINITIONS**

### **2.1 Intent**

For the purpose of interpreting this Ordinance, certain terms, words, concepts, and ideas used herein shall be interpreted or defined as follows, unless more specifically described, limited or qualified within a specific Article, Section or standard of this Ordinance.

(Code 2008, ch. 16, § 2.1; Ord. No. 984, § 10, 9-21-2017)

## 2.2 Interpretation <sup>7</sup>

- A. Except as defined herein, all other words used in this Ordinance shall be as defined in the latest edition of Webster's International Dictionary.
- ~~B. Words used in the present tense include the future tense.~~
- ~~C. Words used in the singular number include the plural, and words used in the plural number include the singular.~~
- ~~D. The word "person" includes a firm, association, organization, partnership, corporation, trust, company, or other entity as well as an individual.~~
- E. The word "lot" includes the word "plot" or "parcel" or "tract."
- ~~F. The word "shall" is always mandatory.~~
- G. The word "structure" shall include the word "building."
- H. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied."
- I. The terms "Zoning Map," and "Westwood Zoning Map," shall mean "The City of Westwood Zoning Map."
- ~~J. Any word denoting gender should be all inclusive.~~
- ~~K. The term "Governing Body" shall mean the "Mayor and the City Council of Westwood, Kansas."~~
- L. The term "Planning Commission" shall mean the "Planning Commission of Westwood, Kansas."
- M. The term "Board of Zoning Appeals" shall mean the "Board of Zoning Appeals of Westwood, Kansas."
- N. The term "Building Official" shall mean the "Building Official of Westwood, Kansas, or designee."  
(Code 2008, ch. 16, § 2.2; Ord. No. 1024, § 16, 2-10-2022)

## 2.3 Definitions

2.3.010 Accessory Structure: a structure subordinate in square footage and primary use to the primary structure on a lot. In some instances only in commercial and institutional development, an accessory structure may be larger in square footage than the primary

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<sup>7</sup> **Legal analysis: 2.2 Interpretation: (B),(C),(D),(F),(J), and (K).** These are covered under the general provisions of Chapter 1. However, if the city may in the future consider removing the zoning ordinance from the general city code, and making it either a separate zoning code, or an appendix to the code, then said terms should be retained.

structure and may serve in an auxiliary capacity to the primary structure's primary use, e.g., the meeting hall of a church.

2.3.015 Accessory Use: a customary use incidental and subordinate to the primary use of a building, and located on the same lot with such primary use or building.

2.3.020 Alteration: any addition, removal, extension, or change in the location of any exterior surface of a primary building or accessory building.

2.3.025 Apartment House: (See Dwelling, Multiple-Family)

2.3.030 Appurtenance: a subordinate or accessory building or structure or portion of a primary structure, the use of which is incidental and customary to that of said primary structure.

2.3.035 APWA: American Public Works Association.

2.3.040 Arcade: any establishment housing 5 or more video games, pinball games, air hockey, or similar coin-operated amusement apparatus.

2.3.045 Assisted Living, Skilled Nursing, Continuing Care Retirement Facilities: a building, or a group of buildings, where for compensation, care is offered or provided for three (3) or more persons suffering from illness, other than a contagious disease, or sociopathic or psychopathic behavior, which is not of sufficient severity to require hospital attention, or for three (3) or more persons requiring further institutional care after being discharged from a hospital.

2.3.050 Automotive Repair: any building, premises, and land in which or upon which the primary use of land is a business which involves the maintenance or servicing of motorized vehicles.

2.3.055 Back Yard: (See Yard, Rear)

2.3.060 Baseline Elevation: the average elevation of a building, calculated by adding the elevations at each building corner, the elevations of a minimum of the quarter points between each corner, and the lowest elevation between corners regardless of location, then dividing the sum by the total number of elevations used in the summation.

2.3.065 Basement: any floor level four feet or more below grade which is beneath the first story in a building.

2.3.070 Board: the City of Westwood Board of Zoning Appeals.

2.3.075 Board of Zoning Appeals: a board appointed by the Westwood Governing Body, which hears and renders decisions regarding appeals and variances arising out of the Zoning Ordinance of the City of Westwood.

2.3.080 Body Shop: any building, premises, and land in which or upon which the primary use of land is a business which involves the painting of vehicles or the repair of exterior damage to vehicles.

2.3.085 Building: a structure having a roof supported by columns or walls, whether or not completely enclosed

2.3.090 Building Height: (See Height)

2.3.095 Building Line: the plane, parallel to the front property line, formed by the majority of the front facades of buildings in a given block.

2.3.100 Building Official: the person authorized by the City of Westwood to interpret and administer the building codes, the Zoning Ordinance and any other related ordinances or regulations of the City or designated by the Governing Body.

2.3.105 Build-Out: the completed construction of all phases of a development as allowed by all ordinances that regulate an area. The scale of build-out can be from a single lot to multiple lots within the City.

2.3.110 Building Permit: written permission issued by the City of Westwood for construction, as required by the adopted codes and ordinances of the City.

2.3.115 Build-To Line: the line, parallel to the front property line, at which construction of a building is to occur on a lot.

2.3.120 Carrying Capacity: the amount of traffic which can be accommodated on a street without reducing the level of service the street provides as defined by the Kansas Department of Transportation or street design standards of the Westwood ordinances or other regulations. Carrying capacity is determined by the amount of traffic per lane per hour.

2.3.125 Certificate of Occupancy: a certificate allowing the occupancy or use of a commercial building and certifying that the structure of use has been constructed or will be used in compliance with this Ordinance and all other applicable codes and regulations.

2.3.130 Child Care Center: a facility which provides care and educational activities for 13 or more children two weeks to 16 years of age for more than three hours and less than 24 hours per day including day time, evening, and nighttime care; or which provides before and after school care for school-age children. A facility may have fewer than 13 children and be licensed as a center if the program and building meet child care center regulations set out in K.S.A. Chapter 65 and K.A.R. Chapter 28.

2.3.135 City Clerk: the person authorized by the City of Westwood to perform all the duties of his/her position as prescribed by statutes or ordinances.

2.3.140 Club: Class A or Class B Club.

Class A Club means a premises which is owned or leased by a corporation, partnership, business trust or association, and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club as determined by the Director of Alcoholic Beverage Control of the Kansas Department of Revenue, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates and their families and guests accompanying them.

Class B Club means a premises operated for profit by a corporation, partnership, or individual to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment and ~~less than fifty percent (50%) of the income is generated from the sale of food consumed on the premises, or less than fifty percent (50%) of the income is generated from athletic services provided on the premises.~~ <sup>8</sup>

2.3.145 Collector Street: within the City of Westwood, only Belinder Avenue, West 47th Place, and West 50th Street.

2.3.150 Commission: the City of Westwood Planning Commission.

2.3.155 Community Living Facility: any dwelling or building defined as "group living" or "semi-independent living" by the Kansas Department of Social and Rehabilitation Services (see KAR 30-22-31). This category provides residential care and treatment for patients with mental health and substance abuse illnesses. These establishments provide room, board, supervision, and counseling services. Medical services may be provided if they are incidental to the counseling, mental rehabilitation, and support services offered.

2.3.160 Conditional Use: a use subject to specific provisions or which requires the approval of the Board of Zoning Appeals before the issuance of a zoning permit.

2.3.165 Condominium Dwelling Residence: 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.

2.3.170 Conservatory: a greenhouse or other structure, primarily of glass or other transparent or translucent material, which encloses a pool, patio, or similar space.

2.3.175 Customary Home Occupation: any use conducted for gain entirely within a residence and carried on by the occupants thereof, which use is clearly incidental and subordinate to the residential use and which does not change the character thereof and in connection with which there is no display or signage. When observed from beyond the lot on which it is located, a home occupation shall not give visual, audible, sensory, or physical evidence that the property is used for any nonresidential purpose.

2.3.180 Day Care: the provision of supervision, training, food, lodging or medical services to persons for less than 24 hours a day.

2.3.185 Day Care Home: a structure designed and used as a one or two-family dwelling where day care is provided for a maximum of twelve (12) children, which is regulated under K.S.A. Chapter 65 and K.A.R. Chapter 28.

2.3.190 Deck: a deck is defined as a wooden flat-floored roofless structure, often attached to a building.

2.3.195 Detention: an engineered method or technique to temporarily store storm water

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<sup>8</sup> **Legal analysis: 2.3 Definitions, 2.3.140 (Class B Club).** Conform to K.S.A. 41-2601(f).

on a site and control its rate of runoff.

2.3.200 Detached Building: a building completely surrounded by open space.

2.3.205 Disability, Disabled: ~~physical, mental, or emotional incapacity as defined by State or Federal law.~~ A physical or mental impairment which substantially limits one or more of a person's major life activities.<sup>9</sup>

2.3.210 Disturbed Ground: any area of ground on a site which during construction is broken, dug up, filled, graded, built on or used for storage or parking.

2.3.215 Drinking Establishment - Bar or Night Club: a premises which may be open to the general public, where alcoholic liquor or cereal malt beverage by the individual drink is ~~sold served and less than fifty percent (50%) of the income is generated from the sale of food consumed on the premises, or less than fifty percent (50%) of the income is generated from athletic services provide on the premises.~~<sup>10</sup>

2.3.220 Dwelling: a building or portion thereof, designed exclusively for residential occupancy, including single-family and multiple-family dwellings, group homes, but not motels, hotels, or mobile homes.

2.3.225 Dwelling, Cottage Court: a group of small detached houses, duplexes, or townhouses centered around a common courtyard. The central courtyard enhances the character of the area through the provision of consolidated open space. A cottage court may be developed on individual lots or with a common form of ownership. This term includes Bungalow Court.

2.3.230 Dwelling, Multi-Family: a residential building containing two or more dwelling units occupying a single building site. This term includes apartments, multiplexes, and condominiums..

2.3.235 Dwelling, Senior Adult Independent Living: a building containing one or more living units which building and units are designed for exclusive occupancy by persons 55 years of age or older who are in generally good health. This type of residence does not contemplate continuous health care services but may include a resident nurse. The properties do not have central commercial kitchen facilities and generally do not provide meals to residents, but may offer community rooms, social activities, and other amenities.

2.3.240 Dwelling, Single-family: a detached dwelling designed for or occupied exclusively by one family, including residential-design manufactured homes.

2.3.245 Dwelling, Townhouse: a dwelling unit that is part of a building that includes at least three dwelling units with such dwelling units being separated by common walls as opposed to one dwelling unit being over another. This term includes rowhouses,

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<sup>9</sup> **Legal analysis: 2.3 Definitions, 2.3.205 Disability.** Conform to K.S.A. 50-676(b), as "disability" and "incapacity" can have very different legal meanings.

<sup>10</sup> **Legal analysis: 2.3 Definitions, 2.3.215 Drinking Establishment.** Conform to K.S.A. 41-2601(h).



townhomes, single family attached units, and attached dwelling development.

2.3.250 Dwelling, Two-Family: a single structure on a single lot containing two dwelling units, each of which is totally separated from the other by a ceiling, unpierced for any purpose including access, communication, or utility connection.

2.3.255 Dwelling Unit: means one or more rooms in a residential building or residential portion of a building which are arranged, designed, used or intended for use by one family and which includes cooking space and lawful sanitary facilities reserved for the occupants thereof.

2.3.260 Dwelling Unit, Accessory (ADU): a dwelling unit which is an accessory use to a detached single family dwelling unit on one lot. This term includes accessory apartments, garage apartments, and accessory cottage dwellings.

2.3.265 Eave: the overhang of the roof structure of a building beyond its supporting wall, at the point of intersection between the roof and the vertical building wall, typically the lowest part of the roof and where exterior or interior gutters are located.

2.3.270 Encroachment: the part of a structure which intrudes into a defined setback.

2.3.275 Facade: the vertical surface of a building facing any property line.

2.3.280 Family: one or more persons who are related by blood or marriage, living together and occupying a single housekeeping unit, or a group of not more than (3) three, not thusly related, living together by joint agreement and occupying a single housekeeping unit on a non-profit cost sharing basis; plus in either case, usual domestic servants and caregivers.

2.3.285 Fence: a vertical structure, including live material, which may provide privacy, divides or defines a boundary.

2.3.290 Flat Roof: roof lines or silhouettes with a pitch which is 4:12 or less; that is, a pitch which is less than or equal to four units of vertical change for every twelve units of horizontal change.

2.3.295 Floodplain, Flood Hazard Area: any area defined by the Federal Emergency Management Act and shown on its maps to be located in an area subject to flooding.

2.3.300 Footprint: the foundation outline of all buildings or structures.

2.3.305 Fountain-Privately Owned: a receptacle of stone, concrete, metal, or other similar material, designed for the aesthetic dispensing and pooling of water, with a reservoir depth not exceeding twelve inches.

2.3.310 Front Yard: (See Yard, Front)

2.3.315 Frontage: the lot boundary which coincides with a public thoroughfare or open space. The facade of a structure facing the street.

2.3.320 Frontage Build-out: the portion of lot frontage which has a building or wall running parallel to it.

2.3.325 Gable: that portion of a building roof comprised of two sloping roof segments, typically of equal slope, that join together at one end and project to a common point vertically above the exterior building wall. A gable includes that portion of the exterior building wall which is directly beneath the roof, within the slope of the gable.

2.3.330 Garage, Commercial: any building, premises, and land in which or upon which the primary use of land is a business which involves the maintenance or servicing of vehicles but does not involve the painting of vehicles or the repair of exterior damage to vehicles.

2.3.335 Garage, Residential: the building or portions of building that fully encloses space for the storage of one or more vehicles. Garages may be attached or detached from the primary structure.

2.3.340 Gas Station: a retail establishment which sells gasoline and other fuels for motor vehicles and may sell and install other automotive products, such as lubricants, tires, batteries, and similar accessories, and which may perform minor vehicle maintenance and repairs.

2.3.345 Gazebo: a free standing, roofed structure with open sides.

2.3.350 General Commercial Use: business and retail establishments providing services and products.

~~2.3.355 Governing Body: the Mayor and Council of the City of Westwood, Kansas.~~<sup>11</sup>

2.3.360 Grade: the elevation of the land or land level at any given point.

2.3.370 Green Roof: a layer of vegetation planted over a waterproofing system that is installed on top of a flat or slightly-sloped roof. Green roofs are also known as vegetative or eco-roofs.

2.3.375 Group Home: any dwelling, licensed by a regulatory agency of the State of Kansas, which is occupied by no more than ten persons, including no more than eight persons with disabilities who need not be related by blood or marriage, and not more than two staff residents for whom the dwelling is not their primary residence.

2.3.380 Health and Welfare Facilities: all hospitals and institutions specializing in medical treatment, mental health treatment, physical therapy, alcohol and drug treatment, and/or assisted living for all ages.

2.3.385 Height: the vertical distance from the average ground elevation adjacent to a

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<sup>11</sup> **Legal analysis: 2.3 Definitions, 2.3.355 Governing Body.** Delete as covered by general provisions in Chapter 1. Should the city wish to retain definitions in this Chapter, "Governing Body" would also be covered under section 2.2. Interpretation of this chapter.

building or structure grade plane to the average height of the highest roof surface, including, but not limited to, any parapet, roof line, decking of a mansard roof, towers, spires, steeples, and any other roof-top appurtenances, including, but not limited to, mechanical equipment or structures. Height, where not regulated in feet, shall be regulated by stories. A story shall be equal to twelve feet for purposes of measuring structures other than buildings.

2.3.390 Irregularly Shaped Lot: any lot which is not square or rectangular in shape.

2.3.395 Laboratory: a place equipped for experimentation or observation in a field of study, or devoted to the application of scientific principles in testing and analysis. Quantities of biological or hazardous materials used on site shall be limited to those quantities established by the State and Federal Requirements.

2.3.400 Land Use Segregation: the practice of prohibiting mixed-use development or close proximity of residential and non-residential uses. This is accomplished through zoning standards which emphasize the separation of all uses, and the buffering and screening of dissimilar uses from one another.

2.3.405 Lot: a parcel of land, the boundaries of which have been established by some legal instrument such as a recorded deed or a recorded map, and which is recognized as a separate tract or legal unit of ownership for purposes of transfer of title. According to the recorded plat thereof, a lot shall be the parcel of land as presently platted. An interior lot is bounded on two opposite sides by other lots and on one side faces a single public right-of-way. A corner lot is bounded on two adjacent sides by two public rights-of-way.

2.3.410 Lot Coverage: the entire area on a tract or parcel that is covered by a structure, any impermeable surface, or is otherwise built upon, including, but not limited to, the footprint or foundation outline of all buildings and structures. Lot coverage does not include decks which do not have roofs and are less than thirty (30) inches in height from the ground, and driveways, sidewalks, and patios which are flush with the surface of the ground. Decks which are not roofed and are thirty (30) inches or higher from the ground are to be calculated at fifty (50) percent of the area covered. Overhanging conditions above open-air exterior areas, including, but not limited to, building, roof, or balcony overhangs or cantilevers, shading devices, and light shelves are to be calculated at 50% of the covered area. Structures covered by green roofs are to be calculated at 50% of the covered area, up to an area equal to 10% of the total lot area.

2.3.415 Machine Shop: a mechanized workshop which manufactures, sizes or assembles pieces of machinery.

2.3.420 Major addition: any addition or alteration that increases or alters more than 50% of the existing structure.

2.3.425 Manufactured Structure: a residential or commercial building comprised of one or more component parts constructed in a manufacturing plant and transported to a site for final assembly on a permanent foundation. The City building code standards for traditional on-site construction are not strictly enforced for such structures.

2.3.430 Massing: the shapes, proportion and form of a building. The design elements that

may affect the mass of a building may include the following:

- A. Building silhouette;
- B. Spacing between facades;
- C. Setback from property line;
- D. Proportion of windows, bays, and doorways;
- E. Proportion of primary facade;
- F. Location and treatment of entryway;
- G. Exterior materials used;
- H. Building scale;
- I. Geometric shapes offset to create the appearance of less mass.

2.3.435 Mechanical Equipment: heating, ventilation, and air conditioning (HVAC) units.

2.3.440 Mixed Use: the presence of residential and nonresidential uses within the same building or development complex. It may be different categories of nonresidential uses such as institutional, retail, and office within the same complex of buildings.

2.3.445 Mobile Home: a structure that: (1) Is transportable in one or more sections which, in the traveling mode, is eight body feet or more in width and 36 body feet or more in length and is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; and (2) Is not subject to the federal manufactured home construction and safety standards established pursuant to 42 USC 5403.

2.3.450 Modular Home: a dwelling unit, a majority of which is assembled in an off-site manufacturing plant and transported to the building site for final assembly on a permanent foundation and constructed in compliance with the City's building codes.

2.3.455 Mother's Day Out: a day care program operating more than five (5) consecutive hours or more than one day per week and in which any one child is enrolled for not more than one session per week.

2.3.460 Multi-Family Dwelling: a building in which more than two families or households live independently of each other and cook within their own living quarters. **12**

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<sup>12</sup> **Legal analysis: 2.3 Definitions, 2.3.460 Multi-Family Dwelling.** This term is defined in Section 2.3.230 as "Dwelling, Multi-Family" with a slightly different definition. Please advise whether the city wants to modify and retain only one, or keep both definitions.

2.3.465 Nonconforming Use: any lawful use of any land, building, or structure which later becomes unlawful as a result of legal or regulatory changes in, or amendments to, this Ordinance.

2.3.470 Off-Street Parking: parking which occurs on a lot and not on a street or other public right-of-way.

2.3.475 Office Use: business, professional, service, or governmental occupations within a building or buildings.

2.3.480 Open Space: any area which does not consist of buildings, streets, rights-of-way, pavement, parking, or easements.

2.3.485 Overlay District: a set of regulations, which add an additional layer of building standards to a specific area within a zoning district.

2.3.490 Patio: a paved outdoor area adjoining a house.

2.3.495 Paved: covered by a contiguous, impervious, hard substance such as concrete, asphalt, brick, stone, or other material which is similar in durability, appearance, and permeability.

2.3.500 Parking Area: any portion of land designated for the parking of vehicles.

2.3.505 Pedestrian-Oriented Development: a land use plan which emphasizes the needs of pedestrians in addition to the needs of automotive traffic.

2.3.510 Permitted Uses: uses allowed to occur within a designated zoning district.

2.3.515 Planning Commission: a review board appointed by the Mayor and approved by the Governing Body to make recommendations on zoning issues provided herein (see Article 1.4 Planning Commission).

2.3.520 Platted Lot: a lot surveyed and recorded at the County Office of Records and Tax Administration.

2.3.525 Pool: any constructed, outdoor basin or tank designed to hold water greater than twelve inches in depth.

2.3.530 Porch: a structure, attached to the exterior of a building, which leads to an entrance and may be:

A. Enclosed: roofed, with walls and a second door or doorway;

B. Open: usually roofed, with no walls, which may have columns or other appurtenances to support the roof;

C. Screened: roofed with screened sides and a second door or doorway.

2.3.535 Preschool: a day care facility providing educational experiences and operating in

compliance with the definitions and regulations of the State of Kansas.

2.3.540 Primary Building: the structure on a multi-structured lot in which the majority of activities occur.

2.3.545 Public Safety Station: police, fire and rescue stations.

2.3.550 Public Street: any right-of-way used for vehicular traffic that is permanently maintained by any city, county, or state agency and is open to all traffic.

2.3.555 Public Utility Buildings: outside storage of materials and equipment is an accessory use in buildings used by public utilities provided all storage is screened from view off the premises.

2.3.560 Quadrangle: a rectangular area, such as a courtyard, enclosed by buildings.

2.3.565 Rear Yard (See Yard, Rear)

2.3.570 Residential Street: all streets within the City of Westwood except those designated as collector streets or thoroughfares.

2.3.575 Residential-Design Manufactured Homes: a manufactured dwelling affixed to a permanent foundation which has minimum dimensions of 22 body feet in width, a pitched roof, and siding and roofing materials which are customarily used on site-built homes.

2.3.580 Retention: an engineered method to completely retain a specified amount of stormwater without release except by means of evaporation, infiltration, or pumping.

2.3.585 Ridge Line: the point at which two sides of a roof meet at their highest edges, which is typically the highest point of the primary roof.

2.3.590 Right-Of-Way (R-O-W): an area of public land dedicated to infrastructure such as streets, sewer lines, water lines, electric lines, and gas lines, etc.

2.3.595 Roof Line: the shape of a roof, formed by its slope, pitch, eaves, ends, and projections, such as dormers, which are above the eave line.

2.3.600 Satellite Dish: any circular or semi-circular dish-shaped receiving antenna used to receive signals transmitted from satellites, generally for highly specialized industrial communications or for receiving television signals from a satellite. This definition does not apply to antennas regulated pursuant to Article Ten of the Westwood Zoning Ordinance.

2.3.605 Setbacks: the mandatory distance between a lot line and the face or nearest part of a structure.

2.3.610 Shed Dormer: a dormer with a roof sloping in the same direction as the roof from which the dormer projects.

2.3.615 Shop-Front: a business or retail establishment located on the ground floor of a structure, the facade of which is aligned directly along the frontage line and the entrance

of which is at grade.

2.3.620 Side Yard (See Yard, Street Side and/or Yard, Interior Side.)

2.3.625 Single-family Dwelling: a detached dwelling designed for or occupied exclusively by one family, including residential-design manufactured homes. <sup>13</sup>

2.3.630 Site Plan: the plan of a construction site showing the position and dimensions of the building to be erected and the dimensions and contours of the lot; a map done by a surveyor or design professional accurately depicting the scale distances and measurements of all existing and planned structures on a lot, and the location and dimensions of the lot itself.

2.3.635 Storm Water: storm water runoff, snow melt runoff, surface runoff, and drainage.

2.3.640 Storm Water Runoff: rainwater flowing on the surface of the ground.

2.3.645 Story: that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that habitable portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. An attic, regardless of its interior dimensions, shall not be considered a story provided it remains unconditioned space, is accessible by nothing more substantial than a pull-down stairway or ladder, and contains no dormers with the exception of minimal vent features. Determination of a building's number of stories shall be based on qualifying floor area being situated directly above other qualifying floor area.

2.3.650 Story Above Grade: any story having its finished floor surface entirely above grade, except that a basement shall be considered as a story above grade when the finished surface of the floor above the basement is:

- A. More than six feet above grade plane;
- B. More than six feet above finished ground level for more than fifty percent of the total building perimeter; or
- C. More than twelve feet above the finished ground level at any point.

2.3.655 Story, First: the street level of a building which is less than four feet below grade for no more than fifty percent of the perimeter and no portion of which is more than eight feet below grade.

2.3.660 Story, Half: A partial story located above a full story and underneath a sloping roof, where the roof planes intersect two opposite exterior walls at a height of no more than 2 ft. above the half-story floor level, and window dormers or other projections out

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<sup>13</sup> **Legal analysis: 2.3 Definitions, 2.3.625 Single-family Dwelling.** This term is previously defined in Section 2.3.240 Dwelling, Single-family. Please advise whether the city wishes to retain both definitions.

from this roof plane do not exceed more than 50% of the horizontal length of the roof for a 2 ½ level, or 85% of the horizontal length of the roof for a 1 ½ story level, measured along both opposite roof planes at 2 ft. above the half-story floor level or higher.

[GRAPHIC]

2.3.665 Street: pavement and sub-grade of a City residential, collector, or thoroughfare roadway, excluding curbs, gutters, and portions adjacent to the pavement and sub-grade of a roadway that lie in a right-of-way.

2.3.670 Street Frontage: that portion of a lot that directly faces the public right-of-way along its front property line.

2.3.675 Street Yard: the area of land along the front property line parallel to a street (i.e. front yard) that is reserved for tree planting and landscaping.

2.3.680 Structure: anything constructed or erected, including retaining walls, the use of which demands a permanent location on the soil, or which is attached to something having a permanent location on the soil.

2.3.685 Sustainable: having the ability to accommodate and/or maintain future population growth and economic expansion.

2.3.690 Testing and Research Facilities: primarily office uses or an establishment primarily engaged in commercial research and providing testing services for scientific research. This use can include the design, development, and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance of product manufacturing. This use does not involve the fabrication, mass manufacture, or processing of the products, and does not include general medical or dental laboratory services.

2.3.695 Temporary Structures: buildings placed on a lot for a specific purpose, which are to be removed within a specified time period. Examples of temporary structures are monitoring stations, mobile classrooms or office space, construction trailers or guard houses, manufactured housing placed on a lot for temporary housing while the primary home renovations are done, and produce stands. The duration permitted for a temporary structure is established by this Ordinance.

2.3.700 Temporary Use Permit: a permit issued by the City allowing a specific use for a specific period of time.

2.3.705 Thoroughfare: within the City of Westwood, only Shawnee Mission Parkway, State Line Road, Rainbow Boulevard, West 47th Street, and Mission Road.

2.3.710 Through Lot: a parcel of land that has access to a public right-of-way from both the front and back property line.

2.3.715 Transitional Yard: the area of a property running along the side or rear yard of a non-residential lot when it abuts a residential lot, used as a buffer.



2.3.720 Utility Structure: any cabinet, pedestal, box, building or other structure used for public utility services, public service corporations, or telecommunications providers including any associated equipment such as condensing units and generators. Towers, poles and traffic signal controllers shall not be considered utility structures. Facilities with a footprint smaller than two square feet, or underground facilities that extend no more than six inches above grade are exempt from this definition.

2.3.725 Undercroft: the area underneath any structure that, due to its height above the ground, is exposed to view. Such structure may be a roof or floor.

2.3.730 Vocational Center: a teaching or learning business where classes are held, which may be affiliated with an educational institution.

2.3.735 Yard: the part of the building plot not occupied by structures and open to sky.

2.3.740 Yard, Front: open space across the full width of the lot extending from the front line of the primary structure to the front line of the lot where the street right-of-way begins. On corner lots, the front yard shall be determined by the street address but extends around on the exterior or right-of-way side to the rear corner of the primary structure.

2.3.745 Yard, Interior Side: open space between the side of the primary structure and the adjacent sideline of the lot, and between the front yard and the rear yard.

2.3.750 Yard, Rear: open space between the rear line of the primary structure and the rear lot line or public right-of-way and between the side lot lines. On corner lots, the rear yard adjacent to the public right-of-way ends at the corner of the primary structure nearest the rear yard and the adjacent side yard public right-of-way.

2.3.755 Yard, Street Side: on corner lots, side yards extend along the yard adjacent to the public right-of-way from the rear corner of the primary of the primary structure to the real property line.

[GRAPHIC]

(Code 2008, ch. 16, § 2.3; Ord. No. 960, § 3, 7-9-2015; Ord. No. 984, § 11, 9-21-2017; Ord. No. 1000, §§ 1, 2, 3-14-2019; Ord. No. 1024, § 17, 2-10-2022)

## Article Three: General Regulations

### 3.1 Applicability

The following provisions shall apply throughout the jurisdiction of this Ordinance, regardless of the underlying Zoning District.

(Code 2008, ch. 16, § 3.1)

### 3.2 Nonconforming Uses

The provisions of this Ordinance shall not apply to existing buildings or structures, ~~nor to the existing use of any buildings or land at the time of the adoption hereof,~~ but shall apply to any alteration of a building or structure to provide for its use for a purpose or in a manner different from the use to which it was put before the alteration. However, nothing

in this article shall prevent the restoration of a building damaged by fire, explosion, act of God or the public enemy, or prevent the continuance of the use of such building, or part thereof, as such use existed at the time of such damage, except that a building which is damaged by more than fifty percent of its fair market value shall not be restored if the use of such building is not in conformance with the regulations herein. A nonconforming use may be changed to a more restricted use, and when so changed, it shall not be changed again to a less restricted use. When a nonconforming use has been discontinued for a period of ninety days, it shall not be reestablished, and any future use shall be in conformity with the provisions of this Ordinance, notwithstanding the purpose for which the premises were erected or used. **14**  
(Code 2008, ch. 16, § 3.2; Ord. No. 1024, § 18, 2-10-2022)

### 3.3 Uses Prohibited

- A. Unless a project is subject to a valid building permit, no open excavation, no partially constructed structure, and no building or structure so damaged as to become unfit for use or habitation, shall be permitted, maintained or remain in such condition within the City for a period of more than six months, except by special permission of the Governing Body.
- B. No building material, construction equipment, machinery, or refuse shall be stored, maintained, or kept in the open on any lot, tract, or parcel within residential (R-I) district, other than during actual construction operations on said premises or related premises. In unusual cases, the Governing Body may waive this requirement for a limited time.
- C. No building or premises ~~now standing~~ in the City, ~~nor any building hereafter erected therein~~, shall be used or occupied for any of the following purposes: **15**
1. junkyard or junk storage ~~room~~ area; **16**
  2. tourist cabin or trailer camp;
  3. slaughterhouse, commercial poultry dressing or processing establishment where such is primary and not incidental to some authorized use;
  4. auto wholesale and retail.
- D. No above-ground construction or planting shall be permitted in any public street, sidewalk or right-of-way, except for traffic and public safety signs, plantings less than 24 inches in height, and hydrants or pedestals less than 30 inches in height and having a width or depth not more than 12 inches; provided that, communication facilities for wireless services may be permitted by application and approval subject to the provisions of Article Ten of Westwood Zoning Ordinance, as well as City-sponsored improvement

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**14 Legal analysis: 3.2 Nonconforming Uses.** Delete time of ordinance adoption language as no longer needed, or if retained, revise to include adoption date.

**15 Legal analysis: 3.3 Uses Prohibited, (C).** Delete language as no longer needed.

**16 Legal analysis: 3.3 Uses Prohibited, (C)(1).** Revise for clarity so as not to be confused with an interior room.

projects.

E. No poles, towers, conduits, or lines for any purpose, including for the purpose of transmission of electricity, data, cable television, voice signals, electronic mail, telecommunications, or other purposes shall be permitted or constructed above ground; provided that, communication facilities for wireless services may be permitted by application and approval subject to the provisions of Article Ten of Westwood Zoning Ordinance.

F. Portable storage units, dumpsters, portable toilets, Portable On Demand Storage units ("PODS"), storage trailers, and other impermanent storage or other facilities are prohibited unless a permit is first obtained. Such a permit shall be for a maximum period of 30 days or as may be required pursuant to any valid building permit. Such permit may be renewable upon a showing of reasonable necessity or as set out in any building permit. (Code 2008, ch. 16, § 3.3; Ord. 920, Sec. 1; Ord. No. 984, § 12, 9-21-2017; Ord. No. 1024, § 19, 2-10-2022)

### 3.4 Allowed Uses

Uses designated as "permitted uses" and "uses permitted with conditions" are allowed in a district as a matter of right. It is recognized that new types of land use will develop and forms of land use not anticipated may seek to locate in Westwood. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

A. For any use not listed in this Ordinance, the owner has the right to appeal to the Board of Zoning Appeals to determine if said use can be reasonably interpreted to fit into a use category where similar uses are described in this Ordinance and is consistent with the Comprehensive Plan of the City, as provided herein.

B. Certain uses preexisting the adoption of this Ordinance are allowed to remain as nonconforming uses in accordance with Section 3.2 of this Article. Temporary uses are allowed in accordance with Section 3.5.2 of this Article. Unless a use is allowed as "permitted," "permitted with conditions," "conditional," "nonconforming," "temporary," or "special," such use is expressly prohibited in that district. <sup>17</sup>  
(Code 2008, ch. 16, § 3.4; Ord. No. 1024, § 20, 2-10-2022)

### 3.5 Temporary Structures

When in compliance with all applicable provisions of this Ordinance and all other ordinances of the City, temporary structures and uses shall be permitted as hereinafter provided.

(Code 2008, ch. 16, § 3.5)

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<sup>17</sup> **Legal analysis: 3.4 Allowed Uses, (B).** If such allowed nonconforming uses are still in existence, replace language with actual ordinance adoption date. Otherwise, delete as no longer needed.

### **3.5.1 Construction Trailers, Sanitary Facilities and Roll-Off Dumpsters**

Construction trailers and roll-off dumpsters may be used in conjunction with construction projects, provided that the following conditions are met:

- A. Construction trailers may be located at a building site where there is a valid permit for the construction project.
- B. All construction trailers shall be located at least ten feet off any street right-of-way.
- C. Roll-off dumpsters must be utilized during all such projects and shall be located at least ten feet of any street right-of-way, and shall be emptied at least monthly of all debris or when filled above its top rim.
- D. Temporary sanitary facilities shall be located at least ten feet away from any street right-of-way, and serviced on a weekly basis or more often, as needed.
- E. In addition to construction trailers, at any construction site for a construction project valued at \$1,000,000 or more, one or more security guard houses may be installed. Use of such structures may include overnight stay, provided adequate sanitary facilities are provided and the same conditions for construction trailers, listed above, are met.

(Code 2008, ch. 16, § 3.5.1)

### **3.5.2 Temporary Uses Allowed**

Certain uses of a temporary nature which would not otherwise be permitted in a particular zoning district may be issued a temporary permit as provided herein. Upon receipt of an application, the Governing Body may grant a temporary use permit for the following uses:

- A. Christmas tree sales;
- B. Revivals;
- C. Shows for civic and youth organizations; and
- D. Markets and art fairs.

The permit shall be valid for a specified time only, not to exceed 45 days in duration.  
(Code 2008, ch. 16, § 3.5.2)

### **3.5.3 Application for Other Uses**

All other temporary uses not otherwise listed above may be granted a temporary use permit only after the Governing Body has made the following determinations:

- A. The proposed use will not materially endanger the public health, welfare, and safety; and,
- B. The proposed use will not have a substantial negative effect on adjoining

properties.

C. In approving such a temporary permit, the Governing Body may authorize conditions regarding the duration of use, hours of operation, signage, lighting, traffic, and other land use and public safety concerns, and such conditions shall be made part of the permit issued. Violations of such conditions shall be considered a violation of this Ordinance.

(Code 2008, ch. 16, § 3.5.4)

### **3.5.4 Manufactured Homes**

Manufactured homes may be allowed on a temporary basis in a zoning district in which such use is not listed as a permitted use, if a disaster destroys an occupied single-family dwelling or renders it uninhabitable (i.e., it receives damage greater than sixty percent of its tax value as indicated on the cost current tax listing). In this instance, a manufactured home may be placed on the lot on which the dwelling was destroyed. The manufactured home is permitted in order to provide living quarters for the residents of the destroyed dwelling while a new dwelling is being constructed or the original dwelling is being repaired. In such instances, the use of a manufactured home is subject to the following conditions:

A. Such manufactured home shall not be placed in the front yard and shall be located a minimum of fifteen feet from the principal residential structures on adjacent lots and a minimum of ten feet from all lot lines.

B. The Building Official has the authority to issue a one-time-only temporary use permit for a period of up to 45 days. Said permit may be renewed on a one-time-only basis for a reasonable amount of time by the Governing Body if it is determined that:

1. construction of the new dwelling unit is proceeding in a diligent manner; and,
2. the granting of such permit will not materially endanger the public health, welfare, or safety; and,
3. the location of the manufactured home on the site does not have a negative effect on adjacent properties.

(Code 2008, ch. 16, § 3.5.4)

### **3.5.5 Manufactured Structures as a Temporary Conditional Use**

A. Manufactured structures may be used for any temporary business space as a temporary conditional use granted by the Governing Body, provided the following conditions are met:

1. The manufactured structures are necessary for temporary needs due to construction.
2. The manufactured housing shall be provided with underpinning, from the bottom of the walls to the ground, made of vinyl, prepainted aluminum material, or other material specifically manufactured for mobile homes.

3. Additional on-site parking for employees or driving patrons must be provided.
- B. The Governing Body can impose requirements to protect the public health, welfare, and safety.
- C. If the Governing Body finds that the above conditions are met, and construction and planning of permanent facilities are being carried out diligently, the Governing Body may issue a temporary use permit for a maximum of one year.  
(Code 2008, ch. 16, § 3.5.5)

### 3.6 Yard and Garage Sales

Yard, estate sales, auctions, sample sales, garage, and patio sales are permitted as an accessory use on any residentially or institutionally developed lot in any district. Such sales may only be conducted by residents of the City of Westwood or their representatives, and may take place only on the tract on which said resident actually resides or has resided. A no-fee permit is mandatory, and can be obtained from the City Clerk.  
(Code 2008, ch. 16, § 3.6)

### 3.7 Sale of Seasonal Products

Seasonal goods, including, but not limited to, produce, Christmas trees, and pumpkins may not be displayed for sale in any R-1 Zoning District.  
(Code 2008, ch. 16, § 3.7)

### 3.8 General Lot Standards

No building or land shall hereafter be used, and no building or part thereof shall be erected, moved or altered, except in conformity with the regulations herein specified for the district in which it is located.

- A. No lot existing at the time of passage of this Ordinance shall be reduced in size or area below the minimum requirements set forth for the subdistrict in which said lot is located. Lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance. **18**
- B. Every building hereafter erected, moved, or structurally altered shall be located on a single lot. In no case shall there be more than one principal building and its customary accessory building(s) on any lot, except in appropriate regulated districts which permit more than one commercial or residential structure on a lot.
- ~~C. Nothing in this Ordinance shall be deemed to require any change in plans, construction, or designed use of any building or structure for which a building permit was secured prior to the adoption of this Ordinance, so long as said building permit remains~~

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<sup>18</sup> **Legal analysis: 3.8 General Lot Standards, (A).** Revise to add actual date of ordinance for reference.

valid. <sup>19</sup>

(Code 2008, ch. 16, § 3.8; Ord. No. 1024, § 21, 2-10-2022)

### 3.9 Storm Water Runoff Provisions

All storm water collection and runoff systems shall conform to the 2003 APWA Standards, Section 5600, as amended.

(Code 2008, ch. 16, § 3.9)

### 3.10 Off-Street Parking and Loading

For all buildings or structures hereafter erected, constructed, reconstructed, moved, or altered, off-street parking in the form of garages or areas made available exclusively for that purpose shall be provided.

Permanent occupancy shall not be allowed until all provisions for parking have been met. (Code 2008, ch. 16, § 3.10)

### 3.11 Solar Collectors

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

- A. Roof-mounted solar collectors visible from the front or side of public right-of-way shall not extend above the peak of the roof where it is mounted, and no portion of such solar collectors shall extend more than 24 inches perpendicular to the point on the roof where it is mounted; the support structure shall not be enclosed.
- B. Roof-mounted solar collectors located on the rear side of building roofs shall not extend above the peak of the roof where it is mounted, and no portion of such solar collectors shall extend more than 48 inches perpendicular to the point on the roof where it is mounted.
- C. Ground-mounted solar collectors shall not exceed six feet in total height and shall be located within the rear yard at least twelve feet inside the property line.
- D. All lines serving a ground-mounted solar system shall be located underground.

[GRAPHIC]

(Code 2008, ch. 16, § 3.11)

## Article Four: Residential Zoning Districts

### 4.1 RESIDENTIAL DISTRICTS — GENERAL REQUIREMENTS

#### 4.1.1 Intent

The R-1 Single-Family Residential District is established to promote the health of the

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<sup>19</sup> **Legal analysis: 3.8 General Lot Standards, (C).** Assuming any such projects undertaken prior to the adoption of the ordinance would have already been completed, delete as no longer needed.

City's historical neighborhoods as well as providing for their expansion along the same traditional lines used when they were established.

A. The following is a list of objectives to achieve housing that is compatible within the existing neighborhood:

1. Materials and colors should be used to reduce the apparent bulk of the structure.
2. The building height should be in proportion to the style and size of the house and to the lot area.
3. Higher portions of structure should be set back from the lot lines to reduce the impression of height.
4. Architectural features should be used to reduce the impression of bulk.
5. A combination of vertical and horizontal elements should be used to break up long or tall facade walls.
6. Recessed and projecting spaces should be used to create interest.
7. The completed structure(s) must not overcrowd or overwhelm neighboring residences.
8. The creation of a vertical canyon effect between houses should be minimized. When a two-story house is proposed adjacent to one-story houses, the space between the houses should increase as wall height increases.
9. Similar materials, colors and roof pitch should be used on all sides and on all structures on the site.
10. The use of highly reflective materials should be avoided.
11. Mechanical equipment should be screened.
12. Large, continuous paved areas should be avoided. Paved areas should be broken up by the use of textured or colored materials.

B. Consistent with the City's Comprehensive Plan, the objectives in development of this District are:

1. to promote positive growth in the City's residential areas;
2. to accommodate the renovation and expansion needs of residents;
3. to allow for future redevelopment;
4. to alleviate problems in compatibility with neighboring properties;
5. to provide clear criteria for new infill houses;



6. to allow for flexibility in expansion and remodeling of existing homes.

C. In addition, the Governing Body recognizes the unique attributes of the area known as the Westport Annex, and finds as follows:

1. Whereas the area known as Westwood East of Rainbow ("WEBO") consists of the area on 47th Terrace and 48th Street between Rainbow Boulevard and State Line Road, and is unique in its construction, platting, and configuration in the City of Westwood; and

2. Whereas WEBO consists of lots nearly all of which were originally platted to have uniform dimensions of 40 feet in width by 110 feet in depth; and

3. Whereas the housing stock in WEBO has a significant percentage of smaller, older homes which present remodeling and redevelopment challenges; and

4. Whereas the construction of many homes in WEBO predate the widespread ownership of automobiles, and thus many homes have little or no garage space; and

5. Whereas the scarcity of garage space contributes to parking congestion which may negatively affect the safety, comfort, and convenience of the citizens; and

6. Whereas creative and distinct efforts may be necessary to create an environment for stable and productive redevelopment in WEBO; and

7. Whereas the Governing Body has received comments from the Planning Commission, residents of WEBO, other citizens, and others, and has studied the challenges posed by the unique characteristics of WEBO, and has concluded that certain rules or requirements may be too restrictive or otherwise interfere with redevelopment or the most productive use of property in WEBO, and that it is appropriate to create certain rules that pertain to WEBO based on the unique and distinct characteristics that predominate in the neighborhood, and the circumstances of WEBO justify the creation of an overlay district or similar special considerations for this area;

8. Therefore, a category R1-E shall be created as further set forth herein.  
(Code 2008, ch. 16, § 4.1.1; Ord. No. 1024, § 22, 2-10-2022)

#### **4.1.2 Residential Zoning Districts Described**

The single-family residential areas of the City are divided into the following single-family residential zoning districts as further defined and described herein, including, but not limited to, the definitions and descriptions set forth in Section 4.3.2:

R-1 (A) lots which are less than 50 feet in width as measured at the curb along the front property line;

R-1 (B) lots which are less than 65 feet in width but at least 50 feet in width as measured at the curb along the front property line;

R-1 (C) lots which are less than 75 feet in width but at least 65 feet in width as measured at the curb along the front property line;

R-1 (D) lots which are at least 75 feet in width as measured at the curb along the front property line; and

R-1 (E) lots which are less than 50 feet in width as measured at the curb along the front property line, and which are located on 47th Terrace or 48th Street between State Line Road and Rainbow Boulevard, otherwise referred to as WEBO.  
(Code 2008, ch. 16, § 4.1.2; Ord. No. 1024, § 23, 2-10-2022)

## 4.2 USES PERMITTED WITH CONDITIONS

### 4.2.1 Intent

Certain uses exist which may be constructed, continued and/or expanded, provided they meet certain mitigating conditions specific to their design and/or operation. Such conditions ensure compatibility among other building types so that different uses may be located in proximity to one another without adverse effects to either.

Each use shall be permitted in compliance with all conditions listed for the use in this article. A special use permit may be required as identified in Article 8 of this Ordinance for each use permitted with the following conditions. Applications for communication facilities for wireless services and for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within Article Ten of the Westwood Zoning Ordinance, and the City shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers. All uses permitted with conditions in a residential district shall comply with Sections 5.1, 5.4, 5.5, and 5.6 of this Article.

(Code 2008, ch. 16, § 4.2.1; Ord. 984, § 13, 9-21-2017; Ord. No. 1024, § 24, 2-10-2022)

### 4.2.2 Customary Home Occupation

- A. Any business operated within a residence shall not change the character of the dwelling.
- B. No outside storage associated with the home occupation is permitted.
- C. No more than 25% of the home shall be used in connection with the home occupation, except for a day care service.
- D. A maximum of one nonresident employee is permitted.
- E. No display or advertising on premises is permitted.
- F. Only vehicles used primarily as passenger vehicles shall be permitted in connection

with the home occupation.  
(Code 2008, ch. 16, § 4.2.2)

#### **4.2.3 Churches and Civic Uses**

- A. Churches, schools, and governmental uses shall be placed on a lot so as to front on the street.
- B. Any building(s) incidental to the primary structure shall be behind a line a minimum of twenty feet from the front facade of the structure and, if more than one, shall be arranged to create secondary gathering spaces within the lot.
- C. Parking shall be located toward the interior of the lot. On-street parking may be used to fulfill parking requirements, where permitted. Parking may not occur within a front setback or corner side setback.
- D. Site plan review by the Planning Commission and approval by the Governing Body is required.  
(Code 2008, ch. 16, § 4.2.3; Ord. No. 1024, § 25, 2-10-2022)

#### **4.2.4 Public Safety Uses**

- A. All public safety stations shall be similar in architectural design to nearby structures.
- B. Parking shall be to the rear of the lot.
- C. Site plan review by the Planning Commission and approval by the Governing Body is required.  
(Code 2008, ch. 16, § 4.2.4)

#### **4.2.5 Group Homes**

- A. All group homes shall be residential in architectural design.
- B. Minimum lot size shall be 7,000 square feet.
- C. Parking shall be to the rear of the home and shall be screened from adjoining properties.
- D. Site plan review by the Planning Commission and approval by the Governing Body is required.  
(Code 2008, ch. 16, § 4.2.5)

#### **4.2.6 Communication Facilities**

- A. Communication facilities are subject to the application, review, building, and performance standards of Article Ten of the Westwood Zoning Ordinance.
- B. Communication Facilities, limited to the following:

1. Towers and Base Stations, as defined within Article Ten, Section 10.2, designed as an architecturally compatible element to an existing non-residential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in residential districts.
2. Antennas, as defined within Article Ten, Section 10.2, mounted on and designed as an architecturally compatible element to an existing non-residential structure or building.
3. Small Cell and Distributed Antenna Systems, as defined within Article Ten, Section 10.2, mounted or collocated on monopoles, utility poles, or street lights in the public right-of-way.  
(Code 2008, ch. 16, § 4.2.6; Ord. 984, § 14, 9-21-2017)

#### **4.2.7 Day Care Center**

- A. Any business operated within a residence shall not change the character of the dwelling.
- B. No display or advertising on premises is permitted.
- C. A state license is issued to the day care center.  
(Code 2008, ch. 16, § 4.2.7)

#### **4.2.8 Parking Space Requirements for Uses with Conditions**

- A. The table below includes requirements for employee parking.
- B. Employee parking spaces are included in the ratios in the below table.
- C. No use shall provide more than one hundred twenty-five (125) percent of the minimum required parking without documented evidence of actual parking demand based on studies of similar uses in similar context.
- D. Any parking permitted over one hundred fifteen (115) percent of the minimum shall require mitigating potential impacts of more parking through one or more of the following strategies:
  1. Provide shared parking for other uses on the block or adjacent blocks.
  2. Use alternative surfaces designed to infiltrate stormwater or otherwise increase permeability without significantly sacrificing stability and durability.
  3. Provide additional buffers and site open spaces to screen parking with at least a ten (10) percent increase in the open space or buffers required for the parking, and at least a twenty (20) percent increase in the landscape material amount required for the parking.
  4. Design all parking areas over the one hundred fifteen (115) percent maximum as dual-purpose space, such as plazas or courtyards, playgrounds, event areas for regular use of the space during non-peak times.

Institutions of higher learning	1 per 5 students / 1 per two residents
High schools	1.5 per five students
All other schools	1.5 per classroom
Government institutions	1 per 300 sq. ft. / 1 per 4 seats of meeting area
Religious institutions	1 per 4 seats of meeting area
Civic organizations	1 per 300 sq. ft. / 1 per 4 seats
Group homes	1 per three residents
Nursing homes / retirement	1 per three beds
General Health and Welfare Institutions	1.2 per bed
Independent Living Facilities	1.5 per unit
Convention Facilities	1 per 250 sq. ft.
Post Office	1 per 400 sq. ft.

(Code 2008, ch. 16, § 4.2.8; Ord. No. 1024, § 26, 2-10-2022)

**4.2.9 Essential Utility Structures**

Utility structures may only be installed in a utility easement; provided that, utility structures may be located within the public right-of-way subject to the approval of the Public Works Director and, if applicable, located behind any sidewalk. Other locations for utility structures may be allowed pursuant to the issuance of a special use permit as provided in Westwood Zoning Ordinance Article 8.

- A. When placing utility structures, priority will be sought in the following order:
  - 1. Properties with non-residential uses.
  - 2. Thoroughfare easements.
  - 3. Rear yards.
  - 4. Street side yards on a corner lot behind the front yard setback.
  
- B. No newly-constructed above-ground facilities shall be located directly in front of any single-family home (or in front of where a single-family home could be constructed, in the case of a vacant lot), provided that if the Public Works Director deems it necessary or appropriate, such facilities may be located in the front yard, at or along the property line between two adjacent properties.
  
- C. The structure is limited to sixty six (66) inches in height above average grade and shall be limited to a footprint of no larger than twenty (20) square feet in area.
  
- D. Utility structures shall comply with all noise limitations and requirements established by the City.

E. Landscaping shall be provided for all utility structures with a footprint greater than two (2) square feet, where necessary to substantially screen the utility structure from public view and the view of adjacent landowners. Where landscaping is required for screening, a landscaping plan signed by a registered landscape architect shall be submitted with an application for a right-of-way permit, and, if approved, installed as part of the work performed in accordance with the right-of-way permit.

F. Any utility structure that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of the utility structure shall remove the structure and return the site to its original condition.  
(Code 2008, ch. 16, § 4.2.9; Ord. 984, § 15, 9-21-2017)

### 4.3 SINGLE-FAMILY RESIDENTIAL

#### 4.3.1 Uses Permitted by Right

In the R-1 District, no building or premises shall be used and no building or structure shall be hereinafter erected or altered unless otherwise provided in this Ordinance, except for the following uses:

- A. Single-family dwellings and appurtenances incident thereto;
- B. Accessory dwelling unit (ADU)
- C. Public parks or playgrounds, churches on lots of one acre or more, public or parochial school, city halls and police stations;
- D. Group homes;
- E. Accessory uses as provided herein;
- F. Essential utility services subject to the limitations provided herein; or,
- G. Communication Facilities, limited to the following:
  1. Towers and Base Stations, as defined within Article Ten, Section 10.2, designed as an architecturally compatible element to an existing non-residential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in residential districts.
  2. Antennas, as defined within Article Ten, Section 10.2, mounted on and designed as an architecturally compatible element to an existing non-residential structure or building.
  3. Small Cell and Distributed Antenna Systems, as defined within Article Ten, Section 10.2, mounted or collocated on monopoles, utility poles, or street lights in the public right-of-way.
  4. Communication facilities, e.g. Towers, Base Stations and Antennas, are subject to the application, location, and performance standards of Article Ten of the Westwood

Zoning Ordinance.

5. Communication facilities with conditions as provided herein or as otherwise deemed necessary by the approval authority to protect the public health, safety or welfare.

H. Nonresidential development permitted in a residential district shall be in compliance with Section 5.1 (general requirements for commercial development), Section 5.4 and 5.5 (related to parking), and section 5.6 (landscaping).  
(Code 2008, ch. 16, § 4.3.1; Ord. 984, § 16, 9-21-2017; Ord. No. 1024, § 27, 2-10-2022)

#### **4.3.2 Single-Family Primary Structure Requirements**

A. Residential lots are described and defined in Section 4.1.2 (Residential Zoning Districts Described) and are reaffirmed herein by reference. For lots which have front footage lying on a curve or arc (such as may occur on a lot on a cul de sac) or which otherwise are not rectangular and have a front width which is narrower than the width at the back property line, the width shall be measured along the front building line of the primary structure for purposes of determining the lot category.

B. The primary structure of all residences in R-1(A), R1-(B), R1-(C), and R1-(D) shall be a maximum of two stories in height. Residences in R-1(E) shall be a maximum of 2½ stories.

C. For all residential tracts in R-1(A) and R-1(E), the total lot coverage of all structures, including, but not limited to all primary and accessory structures, shall not exceed 40% of the area of the lot. For R-1(B), R-1(C), and R-1(D) lots, the total lot coverage of all structures, including, but not limited to all primary and accessory structures, shall not exceed 35% of the area of the lot. However, in calculating lot coverage, decks which are at least 30 inches high, measured from the ground, shall be calculated at 50% of the area they encompass. Thus a deck having an area of 100 square feet shall count as 50 square feet for purposes of calculating total lot coverage. Decks lower than 30 inches in height are not counted toward lot coverage.

D. Primary structures shall have at least 60% of their front facade on the front yard build-to line.

E. The vertical surface of any building elevation shall not exceed more than 600 square feet or 25' measured horizontally without incorporating architectural relief. Architectural relief shall be defined as a building element or elements that break(s) up a wall plane and occurs cumulatively over at least 25% of the wall plane requiring relief.

1. Examples may include dormers, projecting primary entrance features, projections or recessions in the building face (either horizontal or vertical), columns, , chimneys, , arches, eaves, alternating roof pitches, and/or by other architectural means.

2. Windows, doors, and changes of material do not constitute architectural relief.

F. Window openings shall match or exceed the existing percentage of wall-to-window openings of the existing house or the construction of adjacent properties for new homes.

The requirements of this provision, however, shall not apply to the first floor of attached garages.

G. Front setback encroachments for all residences shall be no greater than 4 feet into the front yard setback. See 4.3.3.E

H. The maximum height of the primary structure shall be 35 feet.

I. With respect to lots which have existing primary or accessory structures less than 5 feet from a side property line, such existing primary or accessory structure's existing wall may be extended further along the property line provided that a distance of 10 feet is maintained between the structure and any extension thereof and any structure on any adjacent lot.

J. Notwithstanding the above, any construction within such a 5-foot setback shall require that any future construction of a structure on the adjacent lot be not less than 10 feet away from the new construction. Thus, for example, and not by way of limitation, an extension on one lot that is 4 feet off the side yard property line would necessitate that any later construction on the adjacent lot be at least 6 feet off of its side yard.

K. A permit for construction of a non-conforming primary or accessory structure in the setback will not be granted until the applicant obtains the following in writing signed by the adjacent property owner or owners:

1. a statement advising the adjacent neighbor of the nature of the project or construction under consideration;
2. an acknowledgement by said adjacent neighbor that that property owner or owners may not build any closer than 10 feet to the proposed project or construction in the future;
3. a statement that said adjacent property owner or owners consent to said project or construction; and
4. this writing shall be acknowledged before a notary public and said permit shall be filed with the Johnson County Office of Records and Tax Administration, and proof of said filing provided to the City before any building permit shall issue.<sup>20</sup>

L. Except as set forth in Article 4.3.3, Lot Exceptions below, specific requirements for each residential zoning district are as follows:

1. R-1(A):
  - a. lots shall be less than 50 feet in width;

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<sup>20</sup> **Legal analysis: 4.3.2 Single-Family Primary Structure Requirements, (K)(4).** Revise to clarify, as the current wording seems to imply there are two separate permits required. Please advise; revise accordingly.



- b. minimum setbacks are established at:
    - 1. 20 feet for the front yard,
    - 2. 7 feet for a second-story side yard,
    - 3. 15 feet for the rear yard,
    - 4. 15 feet for the side yard on corner lots,
    - 5. other first-story side yard setbacks as set forth in Article 4.3.2.I above;
  - c. the maximum lot width coverage at front yard setback shall be 80%;
  - d. the maximum eave height above the first floor shall not be greater than half the width of the lot as measured at the curb along the front property line;
  - e. the maximum stories of the primary structure shall be two.
2. R-1(B):
- a. lots shall be at least 50 feet and less than 65 feet in width and have a minimum area of 5,500 square feet;
  - b. minimum setbacks are established at:
    - 1. 35 feet for the front yard,
    - 2. 7 feet for a second-story side yard,
    - 3. 15 feet for the rear yard,
    - 4. 15 feet for the side yard on corner lots,
    - 5. other first-story side yard setbacks as set forth in Article 4.3.2.H above;
  - c. the maximum lot width coverage at front yard setback shall be 80%;
  - d. the maximum eave height above the first floor shall not exceed 23 feet;
  - e. the maximum stories of the primary structure shall be two.
3. R-1(C):
- a. lots shall be at least 65 feet and less than 75 feet in width and have a minimum area of 7,020 square feet;
  - b. minimum setbacks are established at:
    - 1. 35 feet for the front yard,

2. 7 feet for a second-story side yard,
  3. The greater of 15 feet or 20% of depth of lot for the rear yard,
  4. 15 feet for the side yard on corner lots,
  5. other first-story side yard setbacks as set forth in Article 4.3.2.H above;
  - c. the maximum lot width coverage at front yard setback shall be 70%;
  - d. the maximum eave height above the first floor shall not exceed 23 feet;
  - e. the maximum stories of the primary structure shall be two.
4. R-1(D):
    - a. lots shall be at least 75 feet width and have a minimum area of 9,000 square feet;
    - b. minimum setbacks are established at:
      1. 35 feet for the front yard, 7 feet for a second-story side yard,
      2. The greater of 15 feet or 20% of depth of lot for the rear yard,
      3. 15 feet for the side yard on corner lots,
      4. other first-story side yard setbacks as set forth in Article 4.3.2.H above;
      - c. the maximum lot width coverage at front yard setback shall be 70%;
      - d. the maximum eave height above the first floor shall not exceed 23 feet;
      - e. the maximum height of the primary structure shall be 35 feet;
      - f. the maximum stories of the primary structure shall be two.
5. R-1(E):
    - a. lots shall be less than 50 feet in width;
    - b. minimum setbacks are established at:
      1. 20 feet for the front yard,
      2. 5 feet for a second-story side yard, 7 feet for the third-story,
      3. 15 feet for the rear yard but 5 feet for a detached garage in the rear yard,
      4. 15 feet for the side yard on corner lots,

- 5. other first-story side yard setbacks as set forth in Article 4.3.2.H above;
- c. the maximum lot width coverage at front yard setback shall be 70%;
- d. the maximum eave height above the first floor shall not exceed 23 feet;
- e. the maximum stories of the primary structure shall be two and one-half;
- f. the total square footage of the one-half story above the second story shall not exceed 50% of the total square footage of the second story.

J. The chart on the following page is provided to assist property owners for single-family primary structures, however the written paragraphs herein shall prevail in the event of any question of interpretation or ambiguity with respect to said chart.

#### 4.3.2 Single-Family Primary Structure Requirements Charted

Primary Structure Requirements	R-1 (A)	R-1 (B)	R-1 (C)	R-1 (D)	R-1 (E)
Lot Width Minimum		50'	65'	75'	
Lot Width Maximum	< 50'	< 65'	< 75'		< 50'
Lot Size Minimum		5,500 sq. ft.	7,020 sq. ft.	9,000 sq. ft.	
Maximum Lot Coverage Including Accessory Structures (deck calculated @ 50%)	40%	35%			40%
Minimum Setbacks:					
Front Yard Build-to Line (see 4.2.3.D)	20'	35'			20'
First Floor Side Yard	See Article 4.3.2.H				
Corner Lots Side Yard**	15'				15'
Rear Yard	15'		greater of 15' or 20% of lot depth		15', detached garage at 5'
Maximum Lot Width Coverage at Front Yard Setback	80%		70%		80%
Front Setback Encroachments:					
Open Stoops, Open Porches & Raised Doorways	4' into the front yard setback				
Maximum Eave Height above First Floor	< ½ lot width	23'			
Maximum Height of Primary Structure	35'				
Maximum Stories of Primary Structure	2	2			2½ *
Continuous Wall Limits	Not to exceed more than 600 square feet or 25' horizontally without incorporating architectural relief. See 4.3.2 E.				

Attached Garages	The front wall of front-facing attached garages shall be located entirely behind the front wall of the primary building (2.3.520). Front porches or colonnades shall not constitute the front wall of the dwelling for this review.

\* New home builds should see 4.4 New Infill Houses & Major Additions for special considerations.

\* The total square feet of the top one-half story shall not exceed 50% of the area of the second story.

\*\* Corner lots side yard diagramed in Section 2 – Definitions

(Code 2008, ch. 16, § 4.3.2; Ord. No. 1024, § 28, 2-10-2022)

### 4.3.3 Lot Exceptions

- A. No new R-1(A) or R-1(B) lots shall be platted ~~after adoption of this Ordinance.~~ **21**
- B. A cul de sac lot shall have a minimum width of 30 feet at the front building line.
- C. Lot splits of existing platted lots shall be subject to the requirements set forth in Article 1.5, entitled Plans, Plats, and Lot Splits.
- D. Setback exceptions are as follows:
  1. 47th Street Terrace and 48th Street between Rainbow Boulevard and State Line Road: front yard setback 20 feet;
  2. 50th Street Terrace east of Belinder Road: front yard setback 30 feet and rear yard setback 10 feet;
  3. 47th Street Terrace between Belinder Road and Rainbow Boulevard: front yard setback 25 feet;
  4. Fairway Road between 49th Street and 50th Street: front yard setback 23 feet;
  5. Norwood Road between 49th Street and 50th Street: front yard setback 32 feet;
  6. Where irregular front yard setbacks exist and specific setbacks are not indicated above, the front yard shall not be less than the primary structure on either side.
- E. Encroachment exceptions are as follows:

<sup>21</sup> **Legal analysis: 4.3.3 Lot Exceptions, (A).** Revise to update language.

1. Chimneys, open steps, and medically necessary ramps may encroach on front setbacks;
  2. Bay windows may encroach on the front yard to a maximum of 30 inches;
  3. All encroaching stoops and porches shall be open with no enclosing screens or windows;
  4. All the above encroachments shall be constructed using materials and construction methods similar to those of the existing house.
- F. Height exceptions are as follows:
1. Roof equipment;
  2. Spires;
  3. Chimneys and other roof appurtenances not intended for human occupancy and which are necessary to the structure to which they are attached.  
(Code 2008, ch. 16, § 4.3.3)

**4.3.4 Accessory Structure Setback and Other Requirements**

- A. The setback for accessory structures for all residential zoning districts currently established shall be 5 feet for the rear yard and for the side yards, including the interior side lot of corner lots, except as set out in 4.3.2H.
- B. On corner lots, the street side yard setback (i.e., the setback for the side yard nearest to the street) for accessory structures shall be equal to the setback of the primary structure, i.e., accessory structures may not encroach on the setback established for the primary structure.
- C. The following chart sets forth other requirements pertaining to accessory structures. Parameters which do not relate to setbacks are set forth in related sections below the chart. The written paragraphs herein shall prevail over chart data in the event of any question of interpretation or ambiguity.

Accessory Building Setbacks and Other Requirements (Articles 4.3.4, 4.3.5, 4.3.6)	R-1 (A)	R-1 (B)	R-1 (C)	R-1 (D)	R-1(E)
Interior Lots Side Yard	See Article 4.3.2.H				
Rear Yard	5'				
Corner Lots Interior Side	5'				
Corner Lots Side Yard	equal to primary structure setback				
Maximum Accessory Structures per Dwelling	2				

Maximum Detached Garage Height	35' or 2 stories				
Detached Garage Roof Pitch	Same roof pitch as primary structure				
All Other Structure Height	16' and 1 story				
Maximum Footprint of All Accessory Structures	662 sq. ft.	704 sq. ft.	704 sq. ft.	704 sq. ft.	662 sq. ft.
Minimum Garage Size	175 sq. ft.				
Maximum Garage Door Height	9'				
Detached Garage Allowed in Rear Yard	Yes				
Tandem Garage Permitted	Yes				
Adjacent Property Interior Common Wall Garages (see Article 4.3.6.D)	Yes				
Materials and construction	Similar to primary structure				

(Code 2008, ch. 16, § 4.3.4; Ord. No. 1024, § 29, 2-10-2022)

**4.3.5 Accessory Structures**

A. No more than two accessory structures, including detached garage, shall exist for a single residence.

B. Accessory structures must be clearly incidental to and customarily and commonly associated with the primary structure and must be located in the rear yard. Accessory structures may have plumbing, heating, ventilation, air conditioning, cooking facilities, or other amenities, and may be used for any purpose which is otherwise lawful in the primary structure, including, but not limited to, garages, storage areas, home offices, studios, or workshops, and accessory dwelling units, provided all applicable building, fire safety, and other codes are met.

C. Only one accessory dwelling unit (ADU) is permitted on any single-family residential building site. If the ADU is greater than 500 sq. ft. in size, an additional parking space located behind the front yard setback and at least 20 feet from the street side lot line is required. ADUs that are 500 sq. ft. or smaller that have code compliant parking for the principal structure at the time the principal structure was constructed are not required to have an additional parking space for the ADU.

D. For R-1(A) and R-1(E) tracts, the total coverage of the combined footprints of all accessory structures shall not exceed 662 square feet. For R-1(B), R-1(C), and R-1(D) tracts, the total coverage of the combined footprints of all accessory structures shall not exceed 704 square feet. However, notwithstanding the above, an accessory structure may only be constructed provided that all other zoning, building, and other legal requirements are met.

E. Accessory structures other than garages which are less than 150 square feet in

area and do not have a permanent foundation may be constructed of any permitted residential building wall material and may have a roof pitch different from that of the existing pitch of the roof on the primary structure.

F. No structure may be set in any utility or other easement.

G. No structure may be more than sixteen feet, and one story, in height, except as provided in 4.3.6 Garages.

H. Dog runs must be in the rear yard and must comply with all setback and fence height requirements, and shall be no more than four feet wide and twelve feet long with a paved floor for sanitation purposes. Each lot shall have no more than one dog run. (Code 2008, ch. 16, § 4.3.5; Ord. No. 1024, § 30, 2-10-2022)

#### **4.3.6 Garages**

A. Each single-family residence hereinafter constructed within the City limits must have at least a one-car garage.

B. No remodeling or construction shall be permitted which eliminates all garage space for a single-family residence.

C. Basement parking garages in R-1(A) and R-1(E) districts may extend above existing grade a maximum of four feet if the front entrance to the first floor faces the street and no exterior entrance to the garage, other than the garage door(s), faces the street.

D. One detached garage on each of two adjacent lots may be built on the side property line and share a common wall. Such a garage may be built only following a hearing before the Governing Body with notification by certified mail to all property owners who are adjacent, abutting, or opposite the properties upon which the garage is proposed to be built. At the hearing, the Governing Body may approve such a garage provided that the applicants have appropriate easements, party wall agreements, or other documentation and provided further that no existing easements or property rights will be affected by the garage.

E. Any detached garage shall have a permanent foundation, cover an area of at least 175 square feet, and be constructed using materials and construction similar to the primary structure, including the same roof pitch as the existing roof on the primary structure.

F. The front wall of front-facing attached garages shall be located entirely behind the front wall of the primary building (2.3.520). Front porches or colonnades shall not constitute the front wall of the dwelling for this review.

G. Detached garages shall be located entirely behind the rear line of the primary structure.

H. Any three-car garage must have at least two garage doors for vehicle access.

- I. No detached garage shall be more than 35 feet and 2 stories in height.
- J. No garage door shall be more than 9 feet in height.  
(Code 2008, ch. 16, § 4.3.6; Ord. No. 1024, § 31, 2-10-2022)

#### **4.3.7 Building Standards**

- A. Acceptable materials for all structures in all R-1 districts are as follows:
  - 1. The exterior surfaces of residential building walls shall be stone, brick, finished concrete, precast concrete, copper, plaster stucco, EIFS (Exterior Insulation Finishing System), clear glass, wood (clapboard, shingle, drop siding, primed board, or board and batten), brick, metal (for detailing and awnings), vinyl siding and details (including soffits), aluminum siding, or steel siding. Also, vinyl windows are permitted. All other materials shall be prohibited including, but not limited to, plastic columns or other ornamentation, concrete masonry units, corrugated metal, and mirror or other reflective glass.
  - 2. Residential roofs shall be dressed in wood shingles, slate, asphalt shingles, copper, tern-coat metal, tile, concrete tile, painted metal, or single membrane roof. No person shall construct a green roof prior to first submitting a detailed maintenance plan to the City and obtaining a conditional use permit from the Building Official.
  - 3. Gutters and downspouts shall be made of copper, galvanized metal, painted metal, baked finish aluminum or vinyl.
- B. Configurations for all structures in all R-1 districts shall be as follows:
  - 1. The undercroft of buildings shall be enclosed by a lattice or similar enclosure.
  - 2. All rooftop equipment, such as solar panels or turbines, shall be visually compatible with the structure. Roof penetrations, except chimneys and skylights, shall be located on the rear or side so as not to be visible from the street, whenever possible.
  - 3. Window openings shall match or exceed the existing percentage of wall-to-window openings of the existing house or the construction of adjacent properties.  
(Code 2008, ch. 16, § 4.3.7; Ord. No. 1024, § 32, 2-10-2022)

#### **4.3.8 Building Additions — Special Conditions**

- A. For new additions facing the street, roofs shall have the same pitch as one of the existing roofs on the primary structure, and any roof extension facing the street must have the same pitch as the roof from which it extends. For roof additions other than those facing the street, the roof shall have the same pitch as one of the existing roofs on the primary structure with a permitted variation in pitch of up to two feet of vertical drop for twelve feet of horizontal distance in either direction. Dormers can have any roof pitch and can be any size.
  - 1. On corner lots, the front shall be the side with the primary entrance facing the street only.



2. Notwithstanding the above, in the case of the replacement of a portion of an existing home, the replacement roof line may replicate the previously-existing roof line. For example, if a porch has a roof line that differs from that of the roof to which it is attached, and that porch is torn out to be replaced, the previous roof line can be duplicated on the replaced structure. This provision shall not apply to new additions or modifications that deviate from the existing structure.

3. Further, a roof over an open porch or stoop on the front of a house may have a roof pitch that is different from the pitch or pitches of any of the existing roof(s) on the primary structure.

B. The primary eave lines of house additions shall match in height the existing structure's primary eave lines for both the first and second stories.

C. Acceptable building materials are as follows:

1. The building materials on house additions shall match the building materials and construction of the existing house.

2. The building materials on two-story additions may be different above the first-story eave if the material covering the wall of the first story is the heavier in appearance of the two, e.g., stone on the first story and wood siding on the second story.

D. Considering massing of two-story additions, the following shall apply:

1. Structures with the primary roof ridge line parallel to the street frontage must maintain the existing line along two thirds of their street frontage.

2. For one- or one-and-a-half-story structures which have the primary roof's ridge line perpendicular to street frontage, the existing eave line shall be maintained along the full width of street frontage, a distance of at least four feet back from the vertical surface of any building elevation.

3. The primary two-story roof ridge shall run parallel to existing one- or one-and-a-half-story primary roof structure.

4. Within the limits set forth in Subsection 2 above, where the new second-story roof line meets or extends in front of the existing front building wall, the second-story roof line may be perpendicular to the primary existing roof line.

E. Notwithstanding the above restrictions on materials and roof pitch, a sunroom or conservatory added to an existing primary structure may have a roof constructed primarily of Lexan or a similar translucent material and may have a pitch which differs from pitches on existing roofs on the primary structure.

(Code 2008, ch. 16, § 4.3.8; Ord. No. 1024, § 33, 2-10-2022)

#### **4.3.9 Fence and Wall Standards**

No fence may be placed upon any public right-of-way except by the City.

No fence or wall detached from or attached to any building shall be erected or constructed upon any lot, plot, tract, or premises without a valid permit specific to said construction project.

A. The requirements for materials and style of construction shall be as follows:

1. The type and design of any fence or wall must be suitable to and in conformity with the improvements on the lot on which it is constructed and shall be compatible with the surrounding neighborhood. Both sides of any fence or wall shall be of equal quality or finish; any fence or wall of post-and-support construction shall be built with the posts facing the interior of the tract. All fences and walls must be kept in good repair and appearance.
2. All fences and walls exceeding four feet in height shall be made of wood and of board-on-board style, or shall be of live material such as bushes or shrubs.
3. All fences and walls constructed of live material must be kept trimmed and of an orderly appearance, may not exceed six feet, and may be situated at any location upon the lot or tract subject to easements and the City's tree ordinance.

B. The requirements for fence and wall height shall be as follows:

1. No fence or wall other than a retaining wall shall exceed six (6) feet in height, except as hereinafter provided.
2. The height requirement established by this section may be exceeded by not more than six inches in situations where additional height is necessary to allow for normal installation.
3. Fences constructed to secure structural, mechanical, electrical, or other devices not customarily found in residential areas, including, but not limited to, electrical substations and churches or schools with electrical equipment, may be up to twelve feet in height in order to ensure public safety.

C. The requirements for placement of fences and walls shall be as follows:

1. No fence or wall shall be closer to the front property line than the front line of the residence.
2. No fence or wall on a vacant lot shall be closer to the property lines than the allowable building lines as set forth in this Ordinance.
3. On a corner lot, no fence or wall shall be closer than ten (10) feet to the street-side property line.
4. No fence or wall shall restrict or obstruct the sight distance triangle, as defined and illustrated in Section 9.1.3, or any traffic control sign.

D. Retaining walls may be erected, constructed and maintained on any lot, provided

any such wall complies with the following requirements:

1. The erection, construction and maintenance of any such wall is reasonably necessary because of the topography of said lot; and
  2. Any such wall is located at least two feet back from any street line; and
  3. Any such wall shall extend no more than six inches above ground level of the land retained thereby.
- E. Fences or walls around pools may be of solid construction, and shall also be no more than six feet in height, and shall be constructed in accordance with the City Code, Chapter 8, Health and Welfare, Sections 8-601 through 8-604, Swimming Pools.
- F. Fences or walls which would exceed the height limitation or would fail to comply with any other requirement of this Ordinance may be constructed and maintained, contingent upon the following:
1. Application shall be made to the Governing Body, which shall study said application to determine the following:
    - a. the fence or wall will not adversely affect the general welfare of the immediate neighborhood in which the fence or wall is to be erected, taking into consideration factors including, but not limited to, the value of the property and the safety of residences in said neighborhood;
    - b. the appearance, location, and purpose of the proposed fence or wall;
    - c. the effect on adjoining properties;
    - d. the size of the area to be enclosed; and
    - e. the desirability of open views with regard to beauty, value and safety of the neighborhood; and
    - f. with respect to any fence on a lot adjacent to a street, a variance shall not be granted if the proposed fence would interfere with a safe view of the street for vehicular traffic, or would impair the view from any nearby driveway, or would extend closer to the street than the adjacent front yard setbacks.
  2. Said application must be approved by at least four of the five members of the Governing Body.  
(Code 2008, ch. 16, § 4.3.9; Ord. No. 1024, § 34, 2-10-2022)

#### **4.3.10 Driveways**

- A. Each single-family dwelling is limited to one curb-cut or entrance with a corresponding one-lane driveway having a maximum width of twelve feet.
1. However, a single-family residence may have two single-lane curb-cuts, each a

maximum of twelve feet wide, provided:

- a. no curb-cut may be located within 30 feet of an intersection;
  - b. 75 feet of contiguous property is immediately adjacent to the public right-of-way on the subject tract; and
  - c. there must be at least 36 linear feet of public right-of-way between the driveways, measured at the edge of the right-of-way on the tract.
2. For multiple curb-cut properties, each curb-cut must either:
    - a. end at a garage; or
    - b. be configured so that one driveway arcs or circulates in such a fashion that it connects to the other driveway in the front, or front-side yard in the case of a corner lot, while the other driveway ends at a garage.
  3. The total impervious area of the yard(s) in which the multiple curb-cuts and corresponding driveways are located, measured from the edge of the rights-of-way, shall not exceed forty percent of the total area of the front, side, or back yards on which any part of said driveway lies. This is derived by dividing the total area of the driveway by the sum of the total areas of any front, side, or rear yard on which any part of the driveway or driveways lie on that property.
  4. In the event of an arched, or circular, driveway, the arched driveway must be:
    - a. no wider than 12 feet from the edge of the right-of-way to where it connects to the other driveway; and
    - b. arched so that there is at least 17 feet between the inside of the arch and the public right-of-way for at least 18 linear feet, i.e., the inside radius of the arch must be sufficient to maintain at least a 17-foot setback from the nearest right-of-way for a distance of 18 feet along that right-of-way.
- B. Any house with a single-car garage may have a driveway that widens to a maximum of 18 feet. This widening is allowed only for the final 18 feet of the driveway closest to the garage. Any such driveway may widen gradually for an additional 9 feet of transitional length in which the driveway widens from one lane to the prescribed maximum width.
- C. Any house with a garage built to hold more than one car side-by-side may have a driveway which widens up to the width of the garage or 24 feet, whichever is less. If a house with only one curb-cut has a side-by-side two-car garage with street access from the front, and the garage door face is in line with or in front of the closest adjacent rear corner of the house, that driveway and curb-cut may be a maximum of 24 feet wide, or the width of the garage, whichever is less, from the edge of the right-of-way to the garage.
- D. Any house with a side-by-side garage with more than two side-by-side garage

spaces shall be permitted an additional 9 feet of width than that width permitted in the previous section for each additional side-by-side garage space greater than two spaces in the widened area closest to the garage. Widening of the drive to this greater amount adjacent to the garage doors is allowed for the final 24 feet of the driveway closest to the garage, or for a length equal to the width at the garage, whichever is less. Any such widened driveway may widen gradually for an additional 10 feet of transitional length in which the driveway widens from one lane to the prescribed maximum for two-car garages, and another additional 5 feet of transitional length for each additional side-by-side garage space over the two-car configuration.

E. Driveways shall be constructed of pavers, concrete, asphalt, brick, or similar hard surfaces, or hard surfaces interspersed with green space, vegetation, or natural stone or a combination thereof. Driveway approaches shall conform to the current City right-of-way ordinance.

F. Pavement is allowed up to one foot from the side yard property line on all R-1 lots. Notwithstanding, common drives which lie on both sides of a property line to serve both the adjacent properties are allowed.

G. Any house with garage door access on the rear or side of the house but having drive access only from the front, shall also be constructed with driveways having a maximum width of twelve feet from the edge of the right-of-way to the face of the garage, subject to the other rules set forth herein. The path of travel from the back of the house to the garage door shall be by the most direct path, considering turning radius, entry grade, and the geometry of the existing structures and the lot. For garages facing the rear of the property, horseshoe or U-shaped drives are to be used whenever possible, with the distance between the portions going from the street and the reversed portion going into the garage, or ends of the horseshoe, being as narrow as possible; and, the distance of the driveway before reversing, or the depth of the horseshoe, shall be as short as possible. For garages facing either side yard, right-angle or L-shaped driveways are to be built wherever possible. The maximum allowed inside turning radius to accomplish the turn into the garage is thirteen feet. An additional hard surface area of up to 162 square feet is permitted behind the front face of the house to permit the turning of vehicles and to allow vehicular access to the garage.

H. Any house with no garage shall be treated the same as a house with a single car garage, except that:

1. all driveways shall be straight and perpendicular to the curb-cut;
2. all driveways shall be located as close as possible to either side yard property lines; and
3. all driveways may widen for the final eighteen feet farthest from the street, and such driveways may widen gradually for an additional nine feet of transitional length in which the driveways widen from one lane to the prescribed maximum width. Such driveways shall terminate at least five feet from any rear yard property line and shall not be constructed in a fashion which violates the easement rights of other parties.

I. Notwithstanding anything to the contrary herein, the entrance to a driveway may

widen at the street entrance pursuant to the City's ordinances regarding driveway approaches or right-of-way governance. Any measurements hereunder shall be made from the edge of the right-of-way, wherever applicable. Nothing herein shall be deemed to permit any parking or storage of vehicles on any right-of-way or in other areas designated for public use.

(Code 2008, ch. 16, § 4.3.10; Ord. 915, Sec. 1; Ord. No. 1024, § 35, 2-10-2022)

#### **4.3.11 Off-Street Parking**

A minimum of two spaces per primary structure must be provided on the site and off the public right-of-way. Additional off-street parking requirements per accessory structure are outlined in Section 4.3.5.

(Code 2008, ch. 16, § 4.3.11; Ord. No. 1024, § 36, 2-10-2022)

#### **4.3.12 Parking or Storage of Boats, Trailers, Commercial and Recreational Vehicles**

- A. No boats, campers, trailers, motorcycles, or jet skis may remain in public view on any portion of any lot, tract, or parcel of land in the City for more than twelve hours, except as provided below.
- B. A special permit to park campers, trailers, motorcycles, or jet skis in public view may be obtained from the police department for two periods of four days each in each calendar year.
- C. Repairing and/or mechanical work on any motor vehicle must be done in an enclosed building or garage.
- D. All recreational equipment and vehicles such as boats, campers, trailers, motorcycles, or jet skis, must be stored inside an enclosed structure except as provided under Section A above.
- E. Any vehicle larger than one-ton pickup truck shall be parked in an enclosed garage.
- F. In areas zoned for residential use, vehicles must be parked on driveways or in garages. No part of any vehicle shall be parked on any yard or green space.
- G. The above requirements shall not be interpreted to prohibit vehicles from loading and unloading household goods in any Residential District for a period of up to 24 hours.
- H. No boat, trailer, commercial or recreational vehicle shall be used as a dwelling unit or for living, sleeping, or housekeeping purposes. The connection of such vehicle to utility services (other than for periodic maintenance and/or repair purposes), temporarily or permanently, is prohibited. However, this prohibition shall not apply to manufactured homes and structures approved under Sections 3.5.4 and 3.5.5 of this Ordinance. <sup>22</sup>
- (Code 2008, ch. 16, § 4.3.12)

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<sup>22</sup> **Legal analysis: 4.3.12 Parking or Storage of Boats, Trailers, Commercial and Recreational Vehicles, (H).** Add language to clarify and avoid potential internal conflict.

### 4.3.13 Satellite Dishes

Building- and/or roof-mounted satellite dish antennae are allowed in all residential use districts if the following performance standards are met:

- A. No dish antenna shall exceed 24 inches in diameter.
- B. Every dish antenna must be attached directly to the primary structure.
- C. Every dish antenna shall be located on the rear elevation of the structure, shall not extend above the highest point of the roof, and shall not be visible from the public right-of-way, unless necessary for reception.
- D. No more than one satellite dish antenna shall be allowed per residential lot. (Code 2008, ch. 16, § 4.3.13)

## 4.4 NEW INFILL HOUSES AND MAJOR ADDITIONS — SPECIAL CONSIDERATIONS

### 4.4.1 Intent

- A. Consistent with the City's Comprehensive Plan, these regulations are designed to allow redevelopment in existing neighborhoods, using the same traditional lines along which each neighborhood was established.
- B. All new development shall reflect, complement, and preserve the nature and character of existing adjacent development.
- C. All new residential construction shall conform in street orientation and massing to adjacent homes. (Code 2008, ch. 16, § 4.4.1; Ord. No. 1024, § (37(4.4.1), 2-10-2022)

### 4.4.2 Tree Preservation

- A. A tree protection and removal plan shall be submitted with the site plan. The tree protection and removal plan shall:
  - 1. Show all existing trees, including size and species;
  - 2. Identify trees proposed for removal and those to be retained; and
  - 3. Include locations of protection fences and other protection measures.
- B. Tree removal is only permitted if:
  - 1. The tree is dead;
  - 2. The tree is diseased or dying, and constitutes a threat to healthy trees, property, or public safety;

3. The tree has visible structural deficiencies; or
  4. Removal of the tree is necessary for construction, development, or redevelopment under the following criteria:
    - a. All reasonable efforts have been made to avoid removing the tree through comparable alternative design;
    - b. The presence of the tree places an undue financial burden on the applicant; and
    - c. No other reasonable accommodations, including adjustments to the otherwise allowable building footprint or site design can be made to preserve the tree.
  - C. All removed trees shall be replaced. Replacement trees shall:
    1. Be at least 2 inches in caliper;
    2. Be placed in the front yard if the tree removed was in the front yard;
    3. Be placed anywhere on site if the tree removed was not in the front yard;
    4. Be outside of the right-of-way; and
    5. Be planted once construction is complete.
  - D. All infill construction properties shall:
    1. Contain at least one front yard tree;
    2. If no front yard trees exist on the property at the time of construction:
      - a. A tree of at least 2 inches in caliper should be planted in the front yard of the property;
      - b. The new tree shall be planted outside of the right-of-way, once construction is complete.
- (Ord. No. 1024, § 37(4.4.2), 2-10-2022)

#### **4.4.3 Massing**

- A. All new structures must have enough one-story eaves that a one-story appearance is maintained. Up to one third of any new building structure may be two stories in height without a one-story element in front. The portion of a two-story structure that does not have a one-story structure in front shall have a change in material from the first to the second story, with a line of separation that aligns with the first story eave line.
- B. One-story eave lines shall be apparent as described above.  
(Code 2008, ch. 16, § 4.4.2; Ord. No. 1024, § 37(4.4.3), 2-10-2022)

#### **4.4.4 Sustainability ("Green") Features**



The City recognizes customer demand for sustainable ("green") design and construction practices. These practices offer increased energy efficiency, reduced water consumption, reduced stormwater runoff, resource conservation, and improved indoor air quality. Where a sustainability effort conflicts with the Zoning Ordinance, consideration will be given to granting a waiver or exception.

(Ord. No. 1024, § 37(4.4.4), 2-10-2022)

#### **4.4.5 Plans and Documents**

The Building Official may require documentation from any applicant for a new residential infill building permit necessary to determine whether the project complies with all applicable codes and requirements, including, but not limited to, any plans or drawings of any structure to be built, and a sealed survey which accurately depicts any easements, boundaries, dimensions or structures pertinent to the project.

(Code 2008, ch. 16, § 4.4.3; Ord. No. 1024, § 37(4.4.5), 2-10-2022)

### 4.5 WAIVERS & EXCEPTIONS

#### **4.5.1 Purpose**

This section creates a flexible, streamlined process where applicants can seek exceptions from the specific rules in this title where granting the waiver or exception would result in superior design, and the consideration of a variance request by the Board of Zoning Appeals is not suitable or proper in the circumstances.

(Ord. No. 1000, § 3, 3-14-2019)

#### **4.5.2 Applicability**

This section applies to a request for a waiver or exception from the building design or site development standards of only the following Sections: 4.3.2 Single-Family Primary Structure Requirements; 4.3.5 Accessory Structures; 4.3.6 Garages; 4.3.7 Building Standards; 4.3.8 Building Additions – Special Conditions; and 4.4 New Infill Houses – Special Considerations.

(Ord. No. 1000, § 3, 3-14-2019; Ord. No. 1024, § 38, 2-10-2022)

#### **4.5.3 Initiation**

An exception shall be requested at the time of filing a building permit. Consideration of a request for an exception shall require a Public Hearing before the Planning Commission following public notice as provided in Section 1.6.8 through 1.6.11.

(Ord. No. 1000, § 3, 3-14-2019; Ord. No. 1024, § 39, 2-10-2022)

#### **4.5.4 Approval Criteria**

A waiver or exception shall not be approved if it is contrary to the public interest or unnecessarily burdens the City. The Approving Authority may approve the waiver or exception if the applicant demonstrates one (1) or more of the following:

A. An alternative higher quality development design in being proposed with no

negative impacts to either near-by residential or nonresidential properties.

B. Relief of the development restrictions imposed on the property will ensure low impact land uses, and quality building and site design arrangements in which adjoining residential properties will not be negatively impacted by any deviations from the applicable regulations.

C. The granting of the wavier or exception will not be opposed the general spirit and intent of the adopted Comprehensive Plan.  
(Ord. No. 1000, § 3, 3-14-2019)

#### **4.5.5 Decision**

A. The Planning Commission may approve, approve with conditions, or deny any requests for an exception or wavier.

B. The Planning Commission’s decision may be appealed by the applicant only, to the Governing Body. In that case, the Governing Body can approve, approve with conditions, or deny the waiver request.  
(Ord. No. 1000, § 3, 3-14-2019)

#### **4.5.6 Scope of Approval**

The waiver or exception is a condition of the underlying application for approval, and has the same effect as any approval of that application. In such instances, findings shall be prepared that:

A. No private rights will be injured or endangered by granting of the waiver or exception.

B. The public will suffer no loss or inconvenience thereby and that in justice to the applicant or applicants the application should be granted.  
(Ord. No. 1000, § 3, 3-14-2019)

#### **4.5.7 Recordkeeping**

The Building Official will maintain a record of approved waivers and exceptions.  
(Ord. No. 1000, § 3, 3-14-2019)

### **Article Five: Commercial Zoning Districts**

#### **5.1 COMMERCIAL DISTRICTS — GENERAL REQUIREMENTS**

##### **5.1.1 Intent**

Zoning serves the City in that it maintains property values, stabilizes neighborhoods, provides uniform regulations, provides safe and efficient traffic movement, and promotes aesthetics and architectural harmony. It is the intent of the City to promote high design standards and safety in its land use policies and ordinances.

A. Consistent with the City's Comprehensive Plan, the goals of these Commercial District Ordinances are as follows:

1. to be able to accommodate the types of uses desired by the citizens of Westwood, including, but not limited to, retail, dining, and office services;
2. to improve the overall cohesiveness of the commercial areas of the City;
3. to enable future development to improve the look and character of the City;
4. to accommodate the needs of future expansion and improvements.

B. Several issues are paramount in achieving the goals indicated in the City's Comprehensive Plan, relating to the continued redevelopment of the Commercial districts. They are as follows:

1. creating or improving proper commercial buffering from adjacent residential properties;
2. solving parking and driveway problems to accommodate both vehicles and pedestrians properly;
3. creating consistent sight lines to commercial buildings, thereby strengthening City cohesiveness;
4. providing better access to commercial areas for both pedestrians and vehicles;
5. creating the proper image on the side streets that serve as gateways into the residential neighborhoods adjacent to the commercial corridors; and
6. accommodating a variety of property uses in a small, densely built area. (Code 2008, ch. 16, § 5.1.1; Ord. 984, § 17, 9-21-2017)

### **5.1.2 Repealed** <sup>23</sup>

(Ord. No. 960, Sec. 7)

### **5.1.3 Repealed**

(Ord. No. 960, Sec. 7)

## 5.2 C-O COMMERCIAL — OFFICE

### **5.2.1 Office and Commercial District (C-O) Use Regulations**

In the office and professional district, no building, structure, land, or premises shall be used, and no building or structure shall be hereafter erected, constructed, reconstructed,

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<sup>23</sup> **Legal analysis: 5.1.2 Repealed.** The introductory language of Ord 960 states that it amends Section 5.1.2, but did not provide any amend language. Section 7 of Ord 960 states that 5.1.2 and 5.1.3 are repealed to the extent inconsistent. Please advise whether 5.1.2 was intended to be repealed in its entirety, or there is some missing language in the ordinance.

moved or altered except for one or more of the following uses:

- A. Office buildings to be used only for the administrative function of businesses, companies, corporations, or social or philanthropic organizations or societies.
- B. Other offices including, but not limited to, the following:
  - 1. accountants
  - 2. architects
  - 3. banks
  - 4. brokers
  - 5. engineers
  - 6. dentists
  - 7. lawyers
  - 8. insurance offices
  - 9. physicians, osteopaths, chiropractors, psychologists, mental health counselors, or other physical or mental health care professionals
  - 10. real estate
  - 11. advertising, public relations, and graphic arts
  - 12. financial planning, stock brokerage, and securities businesses
  - 13. computer programming, and technology services
  - 14. massage therapists
- C. Customary accessory uses; provided that, accessory uses related to Communication Facilities for Wireless Services are subject to the application, location, and performance standards of Article Ten of the Westwood Zoning Ordinance.
- D. No merchandise shall be handled or displayed, nor equipment, material, or vehicle used for transportation to and from a building in this district.
- E. Communication Facilities limited to the following:
  - 1. Antennas, as defined in Section 10.2, mounted on and designed as an architecturally compatible element to an existing structure or building or affixed to water tower.
  - 2. Small Cell or Distributed Array Facilities, as defined in Section 10.2, on utility poles

or street lights in the public right-of-way.

3. Communication facilities are subject to the application, location, and performance standards of Article Ten of the Westwood Zoning Ordinance. (Code 2008, ch. 16, § 5.2.1; Ord. 984, § 18, 9-21-2017)

### 5.3 C-1 COMMERCIAL — MIXED-USE

#### 5.3.1 Intent

A. Consistent with the City's Comprehensive Plan, the C-1 Commercial Mixed-Use District is intended to provide redevelopment or investment opportunities for existing or planned commercial centers within the City. Developments in Commercial Mixed-Use districts are to follow the characteristics of traditional "Main Street" commercial neighborhood developments, and to encourage pedestrian use through connections to adjacent neighborhoods and the construction of mixed-use buildings. The purpose of this District is to allow for the development of fully integrated, mixed-used, pedestrian-oriented neighborhoods.

B. Within the City, the following uses should be so arranged as to service the needs of the resident population in a convenient walking environment by providing open space, civic buildings, single-family residential, multi-family residential, retail/commercial, business/workplace, and parking.

C. The streets and sidewalks are the main pedestrian activity centers in Commercial Mixed-Use Districts. Minimal setbacks bring buildings close to the street and the pedestrians.

D. The typical form of the suburban retail center is oriented entirely to the auto and parking. Smaller shops are dependent on their relationship to the anchor stores when arrival is only by vehicle. The C-1 Commercial Mixed-Use design offers an opportunity for a more diverse patronage, both from the traditional auto/anchor and from the walk-in neighborhood and transit activity. To attract foot traffic to local shops, the configuration of streets, entrances, and parking must provide a comfortable route for pedestrians. Large pass-through parking lots and access roads designed for heavy auto traffic are discouraged. Configurations that provide traditional "Main Street" sidewalk storefronts, in combination with artery-oriented anchors, which provide accessibility for both the pedestrians and auto, are encouraged.

E. The configuration of commercial shops in the C-1 Commercial Mixed-Use District is intended to strike a balance between pedestrian and auto comfort, visibility, and accessibility. While anchor stores may need to orient to an arterial road and parking lots, smaller shops should orient to the main streets that have been made desirable for the pedestrian or to public open space such as plazas. Direct local street pedestrian access from the local neighborhood is required. (Code 2008, ch. 16, § 5.3.1; Ord. No. 1024, § 40, 2-10-2022)

#### 5.3.2 Building Use and Mixed Use

A. Consistent with the City's Comprehensive Plan, new developments in the C-1

commercial areas are to become mixed-use by providing floors of residential and/or office uses above a ground-floor level with retail shops.

B. Such commercial areas may mix the ground-floor shop-front retail with office and commercial space. Land designated for such shop-front use may contain residential as well as commercial uses. However, residential uses are not permitted on the ground floors of shop-front buildings. All uses shall be conducted within completely enclosed buildings unless otherwise specified.

C. Mixed-use buildings shall maintain the opportunity and flexibility to accommodate a variety of active uses adjacent to sidewalks and plazas.

D. In certain locations, multi-family construction, such as condominiums, may be appropriate, since such a use poses many of the same planning concerns that commercial buildings do, such as traffic, drainage, fire safety, and other concerns.  
(Code 2008, ch. 16, § 5.3.2; Ord. 920, Sec. 2)

### **5.3.3 Uses Permitted by Right**

Unless otherwise provided in this article, no buildings or premises shall be used, and no building or structure shall be erected or altered hereafter in C-1 Commercial Mixed-Use Districts, except for the following uses:

A. Retail stores;

B. Retail trade and shops for custom work or the making of articles to be sold at retail on the premises;

C. Manufacturing, clearly incidental or necessary to a retail business, lawfully conducted on the premises, provided that it is not in any way a nuisance or a hazard, and it meets all City ordinances regarding vibration, noise, and odor;

D. The place of business of a baker, barber, beauty shop, caterer, light dry cleaning and dyeing, confectioner, decorator, dressmaker, electrician, florist, furrier, milliner, theater, public utility station or substation, painter, paperhanger, photographer, plumber, printer, publisher, restaurant, shoe repairer, tailor, upholsterer, small animal veterinarian, health club, aerobics studio or similar facility;

E. Fire and police stations or other public buildings;

F. Any and all uses enumerated in Article 5.2 Commercial / Office;

G. Other general commercial uses up to 30,000 gross square feet. (Exceptions: automotive repair, garages, welding shops, machine shops, outdoor storage or sales, pool halls, game rooms);

H. Other office uses up to 30,000 gross square feet;

I. Hotels and/or convention facilities up to 50 rooms and 30,000 gross square feet of convention floor area;

- J. Restaurants (exception: drive-through restaurants); **24**
- K. Nursing or assisted living facilities;
- L. In addition to multi-family uses in connection with a mixed-use development, free-standing multi-family residential uses which are restricted to individually owned townhouse developments as defined in the Townhouse Ownership Act (K.S.A. 58-3701, et seq.) as amended, and residential condominium units as defined in the Apartment Ownership Act (K.S.A. 58-3101, et seq.) as amended, shall be permitted in C-1 districts. Any requirement or regulation pertaining to C-1 uses shall apply also to such individually owned townhouse developments and residential condominium units. Furthermore, in addition to meeting all plan, development, building code, and other approvals and regulations imposed by the City, or state or federal law, any such multi-family use shall meet the following criteria:
1. Multi-family condominium or townhouse developments may be located only in areas which have adequate street, drainage, and other infrastructure capabilities, and further must be located so that such developments can be adequately buffered from, or transitioned to, surrounding or nearby properties;
  2. Multi-family condominiums or townhouse developments can be located only on or at intersections with Rainbow Boulevard, 47th Street, State Line Road, or Shawnee Mission Parkway.
- M. Multi-family residential as permitted within an applicable Commercial Overlay District.  
(Code 2008, ch. 16, § 5.3.3; Ord. 920, Sec. 3; Ord. No. 1024, § 41, 2-10-2022)

### 5.3.4 Uses Permitted with Conditions

The following uses are permitted in C-1 Districts:

- A. Commercial uses exceeding 30,000 gross square feet
- B. Multi-family over 45 feet in height
- C. Customary home occupations
- D. Commercial child care
- E. Hotels and/or convention facilities exceeding 50 rooms and 30,000 gross square feet of convention floor area
- F. Office uses exceeding 30,000 gross square feet

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<sup>24</sup> **Legal analysis: 5.3.3 Uses Permitted by Right, (J) Restaurants.** Revise to clarify whether the exception is for restaurants that are drive-through only, or any dine-in restaurant that also has a drive-through.

- G. Parking decks
- H. Restaurants with outdoor seating
- I. Service stations
- J. Commercial uses which allow patrons to remain in their automobiles while receiving goods and services.
- K. Communication Facilities limited to the following:
  - 1. Antennas, as defined in Section 10.2, mounted on and designed as an architecturally compatible element to an existing structure or building or affixed to water tower.
  - 2. Small Cell or Distributed Array Facilities on utility poles or street lights in the public right-of-way.
  - 3. Communication facilities are subject to the application, location, and performance standards of Article Ten of the Westwood Zoning Ordinance. (Code 2008, ch. 16, § 5.3.4; Ord. 984, § 19, 9-21-2017; Ord. No. 1024, § 43, 2-10-2022)

### 5.3.5 Uses Not Permitted

The following uses are not permitted in C-1 Districts:

- A. Drive-through restaurants; <sup>25</sup>
- B. Chemical manufacturing;
- C. Storage or distribution as a primary use;
- D. Enameling, painting, or plating, except artists' studios;
- E. Outdoor advertising or billboard as a primary use;
- F. Carting, moving, or hauling terminal or yard;
- G. Prisons and/or detention centers (except for the City's Public Safety prisoner holding cell), or halfway houses;
- H. Manufacturing of hazardous materials, or storage or disposal of hazardous materials or hazardous waste materials;

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<sup>25</sup> **Legal analysis: 5.3.5 Uses Not Permitted, (A) Drive-through restaurants.** See previous footnote.



- I. Scrap yards;
- J. Mobile homes;
- K. Sand, gravel, or other mineral extraction;
- L. Any use which produces adverse impacts which violate any City ordinance related to vibration, noise, and odor.  
(Code 2008, ch. 16, § 5.3.5; Ord. No. 1024, § 43, 2-10-2022)

### **5.3.6 Lot Coverage**

Mixed-use retail / office / residential buildings with ground-level shop fronts shall cover no more than sixty percent of the lot area. "Business use only" buildings shall not cover more than fifty percent of the lot area.  
(Code 2008, ch. 16, § 5.3.6; Ord. 920, Sec. 4)

### **5.3.7 Street Frontages, Setbacks, Built-to Lines, and Encroachments**

- A. Unless otherwise indicated in a specific Overlay District, the facade of buildings in the C-1 District shall be constructed directly on the build-to line along at least seventy percent of the length of the building.
- B. Exceptions are allowed for pedestrian walkways and any lots for civic use.
- C. Parking areas and parking garages shall be recessed or placed to the rear of buildings.
- D. Larger setbacks may be permitted for street-side outdoor cafes and patios.
- E. Buildings on such C-1 District lots shall have no setback from at least one side lot line.
- F. Balconies and awnings, shall be permitted to encroach upon sidewalk areas as follows:
  - 1. Balconies: 3 feet horizontal with 10 feet vertical clearance.
  - 2. Awnings: 6 feet horizontal with 7 feet vertical clearance.
- G. All buildings shall be parallel or perpendicular to the street frontage or may face the corner on a corner lot.
- H. The required setbacks shall be as indicated in each Overlay District, or, in the absence of such criteria, as follows:
  - 1. front and side setbacks: 0 feet
  - 2. rear setback: 20 feet minimum

Requirements for transitional yards between residential districts shall be as indicated in Section 4.3.7 Building Standards.  
(Code 2008, ch. 16, § 5.3.7; Ord. 920, Sec. 5)

### **5.3.8 Building Height**

- A. One-, two-, and three-story buildings are permitted in the C-1 Mixed-Use Districts.
- B. The maximum height shall be 45 feet, except as provided or restricted in any Overlay District herein, and except as set forth herein.
- C. Under certain circumstances, and upon approval of all site and development plans by the City, portions of buildings may reach a maximum of 75 feet in height. Necessary roof-mounted mechanical equipment and its screening may be placed above 75 feet but may not exceed an additional 15 feet in height, for a maximum height of 90 feet. Any building or part thereof with such increased height is also referred to herein as a "mid-rise building." In order for a mid-rise building to be lawfully constructed, the building must conform to all relevant planning and construction requirements, criteria, and regulations, including, but not limited to, the following:
1. Mid-rise buildings shall be on corner lots only. An entire block of mid-rise buildings shall not be permitted;
  2. Mid-rise buildings must have a street or open space to the north of the building. In no event shall a mid-rise building be permitted if it will cast a shadow during winter months on any property or, in the discretion of the City, will create a possible hazard by casting a shadow which permits ice and snow to remain on streets and sidewalks or otherwise impairs or hampers the City's removal of snow and ice from streets and sidewalks. A green space or the building's parking area lying to the north of the mid-rise building can be used to provide a buffer space to meet these criteria;
  3. Mid-rise buildings must be on lots that are sufficiently large to avoid towering over neighboring properties and to avoid interfering with neighboring properties' access to light and air;
  4. Mid-rise buildings must be tiered; only a portion of the building may be the maximum height;
  5. Mid-rise buildings are to be located in lower elevations and/or against hillsides, unless the City finds that a mid-rise building which is neither lying in a lower elevation nor against a hillside meets all other criteria established in the zoning and other codes of the City, and further finds that such a building will have no significant negative impact on nearby properties;
  6. No mid-rise building shall be approved or constructed unless the City finds that all infrastructure and public safety and welfare needs have been met, including, but not limited to, obtaining appropriate engineering and other studies assuring that traffic, sanitary sewer, surface water drainage, and other infrastructure and public safety and welfare needs which are generated or affected by the project can be properly and safely met;

7. No mid-rise building shall be approved or constructed unless the City finds that all fire safety issues have been addressed, and the City further finds that existing firefighting and other public safety issues will be satisfactorily met by the design of the building and its overall development plans. Included in this fire safety evaluation shall be a consideration by the City and/or the relevant fire safety authority of the firefighting equipment available at the time, and the maximum height accessible by the firefighting authority's equipment, given the proposed design of the building and street or parking access for firefighting equipment.  
(Code 2008, ch. 16, § 5.3.8; Ord. 920, Sec. 6)

#### 5.4 OFF-STREET PARKING AND LOADING — ALL COMMERCIAL DISTRICTS

##### 5.4.1 General Design Standards

- A. Unless no practical alternative is available, any off-street parking area in any commercial district shall be designed so that vehicles may exit such areas without backing onto a public street.
- B. Off-street parking areas of all developments shall be designed so that sanitation, emergency, and other public service vehicles can serve such developments.
- C. Every off-street parking area shall be designed so that vehicles cannot extend onto public rights-of-way, sidewalks and shall be designed to prevent damage to any wall, vegetation, or other obstruction.
- D. Parking spaces may be located either on the premises or within 300 feet of land zoned for retail business.
- E. Circulation areas shall be designed so that vehicles can proceed safely without posing danger to pedestrians and without interfering with parking areas.
- F. Storm water shall be collected on site and run underground to the nearest storm sewer. Retention or detention facilities shall be provided if a runoff study so dictates.
- G. Lighting used to illuminate the parking area in any district shall be so arranged as to direct the light away from any adjacent premises in a residential district.
- H. Curbs and islands are required pursuant to City standards.
- I. All drives and parking surfaces shall be constructed of concrete, asphalt, paving stones, masonry, or similar dust-free, non-granular surfaces and shall have curbs that conform to City standards.
- J. All disabled parking spaces shall conform to all legal design requirements.  
(Code 2008, ch. 16, § 5.4.1)

##### 5.4.2 Parking Space Requirements

- A. Mixed-use parking is as indicated in the specific Overlay District.

- B. The table below includes requirements for employee parking.
- C. Any use not specifically addressed or referred to in this list shall have parking requirements determined by the Planning Commission.
- D. All square footage is in leasable square feet.
- E. No use shall provide more than one hundred twenty-five (125) percent of the minimum required parking without documented evidence of actual parking demand based on studies of similar uses in similar context.
- F. Any parking permitted over one hundred fifteen (115) percent of the minimum shall require mitigating potential impacts of more parking through one or more of the following strategies:
  - 1. Provide shared parking for other uses on the block or adjacent blocks.
  - 2. Use alternative surfaces designed to infiltrate stormwater or otherwise increase permeability without significantly sacrificing stability and durability.
  - 3. Provide additional buffers and site open spaces to screen parking with at least a ten (10) percent increase in the open space or buffers required for the parking, and at least a twenty (20) percent increase in the landscape material amount required for the parking.
  - 4. Design all parking areas over the one hundred fifteen (115) percent maximum as dual-purpose space, such as plazas or courtyards, playgrounds, event areas for regular use of the space during non-peak times.

**5.4.2.1 Minimum Parking Spaces Per Use**

Offices	1 per 333 sq. ft.
Retail	1 per 250 sq. ft.
Theaters	1 per 3 seats
Night clubs, lounges, bars, restaurants	1 per 75 sq. ft. of patron area
Drive-through (procession lanes)	12 car lengths for first window, 8 lengths per additional window
All other commercial uses	1 per 300 sq. ft.

(Code 2008, ch. 16, § 5.4.2; Ord. No. 1024, § 44, 2-10-2022)

**5.4.3 Drive-through Services**

Where allowed by this Ordinance, businesses offering drive-through services shall provide stacking lanes in sufficient number and of sufficient length to provide a safe and efficient flow of traffic. Procession lanes shall be of sufficient length to accommodate a minimum of twelve cars for the first service window and a minimum of eight cars for each additional window.

(Code 2008, ch. 16, § 5.4.3)

**5.4.4 Parking Space Dimensions**

- A. In all lots other than single-family dwellings, each parking space (other than those designed for the disabled) shall contain a rectangular area at least 18 feet long and 9 feet wide. Parking space lines may be drawn at various angles in relation to curbs or aisles, provided the parking spaces so created contain the rectangular area required by this Section.
- B. In all lots other than for single-family dwellings, wherever parking areas consist of spaces set aside for parallel parking the dimensions of such parking shall not be less than 20 feet long by 8 feet wide.
- C. All uses shall be required to provide the number of disabled accessible parking spaces as required by law.  
(Code 2008, ch. 16, § 5.4.4)

**5.4.5 Aisle and Driveway Widths**

A. In all lots other than for single-family dwellings, parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking. In all cases, where an aisle serves two or more angles of parking, the larger minimum width shall prevail.

1. Aisle widths for one-way traffic:		2. Aisle widths for two-way traffic:	
Angle of Parking Parallel (Ø degrees) 30 degrees	Aisle Width 13 feet	Angle of Parking Parallel (Ø degrees) 30 degrees	Aisle Width 19 feet
45 degrees	13 feet	45 degrees	19 feet
60 degrees	13 feet	60 degrees	20 feet
90 degrees	18 feet	90 degrees	22 feet
	20 feet		24 feet

- B. Except for a lot containing a single-family dwelling, all uses shall be required to provide driveways which are not less than 10 feet in width for one-way traffic and 18 feet in width for two-way traffic, except that driveways 10 feet in width are permissible for two-way traffic when:
  1. the driveway is not longer than 50 feet;
  2. it provides access to not more than six spaces; and
  3. sufficient turning space is provided so that vehicles need not back into a public street.

C. In no case shall a driveway exceed 30 feet in width, except when required by the Kansas Department of Transportation.  
(Code 2008, ch. 16, § 5.4.5)

#### **5.4.6 Cooperative Parking**

A. Cooperative provisions for off-street parking may be made by contract between two or more adjacent property owners. The parking area provided on any one lot may be reduced to not less than one half of the number of required parking spaces for the use occupying such lot.

B. To the extent that property owners who wish to make joint use of the same parking spaces operate at different times, up to one half of the parking spaces may be credited to both uses; e.g., one use, such as a church, theater, or assembly hall, has peak hours of attendance at night or on Sundays, and the other use or uses are closed at night or on Sundays. Such contract shall be recorded with the County Register of Deeds.  
(Code 2008, ch. 16, § 5.4.6)

#### **5.4.7 Parking Area Uses**

Parking and loading areas for non-residential properties shall be used only for access and parking necessary for the use of any business in the building served by said parking lot and loading area(s). Vehicles which are necessary for persons using said building and guests or customers of occupants or tenants of said building are permitted, as are delivery and other commercial vehicles used by or necessary for any business located in such building. However, no vehicles unrelated to the use of the occupants or tenants of any non-residential building shall be parked or stored on any property. Such parking areas also shall not be used for the storage of any vehicles over 24 hours except those vehicles which are operable and necessary to the commercial function of the occupants or tenants or any business located in said building. Such parking areas shall not serve for any other uses.

(Code 2008, ch. 16, § 5.4.7)

### **5.5 C-O, C-1, P-1 GENERAL DISTRICT PARKING AND LOADING REQUIREMENTS**

#### **5.5.1 Location**

A. Generally, parking lots shall be located at the rear or side of buildings and shall be screened from the sidewalk by low walls, fences, or hedges.

B. In C-1 Districts, off-street parking of no less than 75% of the parking places shall be to the rear or side of the building.

C. Parking for existing structures, which are not built out to the front build-to line can occur within the front setback. Parking within front setbacks shall be five feet from the right-of-way.

D. Parking can extend to side and rear lot lines only (including corner lots).

E. Parking shall be a minimum of 4 feet from the rear of any building.

F. Parking on or in side yards on corner lots adjacent to the secondary street must not encroach upon the public right-of-way, and maintain a minimum of 4 feet from the side of the building.

(Code 2008, ch. 16, § 5.5.1)

### **5.5.2 Access**

Ingress and/or egress will be reviewed during the site plan review process. Such entries shall be separated by a minimum of twenty feet unless otherwise indicated on a specific Overlay District Development Plan.

(Code 2008, ch. 16, § 5.5.2)

### **5.5.3 Minimum Commercial Off-street Loading Requirements**

The following minimum off-street loading requirements shall apply:

- A. Buildings of less than 10,000 square feet: None
  - B. Buildings of 10,000 – 50,000 square feet: one bays
  - C. Buildings of over 50,000 square feet: two bays
- (Code 2008, ch. 16, § 5.5.3)

## **5.6 LANDSCAPING FOR ALL COMMERCIAL DISTRICTS**

### **5.6.1 Parking Areas**

The following landscaping standards apply to all new development within all Commercial Zoning Districts:

- A. Parking areas within 50 feet of the right-of-way shall have a planted screen between the parking perimeter and the front property line.
  - B. Screening shall be 3 feet high with no gaps greater than 4 feet (excluding driveways).
  - C. Walls may be substitute for vegetation. Walls may not exceed 4 feet in height.
  - D. Interior plantings required for new lots include two shade trees per 2,400 square feet of surface area, or one for every eight spaces, whichever is less.
- (Code 2008, ch. 16, § 5.6.1)

### **5.6.2 Utility, Storage, and Loading Areas**

Utility, storage, and loading areas shall be screened as follows:

- A. screening shall be by walls or fences;
- B. one third of the surface area of the wall or fence must be screened from the right-

of-way with plants; and

C. plant screening must be evergreen.  
(Code 2008, ch. 16, § 5.6.2)

### **5.6.3 Transitional Yards and Buffers**

Transitional yards are all non-residential properties that abut a residential or mixed-use district.

- A. Standards for types of transitional fences, walls, and berms are:
1. Rear yard fences and walls shall be a maximum height of 6 feet.
  2. Side yard fences and walls, where permitted, shall be a maximum height of 6 feet.
  3. A minimum of one tree per 20 feet of linear fence or wall shall be planted.
  4. Plantings must be located between the fence or wall and the adjoining property line.
  5. If required landscaping of a transitional yard makes up over twenty percent of a lot, the use of an earth berm may reduce the yard requirement, as recommended by the Planning Commission and approved by the Governing Body.
  6. Fences shall be constructed of brick, stucco, stone, wrought iron, and/or wood (excluding farm-type fencing, such as chicken wire, barbed wire, razor wire, or the like). The heavier material shall be below.
  7. Chain link may be used only when necessary for security upon review by the Planning Commission and approval by the Governing Body.

The above requirements may be waived by the City upon proof of impossibility of performance.

B. No fence or wall, freestanding or attached to any building, shall be erected or constructed upon any lot, plot, tract, or premises, without a specific, valid permit therefor, issued by the Building Official. Said fence shall be erected or constructed pursuant to the specifications set forth on the permit application.

C. Open parking areas and access drives for commercial, civic, and apartment uses shall be located a minimum of 8 feet from any property line abutting a street or an R-1.  
(Code 2008, ch. 16, § 5.6.3)

### **5.6.4 Satellite Dishes**

- A. Ground-mounted satellite dish antennae are permitted in Commercial Districts if the following performance standards are met:
1. No satellite dish antenna shall exceed 13 feet in height above the grade where it is



mounted.

2. All satellite dish antennae shall be located behind the required yard setback of each district.

3. All satellite dish antennae must have a detailed site and landscaping plan approved by the Building Official prior to the issuance of any permit. If any antenna is proposed to be located within 300 feet of any property zoned Residential District or Office Commercial District, said plans shall require the screening of the antenna to the fullest extent possible without interfering with the operation of the antenna.

4. All cables and lines serving the satellite dish antenna shall be located underground or concealed inside the building enclosure. No exposed or surface-mounted conduit is allowed.

B. Roof-mounted satellite dish antennae are permitted if the following performance standards are met:

1. Any satellite dish antenna shall be located within the rear yard and shall be located a distance inside the property line at least equal to its height;

2. The top edge of satellite dish antenna shall not exceed 13 feet above the roof surface;

3. Any roof-mounted satellite dish antenna shall be screened from view to the fullest extent possible without interfering with its operation. The permit for such antenna shall be issued only after a final development plan indicating the screening is reviewed by the Planning Commission and approved by the Governing Body;

4. Landscape screening shall be provided which prevents all antennae from being observed from any street or from surrounding properties to the fullest extent possible not to interfere with the operation of the antenna or to impose undue cost or hardship;

5. All cables and lines serving the satellite dish antenna shall be located underground or concealed inside the building enclosure. No exposed or surface-mounted conduit is allowed.

C. All satellite dish antennae shall be required to have a final development plan reviewed by the Planning Commission and approved by the Governing Body prior to issuance of any permit that the antenna is screened from view to the fullest extent possible without interfering with the operation of the antenna or to impose undue cost or hardship.

(Code 2008, ch. 16, § 5.6.4)

### **5.6.5 Mechanical Equipment Placement and Screening**

A. All roof-mounted equipment shall be set back from any edge of the roof upon which it is mounted a distance greater than or equal to the height of the mechanical equipment.

B. Screening walls shall be made of materials that comply with appropriate district

regulations.

C. Screening walls materials shall be consistent with those of the primary structure and shall match or be compatible with the primary structure with regard to color and composition.

D. All rooftop equipment shall be enclosed in building material that matches the structure or is visually compatible with the structure.  
(Code 2008, ch. 16, § 5.6.5)

## **ARTICLE SIX: PLANNED ZONING DISTRICTS**

### **6.1 P-1 PLANNED PARKING DISTRICT**

#### **6.1.1 Uses Allowed**

In P-1 Parking Districts, no building or structure shall be erected and no land or premises shall be used except for the parking of motor vehicles, for recurrent periods not in excess of 24 consecutive hours. Parking areas shall not be used for permanent or long-term storage of such vehicles, a parking lot for dealerships, privately advertising used vehicles for sale, or other non-parking uses.

Additional zoning regulations which apply to P-1 Districts, including parking, landscaping, fences and walls, transitional yards, and screens, are set forth in Article 5, Sections 4, 5 and 6, of this Zoning Ordinance.  
(Code 2008, ch. 16, § 6.1.1)

### **6.2 PD PLANNED DEVELOPMENT DISTRICT**

#### **6.2.1 Intent**

The zoning of land in Westwood to one of the planned districts shall be to encourage and require orderly development and redevelopment on a quality level generally equal to or exceeding that which prevails in the City, but shall permit deviations from certain requirements. The use of planned zoning procedure is intended to encourage efficient development and redevelopment of small tracts, innovative and imaginative site planning, conservation of natural resources, and a minimal waste of land. The following are specific objectives of this section:

- A. A proposal to rezone land to a planned district shall be subject to the same criteria relative to compliance with the Westwood Comprehensive Plan, land use policies, neighborhood compatibility, adequacy of streets and utilities and other elements, which are established and customary development techniques in the City.
- B. The submittal by the developer and the approval by the City of development plans represent a firm commitment by the developers that development will follow the approved plans in such areas as concept, intensity of use, aesthetic levels and quantities of open space.
- C. Deviations in yard requirements, setbacks and relationship between buildings, as

set out in Standards of Development in this Ordinance, may be recommended by the Planning Commission and approved by the Governing Body if it is deemed that other amenities or conditions will be gained to the extent that an equal or higher quality of development will be produced.

D. Commercial areas are to be planned and developed so as to result in attractive, viable and safe centers and clusters, as opposed to strip patterns along thoroughfares. Control of vehicular access, circulation, architectural quality, landscaping and signs will be exercised to soften the impact on nearby residential neighborhoods, and to assure minimum adverse effects on the street system and other community services.

E. The developer will be given latitude in using innovative techniques in the development of land not feasible under the strict application of standard zoning requirements.

F. Planned zoning shall not be used as a refuge from the standard requirements of the zoning district as to intensity of land use, amount of open space or other established development criteria.

G. Any building or portion thereof may be owned in condominium.

H. For purposes of this Article, the terms "shopping center," "business park," "office park," or other grouping of buildings shall mean developments that were planned as integrated units or clusters on property under unified control or ownership at the time the zoning was approved by the Governing Body. The sale, subdivision, or other partition of the site after zoning approval does not exempt the project or any portion thereof from complying with development standards that were committed at the time of zoning.

I. Additional zoning regulations which apply to PD-1 Districts, including parking, landscaping, fences and walls, transitional yards, and screens, are set forth in Article 5, Sections 4, 5 and 6, of this Zoning Ordinance.  
(Code 2008, ch. 16, § 6.2.1)

**6.2.2 Planned Zoning Incorporated**

Planned zoning districts and their equivalent districts are as follows:

<i>Planned District</i>	<i>Equivalent</i>
PD Planned Development	C-1

(Code 2008, ch. 16, § 6.2.2; Ord. No. 1024, § 47, 2-10-2022)

**6.2.3 Repealed**

(Ord. No. 960, Sec. 7)

**6.2.4 Repealed**

(Ord. 920, Sec. 7); (Ord. No. 960, Sec. 7)

**6.2.5 Repealed**

(Ord. No. 960, Sec. 7)

### 6.3 PLANNED RESIDENTIAL CLUSTER DEVELOPMENT (PRCD) DISTRICT

#### 6.3.1 Intent

The Planned Residential Cluster Development district ("PRCD") is established to provide for small-scale medium density housing options. The developments can incorporate the Permitted Uses described below, with flexible yard requirements. Projects may be developed on a single lot or parcel of land. Cottage style developments and patio homes, and other cluster subdivision developments that create a higher density single-family residential environment are encouraged.

(Code 2008, ch. 16, § 6.3.1; Ord. No. 960, § 4(6.3.1), 7-9-2015; Ord. No. 1024, § 48, 2-10-2022)

#### 6.3.2 Permitted Uses

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

- A. Single-Family dwellings
  - B. Multi-family dwellings limited to the following building types: Two-Family, Townhouse, and Cottage Court
  - C. Group homes;
  - D. Accessory structures; or
  - E. Accessory uses as provided in Sections 4.2.2, 4.2.5, 4.2.6, 4.2.7, 4.3.12, and 4.3.13
  - F. Communication Facilities as defined in 10.2, limited to:
    - 1. Towers and Base Stations, as defined within Article Ten, Section 10.2, designed as an architecturally compatible element to an existing non-residential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in such districts.
    - 2. Antennas, as defined within Article Ten, Section 10.2, mounted on and designed as an architecturally compatible element to an existing non-residential structure or building.
    - 3. Small Cell and Distributed Antenna Systems, as defined within Article Ten, Section 10.2, mounted or collocated on monopoles, utility poles, or street lights in the public right-of-way.
- (Code 2008, ch. 16, § 6.3.2; Ord. No. 960, § 4(6.3.2), 7-9-2015; Ord. 984, § 20, 9-21-

2017; Ord. No. 1024, § 49, 2-10-2022)

### **6.3.3 Height and Area Regulations**

The maximum height of buildings, the minimum dimensions of yard areas, and the minimum lot area per dwelling permitted on any parcel shall be as follows, except as otherwise provided in:

#### **A. Maximum height:**

1. Residential structures - 2 ½ stories, not exceeding 35 feet.
2. Detached Garages - 1½ stories, not exceeding 26 feet and not exceeding the height of the main structure.
3. All other accessory structures and uses -- one story, not exceeding 20 feet and not exceeding the height of the main structure.

#### **B. Minimum yard areas / setbacks:**

1. Front yards. No principal or accessory structure shall be closer than 10 feet to a public street right-of-way, and 25 feet from back of curb if fronting on a private street
2. The perimeter setback along a public street shall not be less than the average setback for residential uses along the same and facing block faces, and shall not be greater than 15 feet back from the average existing setback.
3. Structure Separation: No portion of any principal structure shall be located less than 10 feet from any other principal structure. Each accessory building shall provide a yard area between the building and the property line of the project, other than a street line, of not less than five (5) feet.

#### **C. Area Regulations**

1. The minimum net site area per dwelling unit shall be 3,500 square feet of the project area.
2. The aggregate total lot coverage of all structures, both principal and accessory, shall not exceed 40% of an individual lot for detached principal residences.
3. Maximum total lot coverage of all buildings and hard surface areas shall not exceed 65% of the total project area.  
(Code 2008, ch. 16, § 6.3.3; Ord. No. 960, § 4(6.3.3), 7-9-2015; Ord. No. 1024, § 50, 2-10-2022)

### **6.3.4 Parking Regulations**

Two off-street parking spaces shall be provided for each principal dwelling, at least one of which shall be in a garage or carport. To fulfill the off-street parking requirements, the development may develop accessory off-site parking areas within common open space

areas. The off-site parking areas must be accessible to all units for which they are intended. These accessory off-site parking areas shall be indicated on the initial development plan.

(Code 2008, ch. 16, § 6.3.4; Ord. No. 960, § 4(6.3.4), 7-9-2015)

### **6.3.5 Development and Performance Standards**

A. Attached principal dwellings which otherwise comply with the ordinances of the City may be divided at the party wall (or ceiling in the case of two-family dwellings) as to ownership and owned as separate dwelling units by separate owners and such ownership shall not constitute violation of the lot and yard requirements of this chapter.

B. Private gated communities are not encouraged.

C. All driveways shall be at least 20 feet long to accommodate off-street parking,

D. Pedestrian circulation systems (sidewalks, walkways and paths) should be located and designed to provide adequate physical separation from vehicles along all public and private streets and drives and within any parking area.

E. Site drainage patterns shall be designed, graded and constructed to prevent surface drainage from collecting on and flowing across pedestrian paths, walks and sidewalks.

F. Detached accessory buildings including garages and carports shall not be located in any required front or setback area, but may be located in the rear yard area provided that no such building may be closer than five (5) feet to any interior property line, closer than 20 feet from any street right-of-way line, or in front of any building setback line. No more than two (2) detached accessory buildings shall be permitted for each residence.

G. Common open space is encouraged, but not required with this type of planned development. Such common open space shall be perpetually owned and maintained by a homeowners association. The owner(s) shall cause a final plat to be recorded which clearly describes the open space(s), required deed restrictions, and conditions thereof, prior to the issuance of any building permit(s).

H. An orderly transition from adjacent lower-density to higher density developments is encouraged by providing well designed transition area between existing residential parcels and structures, and the proposed project.

I. Prior to issuance of any building permit, final development plan approval shall be obtained as provided for in Section 1.6.21 and 1.6.25.  
(Code 2008, ch. 16, § 6.3.5; Ord. No. 960, § 4(6.3.5), 7-9-2015; Ord. No. 1024, § 51, 2-10-2022)

## **6.4 PLANNED MEDIUM DENSITY RESIDENTIAL (PMDR)**

### **6.4.1 Intent**

The Planned Medium Density Residential zoning district ("PMDR") is established as a planned zoning district to allow attached and/or detached dwelling units, consisting of one

or several buildings designed as a planned unified development in a higher-density setting upon a finding of compatibility with surrounding uses while ensuring that livability, property values, open spaces, high levels of landscaping, safety and the general welfare will be sustained. Projects may be developed on a single lot or parcel of land. Higher density and intensity residential developments are to be located bordering a designated Thoroughfare: Shawnee Mission Parkway, State Line Road, Rainbow Boulevard, West 47th Street, and Mission Road.

(Code 2008, ch. 16, § 6.4.1; Ord. No. 960, § 5(6.4.1), 7-9-2015; Ord. No. 1024, § 53, 2-10-2022)

#### **6.4.2 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. Residential buildings containing one to eight dwelling units;
- B. Senior Adult Independent Living Dwellings;
- C. Community Living Facility;
- D. Assisted Living, Skilled Nursing, Continuing Care Retirement Facilities;
- E. Accessory structures; or
- F. Accessory uses as provide in Section 4.2.2, 4.2.5, 4.2.6, 4.2.7, 4.3.12, and 4.3.13;
- G. Communication Facilities as defined in 10.2, limited to:
  1. Towers and Base Stations, as defined within Article Ten, Section 10.2, designed as an architecturally compatible element to an existing non-residential use such as schools, churches, and the like, and that comply with the same height and setback requirements as other structures in such districts.
  2. Antennas, as defined within Article Ten, Section 10.2, mounted on and designed as an architecturally compatible element to an existing non-residential structure or building.
  3. Small Cell and Distributed Antenna Systems, as defined within Article Ten, Section 10.2, mounted or collocated on monopoles, utility poles, or street lights in the public right-of-way.

(Code 2008, ch. 16, § 6.4.2; Ord. No. 960, § 5(6.4.2), 7-9-2015; Ord. 984, § 21, 9-21-2017; Ord. No. 1024, § 54, 2-10-2022)

#### **6.4.3 Height and Area Regulations**

The maximum height of buildings, the minimum dimensions of lots and yards, and the minimum lot area per dwelling permitted on any lot shall be as follows, except as otherwise provided in

A. Maximum height:

- 1. Three-story maximum not exceeding 48 feet.
- 2. Accessory structures and uses – 1½ stories, not exceeding 26 feet and not exceeding the height of the main structure.

B. Minimum setbacks:

- 1. All main structures shall be located at least 20 feet from any lot line or street rights-of-way.
- 2. All accessory structures shall be located at least 5 feet from any interior lot line or structure.
- 3. All accessory structures shall be at least 20 feet from any lot line which abuts a street or any property zoned R-1.

C. Minimum yard areas/setbacks:

- 1. Where a lot line abuts a public street, the minimum setback for main structures shall be 10 feet from any street.
- 2. The perimeter setback along a public street shall not be less than the average setback for residential uses along the same and facing block faces.
- 3. Structure Separation: No portion of any principal structure shall be located less than 10 feet from any other principal structure. Each accessory building shall provide a yard area between the building and the property line of the project, other than a street line, of not less than five (5) feet.

D. The minimum net site area per dwelling unit shall be 1,500 square feet. (Code 2008, ch. 16, § 6.4.3; Ord. No. 960, § 5(6.4.3), 7-9-2015)

**6.4.4. Parking Regulations**

A. Parking spaces shall be provided at the following rates for Multi-Family, Senior Adult, or Elderly Housing dwellings:

<i>Number of Spaces Dwelling Unit</i>	<i>Required per Unit</i>
Studio/efficiency	1
1-bedroom	1.25
2-bedroom	1.5
More than 2 bedrooms	2.0

B. Parking spaces shall be provided at the following rates for Assisted Living, Skilled Nursing, and Continuing Care Retirement Facilities:

C. Not less than three off-street parking spaces shall be provided on the premises for every four apartments or congregate living units.



- D. One space shall be provided for every five beds, and not less than one space shall be provided for each employee on the premises on the maximum shift.
- E. No parking or access drives shall be located within 15 feet from any lot line which abuts a property zoned R-1
- F. No parking area shall be located within 15 feet of any public street rights-of-way.
- G. Lighting used to illuminate parking areas shall be arranged, located or screened to direct light away from any adjoining or abutting residential district or any street right-of-way.  
(Code 2008, ch. 16, § 6.4.4; Ord. No. 960, § 5(6.4.4), 7-9-2015; Ord. No. 1024, § 55, 2-10-2022)

### **6.4.5 Development and Performance Standards**

- A. Attached principal dwellings which otherwise comply with the ordinances of the City may be divided at the party wall as to ownership and owned as separate dwelling units by separate owners and such ownership shall not constitute violation of the lot and yard requirements of this chapter.
- B. Pedestrian circulation systems (sidewalks, walkways and paths) shall be located and designed to provide adequate physical separation from vehicles along all public and private streets and drives and within any parking area.
- C. Site drainage patterns shall be designed, graded and constructed to prevent surface drainage from collecting on and flowing across pedestrian paths, walks and sidewalks.
- D. Detached accessory buildings including garages and carports shall not be located in any required front or side yard setback area, but may be located in the rear yard setback area provided that no such building may be closer than five (5) feet to any interior property line, closer than 20 feet from any street right-of-way line, or in front of any building setback line. No more than two (2) detached accessory buildings shall be permitted for each residence.
- E. An orderly transition from adjacent lower-density to higher density developments is encouraged by providing well designed transition area between existing residential parcels and structures, and the proposed project.
- F. Prior to issuance of any building permit, final site plan approval shall be obtained as provided for in Section 1.6.21 and 1.6.25.  
(Code 2008, ch. 16, § 6.4.5; Ord. No. 960, § 5(6.4.5), 7-9-2015; Ord. No. 1024, § 56, 2-10-2022)

## **ARTICLE SEVEN: COMMERCIAL OVERLAY DISTRICTS**

### **7.1 COMMERCIAL OVERLAY DISTRICTS**

#### **7.1.1 Intent**

Consistent with the City's Comprehensive Plan, the Overlay Districts herein described have been established to assist in directing the appropriate redevelopment within certain commercial areas of Westwood. These specific areas are as indicated on the following diagrams and are described and guided by the criteria established within each specific Overlay District. In brief, the goals of the City's Comprehensive Plan related to the redevelopment within these Commercial Overlay Districts are as follows:

- A. To encourage high quality mixed-use office / retail and/or residential footprint in two- and three-story buildings;
- B. To promote consistent clusters of parking behind the buildings;
- C. To promote consistent drive lane locations to access parking / buildings;
- D. To allow parking / drives to serve as components of buffers and pedestrian access from adjacent neighborhood streets.

Consistent with the overall intent of the C-1 Commercial / Mixed-Use District, general building criteria have been established relating to the following Commercial Overlay Districts.

(Code 2008, ch. 16, § 7.1.1; Ord. 920, Sec. 8)

### 7.1.2 Building Design

Building facades that are varied and exhibit architectural relief are key to making a place "pedestrian-oriented" as set forth in the City's Comprehensive Plan. Streets with monotonous and unarticulated buildings are not conducive to pedestrian activity and make walking less appealing.

Buildings should differentiate between the building facade at the sidewalk level and the floors above in order to recognize the differences in the character of activities at pedestrian level.

Buildings should incorporate elements at the street level that draw pedestrians and reinforce street activity. Street-side buildings should encourage window shopping, heavy foot traffic in and out of stores, and people watching from outdoor seating areas. Building facades should be varied and articulated to provide visual interest to pedestrians. Street level windows and numerous building entries are required in the core commercial areas. Building materials such as concrete masonry, tile stone, and wood should be encouraged.

Buildings shall be built of materials of Class C or better as defined in Marshall Valuation Service 2006 as amended; however, deviations may be permitted in conjunction with site plan review where there is ample evidence that said deviation will not adversely affect the neighboring properties or constitute the mere granting of a privilege on a project-specific basis.<sup>26</sup>

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<sup>26</sup> **Legal analysis: 7.1.2 Building Design.** Please advise if the city would like to revise this to reflect a newer edition or version of the Swift valuation (currently cites 2006).

Buildings should integrate roof shape, surface materials, colors, mechanical equipment, and other penthouse functions into the total building design. Roof terraces and gardens are permitted.

(Code 2008, ch. 16, § 7.1.2)

### **7.1.3 Pedestrian Emphasis**

The following concepts are encouraged:

- A. Reinforce and enhance the pedestrian system: Maintain an attractive access route for pedestrian travel where a public right of way exists or has existed. Recognize the different zones of a sidewalk: curb, street furniture zone, walking zone, and window shopping zone. Where appropriate, develop pedestrian routes through sites and buildings to supplement the public right of way.
- B. Provide an attractive, convenient pedestrian access-way to building entrances: Integrate an identification, signage, and lighting system that offer interest, safety, vitality, and diversity to the pedestrian.
- C. Protect the pedestrian: Protect the pedestrian environment from bicycle and vehicular movement.
- D. Bridge pedestrian obstacles: Bridges across barriers and obstacles by connecting pedestrian pathways with strongly marked crossings and inviting sidewalk design.
- E. Provide stopping & viewing places: Increase the pleasure of the community experience by providing safe, comfortable places where people can visit, meet, stop, and rest without conflicting with other street uses.
- F. Plazas, parks, and open spaces should be inviting and maximize opportunities for public use: These spaces should be well defined, accommodating, and create a secure environment. Such area should be oriented to receive sunlight, work well with pedestrian circulation patterns, and accommodate special events.
- G. Consider sunlight, shadow, glare, reflection, wind, and rain.
- H. Consider view opportunities: Create new viewing opportunities through the situation of windows, entrances, and adjacent exterior spaces as they relate to surrounding points of interest and activity.
- I. Pedestrian landscape: Where appropriate, enhance the pedestrian way with landscaped setbacks, decorative features, planters, trees, and other devices.
- J. Develop or strengthen gateways at locations identified by the Comprehensive Plan. (Code 2008, ch. 16, § 7.1.3; Ord. No. 1024, § 57, 2-10-2022)

### **7.1.4 Building Entries**

- A. All buildings, except accessory structures, shall have their main entrance opening

onto the street or a plaza that faces the street.

B. Secondary entries from the interior of a block (i.e., from rear parking lots) are also permitted.

C. Entries into all shops and offices must face directly onto the street. Each first floor shop or office must have a door facing the street. Buildings with multiple retail tenants should have numerous entries to the street; small single-entry malls are not allowed. Off-street parking should also be located at the rear of buildings with openings leading between the buildings to the street and primary entrances.

D. Retail anchor stores (those over 30,000 square feet), such as grocery stores, may have parking lot access to the primary entry. Anchor tenant retail buildings may have their entries from off-street parking lots; however, on-street entries are also required. Pedestrian access to the entry should be provided from the street and configured so pedestrians are not required to walk through the parking lot to enter the store.

Along walls without entries, building elevations shall include windows and display areas and/or be lined with retail shops.

(Code 2008, ch. 16, § 7.1.4)

### **7.1.5 Commercial Overlay District Map**

The boundaries of such districts are shown upon an Overlay District Map of the City of Westwood on file in the office of the City Clerk and made a part of this article, being designated as the "COD Map," and said map and all of the notations, references, and other things shown thereon shall be as much a part of this Ordinance as if the matters and things set forth by said map are all fully described herein.

(Code 2008, ch. 16, § 7.1.5; Ord. No. 1024, § 58, 2-10-2022)

## **7.2 COD-1 47TH AND MISSION ROAD AREA OVERLAY DISTRICT**

### **7.2.1 47th and Mission Road Area Design Review Overlay District Purpose and Authority**

The 47th and Mission Road Area Design Review Overlay District is established by this Zoning Ordinance, enacted to implement the goals and policies of the 47th and Mission Road Area Concept Plan, adopted by the cities of Westwood, Roeland Park, and the Unified Government of Wyandotte County and Kansas City, Kansas. The 47th and Mission Road Area Concept Plan was drafted pursuant to:

A. the interlocal cooperation acts, K.S.A. 12-2901—12-2909.

B. K.S.A. 12-744(c); and

C. the interlocal agreement between the Cities of Roeland Park, Westwood, and the Unified Government of Wyandotte County/Kansas City, Kansas (collectively "Jurisdictions").

This Ordinance translates the relevant portion of the plan within the boundaries of

Westwood into the Zoning Ordinance, in addition to all current regulations. This Ordinance will accompany a similar ordinance adopted by each jurisdiction to ensure consistent implementation of the 47th and Mission Road Area Concept Plan, as shown in Section 7.2.16 below.

(Code 2008, ch. 16, § 7.2.1; Ord. No. 1024, § 59(7.2.1), 2-10-2022)

### **7.2.2 Applicability**

A. This Ordinance shall apply to all property within Westwood and within the 47th and Mission Road Area Design Review Overlay District. The official zoning map of Westwood is hereby amended to reflect the 47th and Mission Road Area Design Review Overlay District.

B. The standards in this Ordinance shall apply to all property currently or subsequently zoned for commercial or multi-family use.

C. Any property zoned for single-family residential use is included within this overlay to indicate neighborhood areas to be protected by buffers and design enhancements established in this Ordinance for commercial or multi-family use. In addition, to further protect existing neighborhoods, any property currently zoned for single-family residential use which is subsequently rezoned to multi-family or commercial uses must satisfy all design standards in this Ordinance.

D. Any legal nonconforming structure or use cannot increase its level of nonconformity without complying with this Ordinance.

(Code 2008, ch. 16, §§ 7.2.2, 7.2.3; Ord. No. 1024, § 59(7.2.2), 2-10-2022)

### **7.2.3 Type of Development**

These standards shall be applied to new development, redevelopment, or exterior modifications that alters the appearance of a building or site within the overlay district including, but not limited to, building additions, facade improvements, or landscaping improvements. Only those standards required by this Ordinance and directly related to proposed development, redevelopment, or exterior modification shall be applied.

(Code 2008, ch. 16, § 7.2.4; Ord. No. 1024, § 59(7.2.3), 2-10-2022)

### **7.2.4 Other Regulations**

Within the overlay district, all Westwood ordinances, policies, regulations, and plans shall apply. Where conflicts occur regarding development standards in this Ordinance, the standards established in this Ordinance shall supersede those in the conflicting ordinance, policy, regulation, or plan.

(Code 2008, ch. 16, § 7.2.5; Ord. No. 1024, § 59(7.2.4), 2-10-2022)

### **7.2.5 Definitions**

For the purposes of this overlay Ordinance, the following terms and phrases shall have the meaning given in this section. All other terms and phrases shall use definitions given in the Westwood Zoning Ordinance or other codes, unless context indicates that a standard dictionary definition is more appropriate. Terms and phrases not defined in this section or

by any Westwood code shall have the standard dictionary definition.

Adjacent lot: a lot having a common border or endpoint with subject lot, or lots that would have a common border or endpoint in the absence of an existing right of way.

Development: the construction of man-made site elements on an improved or unimproved parcel of land.

Distinctly different hours of operation: uses with hours of operation where 50% or more of one use's hours of operation, including peak hours of operation based on a parking demand study, are mutually exclusive of the hours of operation of the other uses which it proposes to share parking.

Distinctly different peak hours of operation: the peak hours of operation, based on a parking demand study, of uses proposing to share parking are mutually exclusive.

Exterior modification: any maintenance, improvement, construction, or reconstruction of a structure or site, or any portion of a structure or site, that will result in an apparent change visible from the right of way or adjacent property.

Redevelopment: the reconstruction, enlargement, conversion, relocation of a manmade structure.

(Code 2008, ch. 16, § 7.2.6; Ord. No. 1024, § 59(7.2.5), 2-10-2022)

### **7.2.6 Underlying Zoning Uses**

The uses allowed in the 47th and Mission Road Area Design Review Overlay District shall be those uses allowed by the current or any future underlying zoning classification, provided that all future development and redevelopment meets the standards established in this Ordinance. Any future rezoning shall be to a use district consistent with the 47th and Mission Road Area Concept Plan.

(Code 2008, ch. 16, § 7.2.11; Ord. No. 1024, § 59(7.2.6), 2-10-2022)

### **7.2.7 Overlay Uses**

In addition to those uses allowed by the underlying zoning, all property zoned for commercial use within the 47th and Mission Road Area Design Review Overlay District shall be allowed residential uses as a supplemental use, subject to the following:

- A. No property with an underlying zone for Commercial use may have residential uses on the ground floor or at street level.
- B. No structures with supplemental residential uses may exceed 40 feet in height or 3 ½ stories, whichever is less.
- C. All structures with supplemental residential uses, whether new or existing at the time of adoption of this Ordinance, must comply with all other standards established in this Ordinance in order to be eligible for supplemental residential uses.

(Code 2008, ch. 16, § 7.2.12; Ord. No. 1024, § 59(7.2.7), 2-10-2022)

### **7.2.8 Commercial Site Design Standards**

Commercial site design in the 47th and Mission Road Area Design Review Overlay District shall conform to the principles outlined in the 47th and Mission Road Concept Plan. The following design standards implement and shall be interpreted consistent with the Plan. (Code 2008, ch. 16, § 7.2.13; Ord. No. 1024, § 59(7.2.8), 2-10-2022)

### **7.2.9 Building Placement**

Site design in the 47th and Mission Road Area shall conform to the following design standards.

- A. The provisions of this section shall apply to new development.
- B. **Front Setback:** All new buildings shall be built to the right of way line unless an additional setback is required to meet the minimum sidewalk width and buffer requirements in the Pedestrian Access requirement in Section 2 titled Site Access.
- C. **Side Setbacks:** The minimum side setbacks shall be:
  - 1. Ø feet;
  - 2. Property abutting residential districts shall have a side setback equivalent to this of the abutting residential district. In this case, the side setback area shall be used to provide a buffer according to Section 5 of this Article.
- D. **Rear Setback:** Minimum rear setbacks shall be as defined by the zoning regulations of the municipality that the property is located in, unless the property is abutting a residential zoned property on its rear yard property line. If abutting a residential zoned property, the setback shall be equal to the residential properties rear yard setback requirements.
- E. **Continuous Building Frontage:** Building facades on the street frontage should be maximized to provide continuous corridors within the overlay district. All lot frontages should be occupied by building frontages except for entrance drives or alleys to rear parking, courtyards or patios, or any side parking. In the case of courtyards and patios, or side parking, the appearance of a continuous building frontage shall be maintained by a 2½- to 4-foot fence or wall constructed out of the same material as the building facade, or by a continuous landscape element.
- F. **Main Entrance:** The main entrance of all buildings shall be oriented to the street. In the case of the corner lots, a building may have one entrance on each street or may have one corner entrance facing the intersection at a 45 degree angle.  
(Code 2008, ch. 16, § 7.2.14; Ord. No. 1024, § 59(7.2.9), 2-10-2022)

### **7.2.10 Site Access**

- A. **Pedestrian Access:** All buildings shall have a continuous sidewalk along the frontage of the lot. The sidewalk shall be 7 feet wide. All sidewalks shall be buffered from vehicular traffic with a minimum 3 foot buffer zone that includes landscaping, street trees, street

furniture, pedestrian lighting, bicycle facilities, or other amenities that provide physical separation from vehicular traffic.

1. Alternative. Sidewalks outside the Village Area (as identified in the 47th and Mission Road Area Design Review Overlay District may be a minimum of 5 feet in width, but the 3' buffer zone must be maintained.

2. Alternative: Where unique site characteristics prevent a 7' sidewalk and 3' buffer zone from being achievable in the Village Area, sidewalk widths shall be maximized on that site.

B. Vehicle Access: Curb cuts in the 47th and Mission Road area should be minimized. Wherever possible, adjacent properties are encouraged to minimize curb cuts by use of shared parking or shared access to separate parking lots.

C. Connections: Continuous pedestrian connections shall be provided through all parking lots and between parking lots and store-front sidewalks. These pedestrian connections shall primarily be pedestrian-only sidewalks but may include crosswalks across parking lot drive aisles and driveways where necessary. The following design elements shall be used to maintain pedestrian connections and minimize conflicts with vehicles:

1. Alleys, driveways, and parking lot drive aisles shall not exceed 24 feet for two-way access or 12 feet for one-way access.

2. "Bulb outs" for pedestrian-only travel should be used to minimize the distance of pedestrian walkways across driveways, alleys, parking lots, or other vehicle access ways.

3. All pedestrian walkways across driveway, alleys, parking lots, or other vehicle access ways shall be distinguished from the vehicle access way by a visually identifiable path or distinctly textured surface.

(Code 2008, ch. 16, § 7.2.15; Ord. No. 1024, § 59(7.2.10), 2-10-2022)

### **7.2.11 Parking**

A. Required Parking: The parking required for uses in the overlay district shall be established by the applicable standards for the underlying zoning district.

B. Location: Parking shall be provided primarily behind buildings in the Village Area. Parking on commercial lots outside the Village Area should be located primarily behind the building but may be located on the side of the building.

C. Shared Parking: Parking requirements in the overlay district may be met through shared parking according to the following conditions and standards:

1. A written agreement for the joint use of the parking facilities shall be executed by the parties, approved by Westwood and recorded with the register of deeds for any county in which property subject to the agreement is situated. The agreement shall include any necessary cross access easements among property owners. Must meet all other shared parking standards of the said jurisdiction.



2. Parking requirements are cumulative except that parking may be shared based on uses either on the same site or on other sites that meet the requirements of Item C, at the sole discretion of Westwood, according to the following standards:
    - a. When two or more uses have distinctly different hours of operation (e.g., commercial office and residential, or church and school), 100% of the required parking may be shared. Required parking shall be based on the use that demands the greatest amount of parking per the underlying Ordinance requirement.
    - b. When two or more uses have distinctly different peak hours of operation (e.g., office and restaurant / entertainment), 50% of the required parking spaces may be shared among the uses.
    - c. Shared parking shall meet jurisdiction standards. If the parking spaces are more than 800 feet from the main entrance of the building.
  3. Direct pedestrian access, meeting the requirements of Section 2.c, is required between any shared parking and the main entrance of any building proposing to share parking.
  4. Applicants for shared parking shall submit a statement indicating the ability of the proposed shared parking arrangement to meet the demands of all uses involved. The statement shall include hours of operation, hours of peak operation, forecasted demand, and other data indicating the appropriateness of shared parking.
  5. Any change of use or other change causing violation of the shared parking agreement or these standards shall invalidate the shared parking eligibility, and the parking requirements of the underlying Zoning Ordinance shall be met. A plan for meeting the parking requirements of this Ordinance if the shared agreement is invalidated must be submitted with the proposed agreement.
- D. On-Street Parking: Any on-street parking, authorized by Westwood and within 300 feet of the lot, may be credited towards the on-site parking requirements. A maximum of 10% of the required parking may be satisfied by on-street parking credits. On-street parking spaces may be counted by more than one user in meeting this requirement.
- E. Bicycle Parking: Bicycle parking facilities are required at a rate of one Bicycle for every 15 required vehicle parking spaces, with a minimum of 2 Bicycle parking spaces. Bicycle parking facilities may be counted by more than one property in meeting this requirement, as long as the facility is within 150 feet of the entrance and the total required parking is met for each property.
- F. Landscape Elements: Parking lots larger than 20 spaces shall incorporate at least one internal landscape island into the lot design. Landscape islands shall be at least 10% of the parking lot area. Each required landscape island shall be a minimum of 20 square feet and a maximum of 500 square feet. Landscape islands shall maintain a minimum 5-foot width at all times. Landscape islands shall be planted with landscape elements consistent with Section 5 of this Article. Landscape elements along the perimeter of a parking lot shall not count towards the landscape island requirement. Where a parking lot

incorporates internal rows of parking, each row shall be terminated with a landscape element.

G. Lighting: Exterior lighting on commercial properties shall be designed to have minimal light trespass onto adjacent residential properties.

H. All exterior lighting on the building must be full cut-off with non-adjustable heads to direct light 90 degrees downward. No light may cast light or glare off the property or onto the public street.

I. Any lighting used to illuminate an off-street parking area, sign or other structure shall be arranged as to deflect light away from any adjoining residentially zoned property or from public streets. Direct or sky-reflected glare, from floodlights or commercial operations, shall not be directed into any adjoining property. The source of lights shall be full cut-off with non-adjustable heads to direct light 90 degrees downward. Bare light bulbs shall not be permitted in view of adjacent property or public right-of-way.

J. Any light or combination of lights that casts light on a public street shall not exceed one foot-candle (meter reading) as measured from the centerline of the street. Any light or combination of lights that cast light on adjacent residentially zoned property shall not exceed 0.5 foot-candles (meter reading) as measured from that property line.

K. Applicants shall be required to submit a base meter reading as part of their application materials.

(Code 2008, ch. 16, § 7.2.16; Ord. No. 1024, § 59(7.2.11), 2-10-2022)

### **7.2.12 Architecture Features**

A. Enhanced Entrances: All main entrances shall be enhanced by architectural details. Such details may include, but are not limited to, slightly protruding entrances, building material variations, color variations, or artistic elements and other special treatments.

B. Windows: All buildings shall be predominantly transparent at the street level, with a minimum of 40% and a maximum of 80% of the facade occupied by windows. Upper levels may be less transparent, with a minimum of 25% of the facade occupied by windows.

C. Awnings and Canopies: Awnings or canopies are encouraged on facades to provide weather protection and shade to pedestrians, and to add visual appeal to the 47th and Mission Road Area Design Review Overlay District. Awnings and canopies may project into the building setback or right of way provided they are a minimum of seven and one-half (7½) feet above grade. Any awnings provided shall be fabric and shall not be back-lit. Permanent canopies may be constructed if designed as an integral part of the structure. All awnings or canopies on a single block shall be hung at the same height above finished floor elevation of the building it is associated with.

D. Facade Lighting: Facade lighting is encouraged within the overlay district. Facade lighting may be used to highlight architectural features of a building, provide secondary light to the pedestrian zone, or to enhance visibility of signs. Facade lighting shall be shielded so that the light source is applied to the building and does not provide any direct

light or glare on sidewalks or streets.

E. Roof: Flat and pitched roofs are allowed. Flat roofs shall incorporate a roof-screening element, such as a parapet or pediment, as part of the building design. Pitched roofs shall be complementary to the building design. All mechanical equipment shall be screened from view, preferably mounted to the roof and behind a parapet. (Code 2008, ch. 16, § 7.2.17; Ord. No. 1024, § 59(7.2.12), 2-10-2022)

### **7.2.13 Landscape Requirements and Screening**

A. Residential Buffers: All commercial uses and multi-family residential uses shall provide a landscape buffer from any single-family uses. The landscape buffer shall be of a density to provide an all-season visual screen from the single-family property. Treatments may include any combination of earth berms, walls or fences approved by the jurisdiction having authority, and tree, bush, and shrub plantings. The buffer zone shall be a minimum of ten (10) feet in width.

B. Screening: Specialty equipment, such as antennas, satellite dishes, trash and recycling containers, meter and utility boxes, and HVAC equipment, shall be screened from direct view from streets, sidewalks, and other areas of regular public access. Ground-mounted equipment and trash enclosures shall be screened from view with year-round landscape coverage or masonry wall enclosure consistent with the main building material. Roof-mounted equipment shall be placed far enough from the roof edge, or shall be screened with architectural elements, such as parapets, incorporated into the design of the building, so as not to be seen from the sidewalk across any adjacent street. (Code 2008, ch. 16, § 7.2.18; Ord. No. 1024, § 59(7.2.13), 2-10-2022)

### **7.2.14 Signs**

The following signs are allowed in the overlay district:

A. Facade Sign: One facade sign shall be allowed per building tenant, identifying the business or tenant. A facade sign shall be allowed on each facade fronting a street utilized for pedestrian or vehicular access, except no such sign should face a local street.

B. Pedestrian Signs: One pedestrian sign shall be allowed per building tenant, identifying the business of the tenant. Pedestrian signs may be suspended from canopies or awnings, or affixed perpendicular to a building. Pedestrian signs shall not be lower than 7 feet, 6 inches from grade level and shall not exceed 10 square feet. Building-affixed pedestrian signs shall not protrude more than 3 feet from the building surface.

C. Murals. Murals are allowed in the overlay district.

i. Definition. A "mural" is a hand produced or machined graphic applied or affixed to the exterior of a building wall through the application of paint, canvas, tile, metal panels, applied sheet graphic or other medium generally so that the wall becomes the background surface or platform for the graphic, generally for the purpose of decoration or artistic expression, including but not limited to, painting, fresco or mosaic.

ii. Standards.

1. Murals are not permitted on the primary façade. A primary façade is defined, for purposes of this section, as a building elevation that faces the adjacent street right-of-way and is the primary customer entrance. Buildings located on a block corner with the primary customer entrance located diagonally at the building corner to both intersecting streets has two primary facades.
2. On lots that share a property line with a residential zoning district, murals are not allowed on building walls that face a residential zoning district.
3. Up to 20 percent of a mural may include text or commercial copy. No more than five items of information may be included in the area used for text or commercial copy. However, murals should not include any textural reference to the associated business or shall be considered a sign.
4. The mural shall be kept in good condition for the life of the mural according to the maintenance schedule and responsibilities approved by the director and incorporated into the sign permit. A mural is in a state of disrepair when 10 percent or more of the display surface area contains peeling, faded or flaking paint, or is otherwise not preserved in the manner in which it was originally created.
5. The display surface shall be kept clean, neatly painted, and free from corrosion.
6. Murals shall be subject to the jurisdiction ordinances and requirements.  
(Code 2008, ch. 16, § 7.2.19; Ord. No. 1024, § 59(7.2.14), 2-10-2022)

### **7.2.15 Multi-Family Public Improvements and Notification**

Prior to placement of any public improvements on the Capital Improvements Program, or construction of public improvements within the 47th and Mission Road Area Design Review Overlay District, the City of Westwood shall send notice of the intent to construct public improvements to the each jurisdiction. This notice shall provide the opportunity for the jurisdictions to coordinate for construction of public improvements consistent with the 47th and Mission Road Area Concept Plan and Streetscape Design Concept Plans.

For any proposed development, re-zoning, variance, or other action within the overlay district that would require a public hearing and notification to neighbors, notification will also be sent to the other jurisdictions.

(Code 2008, ch. 16, § 7.2.26; Ord. No. 1024, § 59(7.2.15), 2-10-2022)

### **7.2.16 Depiction of 47th and Mission Road Area Design Review Overlay District and 47th and Mission Road Area Concept Plan**

The 47th and Mission Road Area Design Review Overlay District is hereby amended such that the overlay district shall consist of that are identified below as the "Suggested District Boundary." The Village Area, as used in this overlay district Ordinance, shall mean that area identified below as the "Suggested Village Boundary."

(Ord. No. 1024, § 59(7.2.16), 2-10-2022)

### **7.3 COD-2 Commercial Overlay District #2 (Rainbow Boulevard — West Side)**

Commercial lots west of Rainbow Boulevard bounded by 47th Terrace and 48th Terrace.  
(Code 2008, ch. 16, § 7.3)

**7.3.1 District Requirements**

District Requirements	COD-2
Uses Permitted by Right:	Retail and Office Use
Build-to Lines	35’ from street right of way
Corner Lot Build-to Lines	35’ from both street rights of way
Maximum Lot Coverage	35%
Minimum Setback Lines:	
Interior Side Yard	10’
Rear Yard	10’
Maximum Building Height	35’
Maximum Building Stories	2

(Code 2008, ch. 16, § 7.3.1)

**7.3.2 Building Standards**

Commercial building walls shall be wood clapboard, wood shingle, wood drop siding, primed board, wood board and batten, brick, stone, stucco or similar material, and glass.  
(Code 2008, ch. 16, § 7.3.2)

**7.4 COD-3 Commercial Overlay District #3 (Rainbow Boulevard – East Side)**

Commercial lots east of Rainbow Boulevard within the WEBO beginning with Lot 1 south to the city limits, including lots 1-2, 31-36, 91-93; provided, however, that COD-3 shall specifically not include any portion of COD-4, as described in Section 7.5.  
(Code 2008, ch. 16, § 7.4; Ord. 920, Sec. 9; Ord. No. 1024, § 60, 2-10-2022)

**7.4.1 District Requirements**

District Requirements	COD-3
Uses Permitted by Right:	
Ground Floor	Retail and Office Use
Second Floor	All permitted commercial & residential uses
Third Floor	All permitted commercial & residential uses
Lot Provisions	Continuous Street Frontage along Rainbow and 47th Place
Build to Lines	35’ from property line
Corner Lot Build to Lines	35’ from both property lines

Maximum Lot Coverage	35%
Minimum Setback Lines:	
Interior Side Yard	10'
Rear Yard	10'
Maximum Building Height	48'
Maximum Building Stories	3
Parking	75% rear parking

(Code 2008, ch. 16, § 7.4.1)

**7.4.2 Parking**

- A. All parking to be provided to the rear of the building.
- B. Drives and Driveways: No drives are allowed onto Rainbow Boulevard. Driveway access shall be from adjacent side streets as indicated on the plan diagram above. Provide two-lane drive in north-south direction along rear of parking lot, with buffers as required to adjacent residential lots.  
(Code 2008, ch. 16, § 7.4.2)

**7.4.3 Building Standards**

- A. Commercial building walls shall be wood clapboard, wood shingle, wood drop siding, primed board, wood board and batten, brick, stone, stucco or similar material, and glass.
- B. Two primary siding materials, maximum, and the heavier in appearance being at the bottom.  
(Code 2008, ch. 16, § 7.4.3)

**7.5 COD-4 Commercial Overlay District #4 (47th Place and Rainbow Boulevard)**

The properties located on the east side of Rainbow Boulevard on the south and north side of the intersection of 47th Place, legally described as follows: All of Lot 5, Westport View - and now legally described as: Lots 1 and 2 of WOODSIDE VILLAGE NORTH, a subdivision of land in the City of Westwood, Johnson County, Kansas, and all of Lots 1 and 2, Woodside Club Complex, subdivisions lying in the Northwest Quarter of Section 2, Township 12 South, Range 25 East, in the City of Westwood, County of Johnson, State of Kansas, along with all adjoining rights-of-way, easements, and appurtenances.  
(Code 2008, ch. 16, § 7.5; Ord. 920, Sec. 9\*; Ord. 969, § 1(7.5), 4-14-2016)

**7.5.1 District Requirements**

District Requirements	COD-4
Uses Permitted by Right:	
Ground Floor	All permitted commercial uses, multi-family residential (including condominiums and apartments), and fitness

	and health club uses.
Second Floor	All permitted commercial uses within an approved live/work unit, multi-family residential uses (including condominiums and apartments), and fitness and health club uses.
Third Floor	Multi-family residential (including condominiums and apartments).
Fourth Floor	Multi-family residential (including condominiums and apartments).
Fifth Floor	Multi-family residential (including condominiums and apartments) in accordance with the approved final site plan.
Build to Lines	Per approved final site plan.
Corner Lot Build to Lines	In accordance with the approved final site plan.
Maximum Lot Coverage	In accordance with the approved final site plan.
Minimum Setback Lines	In accordance with the approved final site plan.
Front Yard	In accordance with the approved final site plan.
Interior Side Yard	In accordance with the approved final site plan.
Rear Yard	In accordance with the approved final site plan.
Maximum Building Height	In accordance with the approved final site plan.
Maximum Building Stories	5 stories - in accordance with the approved final site plan.
Parking	Set forth in Section 7.5.2 below.

(Code 2008, ch. 16, § 7.5.1; Ord. 920, Sec. 10; Ord. 969, § 1(7.5.1), 4-14-2016)

### 7.5.2 Building Standards

- A. Mechanical equipment and roof appurtenances shall be included in the building height limitations.
- B. Commercial building walls shall be wood clapboard, wood shingle, wood drop siding, primed board, wood board and batten, brick, stone, stucco, or similar material and glass.
- C. Parking: Surface and up to a five-story parking structure at the rear of the lot, subject to and in accordance with approval of a final site plan for the same.

(Code 2008, ch. 16, § 7.5.2; Ord. 920, Sec. 11; Ord. 969, § 1(7.5.2), 4-14-2016)

## ARTICLE EIGHT: SPECIAL USE PERMITS

## 8.1 SPECIAL USE PERMITS

### 8.1.1 Special Uses

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 and protect the public health, safety and welfare. It is the intent of this Chapter to allow for such uses by the granting of a special use permit, subject to the same procedures applicable to a rezoning set forth in Section 1.6. Communication facilities and communication facilities for wireless services are subject to the application, location, building and design standards of Article Ten of the Zoning Ordinance.

(Code 2008, ch. 16, § 8.1.1; Ord. No. 960, § 6(8.1.1), 7-9-2015; Ord. 984, § 22, 9-21-2017)

### 8.1.2 Special Uses Designated

Any building, structure, land or premises may be used, and any building or structure may be erected, constructed, reconstructed, moved or altered, for one (1) or more of the following special uses, subject to approval of a special use permit by the Governing Body and subject to the development and performance standards set forth in Section 8.1.4:

- A. Amusement centers and arcades;
- B. Clubs and drinking establishments - bar or night club;
- C. Community living facility;
- D. Communications facilities and antennas;
- E. Daycare homes, group daycare homes, childcare centers, preschools, and Mother's Day Out programs;
- F. Hospitals;
- G. Off-street parking lots/structures of a temporary or permanent nature
- H. Public utility services or public service corporations - buildings, structures, and premises;
- I. Radio and television towers;
- J. Communication Facilities (Towers, Base Stations, Antennas, and the like);
- K. Testing and research facilities, and laboratories;
- L. Temporary use of land for commercial or industrial purposes.

(Code 2008, ch. 16, § 8.1.2; Ord. No. 960, § 6(8.1.2), 7-9-2015; Ord. 984, § 23, 9-21-2017)



### **8.1.3 Special Uses Not Permitted**

It shall be presumed that any use listed in Section 8.1.2 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.

(Code 2008, ch. 16, § 8.1.3; Ord. No. 960, § 6(8.1.3), 7-9-2015)

#### *8.1.4 Development and Performance Standards*

##### **8.1.4.010 Amusement Centers and Arcades**

A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.

B. The initial special use permit may be granted for a period of up to twelve (12) months, with renewals for a period of up to five (5) years.

(Code 2008, ch. 16, § 8.1.4.010; Ord. No. 960, § 6(8.1.4.010), 7-9-2015)

##### **8.1.4.015 Clubs and Drinking Establishments - Bar or Night Club**

A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.

B. An initial permit may be issued for a maximum time period of two (2) years. Subsequent renewals may be issued for a maximum time period of five (5) years. Provided, however, that establishments within facilities such as convention centers, health clubs, hotels, or similar structures determined not to have traffic, parking, noise, litter or other adverse impacts on surrounding properties, may be issued a special use permit for an indefinite time period.

(Code 2008, ch. 16, § 8.1.4.015; Ord. No. 960, § 6(8.1.4.015), 7-9-2015)

##### **8.1.4.020 Community Living Facility**

A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.

B. An initial permit may be issued for a maximum time period of two (1) year. Subsequent renewals may be issued for a maximum time period of three (3) years.

(Code 2008, ch. 16, § 8.1.4.020; Ord. No. 960, § 6(8.1.4.020), 7-9-2015)

##### **8.1.4.025 Communications Facilities (including Towers, Base Stations and Antennas)**

A. Applications for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within Article Ten of the

Zoning Ordinance, and the City shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

B. Each application for a Special Use Permit shall follow the process set forth and submit the information listed in Article Ten, Section 10.5.

C. A Special Use Permit for Communications Facilities shall be subject to the performance standards Article Ten, Section 10.7.

D. A Special Use Permit for Communication Facilities shall be for a term of not less than (10) years.

E. A denial of a Special Use Permit for Communication Facilities shall comply with the provisions and requirements set forth in Article Ten, Section 10.8. (Code 2008, ch. 16, § 8.1.4.025; Ord. No. 960, § 6(8.1.4.025), 7-9-2015; Ord. 984, § 24, 9-21-2017)

#### **8.1.4.030 Daycare Homes, Group Daycare Homes, Childcare Centers, Preschools, and Mother's Day Out Programs**

A. A Special Use Permit is require only on property zoned District R-1 or residentially zoned property, which are not otherwise permitted as an accessory use or as a permitted use.

1. Day care homes shall be allowed subject to the following standards:

a. The day care provider shall be licensed by the State of Kansas and shall reside on the premises.

b. Outside play areas shall be fenced.

c. Only one employee, other than persons residing on the premises, shall be permitted.

2. Child care centers, preschools and Mother's Day Out programs may be allowed as an accessory use only in religious, educational and community buildings.

a. Such programs shall be subject to a general traffic circulation plan being submitted. Such plan shall not permit parking on any adjacent public street, and shall include a drop-off and pick-up site designed to prevent traffic congestion or vehicles stacking up onto the public streets.

b. The day care operation shall be licensed or registered with the State of Kansas.

c. The Planning Commission and Governing Body may, as a part of any special use permit renewal, require that the number of children and/or employees be reduced until, in their judgment, the adjoining properties are not adversely impacted.

d. Where the day care operation is operated from a residential dwelling, the owner or

operator shall occupy the structure as his or her private residence.

e. No signs identifying the daycare operation shall be permitted on the premises.

B. An initial permit may be issued for a maximum time period of two (2) years. Subsequent renewals may be issued for a maximum time period of three (3) years. (Code 2008, ch. 16, § 8.1.4.030; Ord. No. 960, § 6(8.1.4.030), 7-9-2015)

#### **8.1.4.035 Hospitals**

A. The following uses are accessory uses within a hospital where located within the main building and designed to serve hospital personnel, visitors or patients:

1. Florist.
2. Food service and vending machines.
3. Gift shops.
4. Laundry, cleaning and garment services - pickup and delivery.
5. Nursing and personal care facilities.
6. Pharmacies.
7. Residential quarters for staff and employees.
8. Fitness Centers, pools, game rooms

B. An initial permit may be issued for a maximum time period of two (2) years. Subsequent renewals may be issued for a maximum time period of five (5) years.

C. The Planning Commission and Governing Body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time. (Code 2008, ch. 16, § 8.1.4.035; Ord. No. 960, § 6(8.1.4.035), 7-9-2015)

#### **8.1.4.040 Off-Street Parking Lots/Structures of a Temporary or Permanent Nature**

A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.

B. An initial permit may be issued for a maximum time period of two (1) year. Subsequent renewals may be issued for a maximum time period of three (3) years (Code 2008, ch. 16, § 8.1.4.040; Ord. No. 960, § 6(8.1.4.040), 7-9-2015)

#### **8.1.4.045 Public Utility Services or Public Service Corporations - Buildings, Structures, and Premises**

- A. Outside storage of materials and equipment is an accessory use in buildings used by public utilities provided all storage is screened from view off the premises.
- B. The initial special use permit may be granted for a period of up to two (2) years, with renewals for a period of up to five (5) years; provided that, a special use permit for Communication Facilities for Wireless services shall be for a term of not less than (10) years.
- C. Applications for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within Article Ten of the Zoning Ordinance and Section 8.1.4.025 of this Article, and the City shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.
- D. The Planning Commission and Governing Body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.  
(Code 2008, ch. 16, § 8.1.4.045; Ord. No. 960, § 6(8.1.4.045), 7-9-2015; Ord. 984, § 25, 9-21-2017)

#### **8.1.4.050 Radio and Television Towers**

- A. The property owner must provide maintenance and inspection reports for towers and all supporting structures, guys, and attachments. Such reports shall follow the guideline and checklist set forth in TIA-EIA- 222-F, Annex E
- B. The property owner shall maintain \$1,000,000/\$2,000,000 aggregate Commercial General Liability insurance on each tower or in the alternative the applicant shall maintain \$2,000,000/\$4,000,000 aggregate Commercial General Liability insurance for any casualty occurring with respect to either tower
- C. The property owner shall provide a Certificate of Insurance, with a 30-day notice in the event of cancellation, to the City Clerk, evidencing that it has obtained the requisite liability insurance.
- D. The initial special use permit may be granted for a period of up to two (2) years, with renewals for a period of up to five (5) years; provided that, a special use permit for Communication Facilities for Wireless services shall be for a term of not less than (10) years.
- E. Applications for special use permits for communication facilities for wireless services shall be subject to and processed pursuant to the provisions, definitions, building and design standards, requirements, timelines, and criteria contained within Article Ten of the Zoning Ordinance, and the City shall not discriminate against applicants with respect to the placement of communications facilities as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.  
(Code 2008, ch. 16, § 8.1.4.050; Ord. No. 960, § 6(8.1.4.050), 7-9-2015; Ord. 984, §

26, 9-21-2017)

#### **8.1.4.055 Testing and Research Facilities, Laboratories**

- A. No permit shall be approved unless a determination is made that the impacts of traffic, access and parking, noise and litter will not adversely affect the surrounding neighborhood.
- B. The initial special use permit may be granted for a period of up to two (2) years, with renewals for a period of up to five (5) years.
- C. The Planning Commission and Governing Body may, upon a finding that time restrictions on the permit are not required to protect the public health, safety and welfare, approve a special use permit for an indefinite period of time.  
(Code 2008, ch. 16, § 8.1.4.055; Ord. No. 960, § 6(8.1.4.055), 7-9-2015)

#### **8.1.4.060 Temporary Uses of Land for Commercial or Industrial Purposes**

- A. Special use permits for temporary uses of land for commercial or industrial purposes may be granted for a period not to exceed two (2) years, subject to renewal for one or more periods of time not to exceed a maximum of two (2) years for each renewal.
- B. If a building or structure is constructed on said land in connection with the approved temporary use, and such structure is not otherwise permitted in that district, the building or structure shall be temporary and, along with any stored equipment or material, shall be removed on or before the expiration date of the Special Use Permit;
- C. This provision shall not be used as a means of seeking approval for occupations which are not permitted as accessory uses in residential districts under Section 4.2.2  
(Code 2008, ch. 16, § 8.1.4.055; Ord. No. 960, § 6(8.1.4.060), 7-9-2015)

### **ARTICLE NINE: SIGNS**

#### **9.1 PURPOSE, DEFINITIONS, PROHIBITED SIGNS**

##### **9.1.1 General Regulations**

Signs shall be permitted in the various districts in accordance with the following regulations, which shall apply to all signs that are visible from beyond the lot line. Signs not authorized by the provisions of this chapter are not authorized.  
(Code 2008, ch. 16, § 9.1.1; Ord. No. 991, § 1(9.1.1), 6-14-2018)

##### **9.1.2 Statement of Purposes and Objectives**

The Westwood governing body declares that the purpose of this article is to protect, preserve, and promote the health, safety, general welfare, and beauty of the City, by regulating the location, size, placement, physical materials, and illumination of signs. The City further intends to regulate signage in order to promote economic development and protect property values from the effect of visual blight, and to promote the rights of individuals to convey messages through temporary signs, while preventing the

unrestricted proliferation of signs, both permanent and temporary. The City finds that certain signs, by their quantity, size, placement, appearance, or other characteristics, can create a hazard to traffic by blocking the view of and distracting motorists and others, particularly with respect to signs in the rights-of-way of the City. The City further finds that the rights of way of the City are subject to ongoing street, sidewalk, and other infrastructure and utility construction and repair, and are subject to digging, excavation, and other construction activities at any time. The City also finds that the rights of way are widely used for such subsurface purposes as fiber optic lines, natural gas lines, and other structures, and placing signs or other structures in the rights-of-way could interfere with or damage such structures. The City finds that the use of the rights of way is also subject to statutory and other legal rights and interests including, but not limited to, use of the rights of way by certain utilities or other providers of goods or services to the public. The City intends to promote the substantial governmental goals of safety and aesthetics, but not to impair protected Constitutional rights, including freedom of speech. (Code 2008, ch. 16, § 9.1.2; Ord. No. 991, § 1(9.1.2), 6-14-2018)

### **9.1.3 Definitions**

**Animated Sign:** any device such as flashing, blinking, rotating, or moving action intended to attract the attention of the public to an establishment or to a sign.

**Awning:** a temporary shelter, supported entirely from the exterior wall of a building, and composed of a non-rigid material, except for a rigid, stationary supporting framework.

**Back-Lighted Sign:** a sign with concealed illumination, which provides backlighting that silhouettes the message.

**Banner:** a temporary sign printed on fabric or other pliant material.

**Billboard:** an outdoor freestanding panel or advertising structure which stands over three feet above ground or above grade at its base and which advertises a product or service, relays a message to the public, or carries an advertising message.

**Building:** a roofed and walled structure.

**Building, Multi-Tenanted:** a building, or a group of two or more attached buildings under unified control or ownership, housing two or more tenants.

**Business Facade:** the architectural front of a building, relating to a particular business, lying between the ground level of the pedestrian walkway and the lowest level of the roofline.

**Complex:** a group of two or more buildings with two or more tenants, developed in a related manner and under unified control and ownership.

**Detached Sign:** any sign located on the ground or on a structure or support located on the ground and not attached to any building.

**Directional Sign:** any sign directing traffic to a location or event.

**Dissolve:** a mode of message transition on an EMC accomplished by varying the light intensity or pattern, where the first message gradually appears to dissipate and lose legibility simultaneously with the gradual appearance and legibility of the second message.

**Electronic Message Center (EMC):** A sign that utilizes computer-generated messages or some other electronic means of changing copy including LED, LCD or similar displays.

**Externally Illuminated Sign:** any sign which is partially or completely illuminated by a light source which is shielded so that the light source is external to the sign and not visible.

**Facade:** the principal face or front of a building.

**Fade:** a mode of message transition on an EMC accomplished by varying the light intensity, where the first message gradually reduces intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.

**Flashing Sign:** any sign which is internally or externally illuminated by flashing, flowing, alternating or blinking lights.

**Ground Sign:** a freestanding sign, not more than five feet in height, supported by uprights, braces, columns, poles, or other vertical members which are not attached to the building.

**Height of Sign:** the vertical distance, measured from the average grade of the sign foundation or point of sign support to the highest point on the sign. The average grade shall be determined by deriving the average elevation of property extending fifteen feet from all sides of the proposed sign location.

**Identification Sign:** a sign giving the name and address of a building, business, development or establishment. Such signs may be wholly or partially devoted to a readily recognizable symbol.

**Illuminated Channel Cut Letter Signage:** Dimensional lettering with internal illumination.

**Internally Illuminated Sign:** any sign (other than illuminated channel cut letter signage) illuminated by diffused light through a translucent material so that the light source is not directly discernable.

**Memorial Sign or Tablet:** a sign cut into a masonry or rock surface that is a part of a building, or a bronze, or similar material, tablet inset into such building.

**Monument Sign:** a freestanding sign made of brick, natural stone materials, concrete, metal, wood, or plastic, which harmonizes with the architecture of the building or complex it serves, and is constructed of materials consistent with the building. The monument sign copy area must be attached in a continuous fashion to a proportionate base. The proportionate base must be continuous and the width of the base must be at least one half of the width of the widest part of the sign.

**Nonconforming Sign:** any advertising structure or sign which has been erected and

maintained prior to such time as it came within the purview of this article and any amendments thereto, and which fails to conform to all applicable regulations and restrictions of this article, or a non-conforming sign for which a special use permit has been issued.

**Off-Site Sign:** any sign which directs the attention of the public to any goods, merchandise, property (real or personal), business, service, entertainment, or amusement conducted, produced, bought, sold, furnished, or offered on any premises other than where the sign is located.

**Parcel:** a tract of land comprised of one or more lots or portions thereof zoned for a single dwelling or for a single business single business development under common ownership.

**Permanent Sign:** any wall, monument or other sign that is fixed, lasting, stable, enduring, not subject to change, and generally opposed to temporary, but not always meaning perpetual.

**Pole Mounted Banner Sign:** A temporary sign printed on fabric or other pliant material, mounted to a street light or utility pole, typically within the City right of way.

**Pole Sign:** a freestanding sign, more than five feet in height, supported by uprights, columns, poles, or other vertical members which are not attached to a building.

**Portable Sign:** any sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to an A-frame or sandwich frame sign, balloons or other gas or air-filled objects used as commercial signs; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

**Projecting Sign:** any sign extending more than one foot from the face of the building to which it is attached.

**Public Right-of-way:** the area on, below, or above public streets, alleys, bridges, and parkways, and the area immediately adjacent thereto, that is, the dedicated roadway area.

**Roof:** the cover of a building including roofing and all other materials and construction (such as supporting members) necessary to carry and maintain it on the walls or uprights.

**Roof Sign:** any sign constructed and maintained partially or wholly upon or over the roof eave of a building, or the eave of a false roof.

**Scroll:** a mode of message transition on an EMC where the message appears to move across the display surface.

**Sight Distance Triangle:** the two areas of all corner lots within the triangles formed by a short leg 15 feet in length and a long leg 140 feet in length, both distances measured along the curb line or edge of the pavement.

[GRAPHIC - Sight-Distance Setback Triangle Street or Driveway]



**Sign:** any posting, board, symbol, or other physical or material device which communicates or functions as an announcement, message, attracting device, declaration, demonstration, display, illustration, identification, description, insignia, symbol, or logo which is used to transmit a message, is used to advertise or promote, or which directs attention to any idea, cause, opinion, business, product, activity, service, place, institution, or person, or which functions as a device for solicitation, or anything on which a message is displayed. A sign includes any supporting structure appurtenant thereto when the same is in public view.

**Sign Area Calculation:** the entire area within a single continuous perimeter enclosing all elements of a sign that form an integral part of the display including the perimeter border. Signs with more than one face shall be taken as one face only for purposes of determining size area only. Each sign shall have no more than two faces.

**Sign Maintenance:** the normal care and minor repair necessary to retain a safe, attractive, uniformly lit (if applicable), and finished structure, brackets or surface. Repainting or repairing copy or logo shall be considered maintenance if the information, product or service remains the same and if the sign is to serve the identical establishment using the same business firm name as before the change.

**Sign Structure:** the supports, uprights, braces and framework of a sign.

**Structure:** that which is built or constructed; an edifice or building of any kind.

**Temporary Sign:** any sign that is intended for a temporary period of posting on public or private property, and is typically constructed from nondurable materials, including paper, cardboard, cloth, plastic, and/or wall board, and which may have a plastic, metal, or wooden support, or which does not constitute a structure subject to the City's Building Code or Zoning provisions.

**Tenant:** one who holds or possesses a house, building, land or tenement by any right or title, whether in fee, for life, for years, at will, or otherwise.

**Transition:** a visual effect used on an EMC to change from one message to another.

**Travel:** a mode of message transition on an EMC where the message appears to move horizontally or vertically across the display surface.

**Wall Sign:** any vertical sign attached flat against the surface of a wall, awning, or facade (other than a false roof facade), of a building, but not projecting horizontally from the vertical surface more than twelve inches or above the vertical surface.

**Window Sign:** any sign which is displayed in, attached to or applied to the exterior or interior of any transparent glass or acrylic plastic surface that could be considered a window.

(Code 2008, ch. 16, § 9.1.3; Ord. No. 991, § 1(9.1.3), 6-14-2018; Ord. No. 1024, § 61, 2-10-2022)

#### **9.1.4 Prohibited Signs**

All signs not expressly permitted within this Ordinance or exempted herein are prohibited in the City. Such prohibited signs include, but are not limited to:

- A. Animated signs.
- B. Billboards.
- C. Electrically lighted signs that create a nuisance to neighboring property owners and/or the general public. A nuisance is defined as any electrically lighted sign which gives offense to or endangers life or health, causes pollution such as light pollution, obstructs the reasonable and comfortable use and enjoyment of the property of another, interferes with the rights of citizens whether in person, property, or enjoyment of property or comfort, annoys or causes trouble or vexation, is offensive or noxious, or works hurt, inconvenience, or damage. To constitute a nuisance, the interference must be both substantial and unreasonable.
- D. Electronic Message Centers (EMC's) with the exception of installations noted in 9.3.1.E
- E. Flashing or blinking signs, including excessive change in the color of the illumination.
- F. Off-site signs.
- G. Pole signs.
- H. Portable signs.
- I. Roof signs.
- J. Any sign attached to a tree, fence, or utility pole except warning signs issued and properly posted by the utility company having ownership or control of said utility pole, and also excepting any signs required by governmental or legal authority.
- K. Any illuminated awnings.  
(Code 2008, ch. 16, § 9.1.4; Ord 942, Sec 1; Ord. No. 991, § 1(9.1.4), 6-14-2018; Ord. No. 1024, § 62, 2-10-2022)

### **9.1.5 Severability** <sup>27</sup>

If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Ordinance and/or any other code provision and/or laws or ordinances are declared invalid or unconstitutional by a judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the validity of any

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<sup>27</sup> **Legal analysis: 9.1.5 Severability.** Delete as covered by general provisions in Chapter 1. In the alternative (in case this chapter is ever removed from this code and made into its own zoning code or an appendix), move this to the general provisions of this chapter.

other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Ordinance, including, but not limited to, the prohibitions contained herein, and further including, but not limited to, the prohibition on billboards as contained herein. (Code 2008, ch. 16, § 9.1.5; Ord. No. 991, § 1(9.1.5), 6-14-2018; Ord. No. 1024, § 63, 2-10-2022)

## 9.2 REGULATIONS APPLICABLE TO ALL DISTRICTS

### 9.2.1 Sign Permit

A. Except as provided herein, or as may be provided by other ordinances or resolutions of the City, it shall be unlawful for any person to erect, install, alter, move or replace any new or existing sign without first obtaining a permit and making payment of the sign permit fee as established in the City fee schedule on file in the City Clerk's Office. A permit is not required for ordinary maintenance and repair of a sign, nor is a permit or fee required to post temporary signs.

B. Any person desiring to erect a sign for which a permit is required shall submit to the Building Official an application upon a form to be provided by the City that shall contain the following information:

1. Name, address, and telephone number of the applicant;
2. Location of the building, structure, or lot to which or upon which the sign is to be attached or erected;
3. Position of the sign in relation to nearby building or structures, streets and sidewalks;
4. Drawing of the sign, showing elevation or elevations of the sign at a scale of one half inch to the foot, or larger, showing the sign, including structural supports, height to bottom of the sign, as well as material, color, and lighting;
5. Length of time the sign will be displayed;
6. Written consent of the owner of the building, structure or land to which or on which the sign is to be erected; and
7. Such other information as the Building Official shall require showing full compliance with this and all other laws and ordinances of the City.

C. It shall be the duty of the Building Official, upon filing of an application for a sign permit, to review the application and to conduct such other investigation as is necessary to determine the accuracy of the application and reach a decision within fourteen days of the application being completed and filed with the City. If it shall appear that the applicant has provided the information requested in the application, and that the proposed sign will comply with the ordinances of the City, the Building Official shall forward the sign permit to the Planning Commission for a review of the sign. The Building Official shall record and maintain all documents pertaining to sign permits. Notwithstanding the above, signs may be approved as part of a comprehensive site plan review or otherwise as part of a zoning

procedure provided that any such signs meet the criteria set forth herein.

D. If the Building Official determines that the proposed sign is not in compliance with all requirements of this chapter or any other laws or any other ordinances of the City, the Building Official shall not issue the requested permit, and shall notify the applicant of such denial and the reason therefore within fourteen days of the application being completed and filed with the City.

E. If the Building Official finds that a sign meets the criteria herein for approval, and is not a type of sign that requires specific planning commission approval, then the Building Official shall issue a permit.

F. Any applicant aggrieved by a decision of either the Building Official shall be entitled to an appeal to have said decision reviewed by the Governing Body. Said appeal must be taken within thirty days of the decision from which an appeal is taken. The Governing Body shall hear such appeal at the earlier of its next regularly scheduled meeting or the passage of twenty days from the decision from which an appeal is taken.

G. All rights and privileges acquired under the provisions of the chapter, or any amendments thereto, are revocable at any time by the City for cause, and all such permits shall contain this provision.

(Code 2008, ch. 16, § 9.2.1; Ord. No. 991, § 1(9.2.1), 6-14-2018)

### **9.2.2 Signs Exempt from Permit Requirement**

The following signs are exempt from the permit process and are not subject to this Ordinance:

A. Street markers, traffic signs, warning signs, and other appropriate or mandatory signs displayed by the City or other governmental subdivision in the exercise of the police power to assure the public health, safety, and welfare;

B. Any sign required by the City's Building or Fire Codes or other governmental authority;

C. Official notice by public officers or employees in the performance of their duties; and

D. Signs required or specifically authorized by statute or ordinance, or otherwise required by law.

(Code 2008, ch. 16, § 9.2.2; Ord. No. 991, § 1(9.2.2), 6-14-2018; Ord. No. 1024, § 64, 2-10-2022)

### **9.2.3 Exceptions to Permit Process**

The following types of signs are exempt from permit requirements but must be in conformance with all other requirements of this article:

A. Temporary signs;

- B. Memorial signs or tablets not in excess of four square feet;
- C. Name plate signs for single-family dwellings; and
- D. In the district zoned for retail sales, temporary window signs which do not exceed ten percent of the area of the window in which the sign is placed.  
(Code 2008, ch. 16, § 9.2.3; Ord. No. 991, § 1(9.2.3), 6-14-2018)

#### **9.2.4 Traffic Hazards**

No sign shall be constructed at the intersection of any street in such a manner as to obstruct the free and clear vision of motorists, or any location where, by reason of the position, shape or color, said sign may interfere with obstruct the view or be confused with any authorized traffic signal or device.

(Code 2008, ch. 16, § 9.2.4; Ord. No. 991, § 1(9.2.4), 6-14-2018)

#### **9.2.5 Maintenance and Inspection**

All signs now or hereinafter erected shall at all times be kept in good repair and structurally safe. Any sign which may be at any time deemed to be in disrepair or unsafe by the Building Official shall be removed and costs of the removal paid by the owner.

(Code 2008, ch. 16, § 9.2.5; Ord. No. 991, § 1(9.2.5), 6-14-2018)

#### **9.2.6 Public Rights of Way**

With the exception of City of Westwood pole mounted banner signs, no sign, including any part of a sign or sign structure, shall be located within the public right-of-way, except approved directional and traffic control signs, or except as permitted under the regulations herein. No sign, or sign structure, shall be erected or maintained over, across, or upon any sidewalk or street except as provided herein or otherwise as required or permitted by law.

(Code 2008, ch. 16, § 9.2.6; Ord. No. 991, § 1(9.2.6), 6-14-2018)

#### **9.2.7 Temporary Signs**

A. The City enacts this Ordinance to establish reasonable regulations for the posting of informational signs on public and private property. Recognizing that temporary signs, left completely unregulated, can become a threat to public safety as a traffic hazard, and a detriment to property values as an aesthetic nuisance, the City intends to:

1. Protect the rights of all individuals to convey their message through temporary signs and at the same time recognize the right of the public to be protected against the unregulated proliferation of signs;
2. further the objectives of the City's comprehensive plan;
3. protect the health, safety, and welfare;
4. reduce traffic and pedestrian hazards;

5. protect property values by minimizing the possible adverse effects and visual blight caused by signs;
6. promote economic development; and
7. ensure the fair and consistent enforcement of the temporary sign regulations specified hereinafter.

B. Temporary signs may be posted on property in all zoning districts of the City, subject to the following requirements:

1. The total square footage per parcel for temporary signage in any district, in the aggregate, shall not exceed eighteen square feet, with no individual sign exceeding six square feet. The area of a sign is to be calculated as set forth above.
2. Signs shall not exceed three feet in height measured from the average grade at the base of the sign.
3. No sign shall obstruct or impair access to a public sidewalk, public or private street or driveway, traffic control sign, bus stop, fire hydrant, or any other type of street furniture, or otherwise create a hazard, including a tripping hazard.
4. No sign shall be illuminated or painted with light reflecting paint.
5. A sign shall only be posted with the consent of the property owner or occupant.
6. A temporary sign may be posted for a period of up to ninety days, at which time the sign shall be removed or replaced.
7. Signs shall not be posted on trees, utility poles, and other similar structures within the rights of way.

C. The removal or replacement of temporary signs shall be governed by the following regulations:

1. The person who posted or directed the posting of the sign is responsible for the removal or replacement of that sign.
  2. If the person does not remove or replace the sign in accordance with these regulations, then the property owner or occupant of the building or lot where the sign is posted is responsible for the sign's removal or replacement.
  3. If the Building Official finds that any sign is posted in violation of these regulations on public property, the Building Official is authorized to remove any such signs. If the Building Official finds that any sign is posted in violation of these restrictions on private property, the Building Official shall give written notice to the person who has posted or directed the posting of the sign. If that person fails to remove or replace the sign so as to comply with the standards herein within 72 hours after such notice, such sign may be removed by the Building Official.
- (Code 2008, ch. 16, § 9.2.7; Ord. No. 991, § 1(9.2.7), 6-14-2018)

### 9.2.8 Sign Area Calculations

A. The area for monument signs shall include the sign panel but not the sign base on which it is mounted or the structural elements or frames that form the perimeter of the panel.

B. If a wall sign is contained within a panel, the sign area calculation shall be the area of the panel. If the sign consists of individual letter, symbols, or words, either painted or mounted on the wall, the area shall be the smallest rectangular figure that can encompass all of the letters, words, logos, or symbols.

(Code 2008, ch. 16, § 9.2.8; Ord. No. 991, § 1(9.2.8), 6-14-2018)

### 9.2.9 Setback

No sign, except approved directional signs, shall be placed within the required sight-distance setback triangle (see diagram in definitions), unless specifically authorized by the Planning Commission.

(Code 2008, ch. 16, § 9.2.9; Ord. No. 991, § 1(9.2.9), 6-14-2018)

### 9.2.10 Permanent Signs Secured

Permanent signs shall be secured fastened to the ground or to some other substantial supporting structure so that there is virtually no danger that either the sign or the supportive structure may be moved by the wind or other forces of nature and cause injury to persons or property. Sign structures may be required to have a building permit, at the discretion of the Building Official.

(Code 2008, ch. 16, § 9.2.10; Ord. No. 991, § 1(9.2.10), 6-14-2018)

### 9.2.11 Projecting Signs

A. No sign projecting at right angles from a building wall shall extend over a street, alley, sidewalk, or other property, or within eighteen inches of the curb line or automobile parking area, except for signs over privately owned sidewalks. No projecting sign shall be so constructed that the lowest overhanging part thereof is less than nine feet above the level of any private sidewalk.

B. Projecting signs shall be securely attached to the building or structure by bolts, anchors and guys or non-corrosive metals or plated metals.

(Code 2008, ch. 16, § 9.2.11; Ord. No. 991, § 1(9.2.11), 6-14-2018)

### 9.2.12 Wall Signs

A. Any wall sign:

1. Shall not project or extend more than twelve inches from the face of the wall surface, or eighteen inches above the awning, provided that the awning is at least a minimum of eighteen inches below the parapet.

2. Shall not exceed twenty square feet in area.

3. Shall not extend above, below or beyond the wall surface on which mounted.
4. Must be placed only on flat wall areas where the sign touches the wall surface continuously on all sides.

B. Wall surfaces shall not be leased for outdoor advertising to persons other than the tenant.  
(Code 2008, ch. 16, § 9.2.12; Ord. No. 991, § 1(9.2.12), 6-14-2018)

### **9.2.13 Illuminated Signs**

Illuminated signs shall not constitute a traffic hazard. Lighting shall be directed away and shielded from normal traffic view.  
(Code 2008, ch. 16, § 9.2.13; Ord. No. 991, § 1(9.2.13), 6-14-2018)

### **9.2.14 Obscene Materials**

Obscene signs, flags, banners, or any sign of any type are prohibited. "Obscene" is defined as any material that:

- A. the average person, applying contemporary community standards, would find that, taken as a whole, appeals to the prurient interest; and
- B. the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- C. the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.  
(Code 2008, ch. 16, § 9.2.14; Ord. No. 991, § 1(9.2.14), 6-14-2018)

### **9.2.15 Substitution of Messages**

Subject to the landowner's consent, a noncommercial message of any type may be substituted for any duly permitted or allowed commercial message or duly permitted or allowed noncommercial message, provided that the sign or sign structure is legal without consideration of the message content. This substitution of message may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This provision does not create a right to increase the total amount of signage on a parcel or land use, nor does it affect the requirement that a sign structure or mounting device be properly permitted. This provision does not allow for the substitution of an offsite commercial message in place of an onsite commercial message.  
(Code 2008, ch. 16, § 9.2.15; Ord. No. 991, § 1(9.2.15), 6-14-2018)

## 9.3 REGULATIONS APPLICABLE TO SPECIFIC DISTRICTS

### **9.3.1 Residential Districts R-1(A), R-1(B), R-1(C), R-1(D), R-1(E)**



The following signs shall be permitted in residential districts:

- A. Non-illuminated temporary signs not requiring a permit, as described in Article 9.2.7, Temporary Signs.
- B. Building address numbers visible from the public right-of-way, shall not exceed 8 inches in height, and/or numbers painted on the curb not to exceed 4 inches in height.
- C. Ground signs for the purpose of guiding pedestrian and vehicular traffic to parking lots shall be permitted, provided that such signs do not identify tenants.
- D. Each church, school, and other public building, single or multi-tenanted, allowed in the residential district, shall be allowed one non-illuminated, or externally illuminated sign, not to exceed 5 feet in height, along the frontage of each public street abutting the property. The copy on the sign may be changed from time to time provided that the structure of the sign is not changed from that approved. Signs in such areas shall be subject to review by the Planning Commission as set forth hereinabove.
  - 1. Buildings or complexes with less than 100 feet of street frontage shall be restricted to signs not exceeding 20 square feet in area per face, and be limited to two faces per sign.
  - 2. Buildings with more than 100 feet of street frontage shall not exceed 30 square feet of area per face and be limited to two faces per sign, and one non-illuminated wall sign, not to exceed 15 feet in area.
- E. Churches and Schools allowed in the residential district shall be permitted one Electronic Message Center (EMC). EMC's shall be submitted to the planning commission for specific approval. Details, including siting, materials, size, display brightness (measured at 35' and at the property lines), display type, frequency of message transitions, and method of method transition shall be submitted. **28**
  - 1. EMC's shall be sited, detailed, and programmed so as not to be a nuisance or hazard to pedestrians, motorists, or neighbors.
    - a. Brightness: Brightness on electronic message boards shall be limited to no more than 0.3 footcandles over ambient lighting conditions when measured at a distance of 35'. EMC's shall be equipped with a sensor or other device that automatically determines the ambient illumination and programmed to automatically dim according to ambient light conditions.
    - b. EMC's shall be limited to 0 footcandles over ambient conditions when measured at the property lines.
  - 2. Permitted EMC's shall be monument signs only. All requirements of monument

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<sup>28</sup> **Legal analysis: 9.3.1 Residential Districts. . .(E).** As the word "churches" here could indicate solely Christian places of worship and thus introduce constitutional questions, consider replacing with a broader term, or adding a definition of "church" to include congregational buildings for any type of religious institution.

signs shall apply. The area of the electronic display shall not exceed 12 square feet per face, and be limited to two faces per sign. The total area of the sign shall not exceed 30 square feet per face, and be limited to two faces per sign.

3. No more than one EMC installation is permitted per property.
4. On all EMC's, only the static display of messages is permitted with at least 15 seconds between changes in display and no more than 1 second for transitions. Messages shall be changed only through dissolving or fading Transition Methods. No scrolling, travelling, flashing, or animated transitions are allowed
5. EMC's shall be placed so that the sign face is perpendicular to the street they are addressing. On corner lots, the applicant shall indicate which street the sign will be addressing.
6. EMC's shall be set back 150 feet from adjacent property lines parallel to the sign face, and 15' feet from the right of way perpendicular to the sign face.  
(Code 2008, ch. 16, § 9.3.1; Ord. No. 991, § 1(9.3.1), 6-14-2018)

### **9.3.2 Office and Professional Districts; C-O**

The following signs shall be permitted in office and professional districts:

- A. Any sign allowed in the residential districts.
- B. Each building or complex, single or multi-tenanted, shall be allowed one non-illuminated or indirectly illuminated monument sign, not to exceed 5 feet in height, along the frontage of each dedicated public street abutting the property. Such sign shall identify only the name of the building or complex and list the tenant(s) housed therein.
  1. Buildings or complexes with less than 100 feet of street frontage shall be restricted to signs not exceeding 20 square feet in area per face, and be limited to two faces per sign.
  2. Buildings or complexes with more than 100 feet of street frontage shall not exceed 30 square feet area per face and be limited to two faces per sign.
- C. In addition to the monument sign(s), each business or commercial establishment shall be permitted one non-illuminated, illuminated channel cut letter, or indirectly illuminated wall, projecting, or awning sign along the frontage of each dedicated public street abutting the property. The total area of each sign shall not exceed 10 percent of the area of the business facade on which it is placed, and the facade must be continuous with the tenant's gross leasable floor area.
- D. In addition to the wall, projecting, or awning sign referenced above, each business or commercial establishment shall be permitted window signage, the area of which will be calculated against the gross allowable wall sign area.  
(Code 2008, ch. 16, § 9.3.2; Ord. No. 991, § 1(9.3.2), 6-14-2018)

### **9.3.3 Retail and Business Districts; CP-1, C-1, P-1,**

The following signs shall be permitted in retail and business districts:

- A. Any sign allowed in the residential districts and the office and residential districts.
- B. Each building or complex, single or multi-tenanted, shall be allowed one non-illuminated or indirectly illuminated, monument sign, not to exceed 5 feet in height along the frontage of each dedicated public street abutting the property. Such sign shall identify only the name of the building or complex and list the tenant(s) housed therein.
  - 1. Buildings or complexes with less than 100 feet of street frontage shall be restricted to signs not exceeding 20 square feet in area per face and limited to two faces per sign.
  - 2. For multi-tenanted retail buildings or complexes, with 8 or more storefronts or tenant spaces, the owner may double the allowable area for one street frontage by either doubling the area of the sign, not to exceed 5 feet in height, or by doubling the number of signs on one street frontage.
- C. In addition to the monument sign(s), each business or commercial establishment shall be permitted one non-illuminated, illuminated channel cut letter, or indirectly illuminated wall, projecting, or awning sign. The total area of each sign shall not exceed 10 percent of the area of the business facade on which it is placed, and the facade must be continuous with the tenant's gross leasable floor area. Business establishments having frontage on more than one dedicated public street may have the aforementioned wall or awning sign on each frontage.
- D. Ground signs specifically for the purpose of guiding and directing vehicular traffic shall be permitted in parking districts.
- E. Notwithstanding any other provisions herein, in any district zoned for retail sales, a tenant or property owner may have an additional temporary sign for cumulative periods not to exceed fourteen days in any calendar year, and such sign shall be no larger than 32 square feet. A no-fee permit shall be required for such additional temporary sign. (Code 2008, ch. 16, § 9.3.3; Ord. No. 991, § 1(9.3.3), 6-14-2018)

#### **9.3.4 Planned Commercial Districts**

Signs shown on the approved final development plan or approved amended development plan shall be permitted in planned commercial districts. (Code 2008, ch. 16, § 9.3.4; Ord. No. 991, § 1(9.3.4), 6-14-2018)

### **9.4 SIGN STANDARDS APPLICABLE TO NEW AND EXISTING MULTI-TENANTED OFFICE BUILDINGS, MULTI-TENANTED RETAIL BUILDINGS, AND MULTI-TENANTED COMPLEXES**

#### **9.4.1 Site Plan Review**

Nothing in this Ordinance is intended to supersede the plan review process provided in the City's ordinances and regulations. The development of consistent graphics to avoid confusion, to comply with health and safety concerns, and to avoid visual clutter and pollution may be considered as part of the plan review process. However, nothing in the

plan review shall be construed to override the requirements set forth herein.  
(Code 2008, ch. 16, § 9.4.1; Ord. No. 991, § 1(9.4.1), 6-14-2018; Ord. No. 1024, § 65, 2-10-2022)

### 9.4.2 Compliance

- A. The standards shall be within the regulations set out by this Ordinance.
- B. Such standards shall run with all leases or sales of portions of the development. The sale, subdivision, or other partition of the site does not exempt the project or portions thereof from complying with these regulations.
- C. With respect to projects which require a plan review, sign permits shall not be issued until after approval of the design standards by the Planning Commission as part of the plan review process. A copy of the approved sign standards shall be kept on file in the Office of the City Clerk for reference in the issuance of sign permits.
- D. The Planning Commission shall follow the additional criteria set forth herein.  
(Code 2008, ch. 16, § 9.4.2; Ord. No. 991, § 1(9.4.2), 6-14-2018)

### 9.4.3 Nonconforming Signs <sup>29</sup>

All existing non-conforming signs which exist at the time of the adoption of this amendment may remain and further provided that no changes in the basic structure, source of illumination, location of appearance shall be made in such signs and further provided that if the business to which the sign is related should move to another site, which move creates in effect an off-site advertising sign, then such device shall be removed or otherwise brought into full conformance with this title.  
(Code 2008, ch. 16, § 9.4.3; Ord. No. 991, § 1(9.4.3), 6-14-2018)

### 9.4.4 Permit Fees

Sign permit fees are calculated as shown on the appropriate fee schedule at the Office of the City Clerk. If any sign is installed or placed on any property prior to receipt of a sign permit, the specified permit fee shall be doubled. However, payment of the doubled permit fee shall not relieve any person of any other requirements or penalties of this section.  
(Code 2008, ch. 16, § 9.4.4; Ord. No. 991, § 1(9.4.4), 6-14-2018)

### 9.4.5 Appeal

Any person aggrieved by the terms of this section may seek an appeal before the Governing Body within thirty days of the decision by the City Building Official by which the person is aggrieved. The Governing Body shall meet and decide the appeal at the earlier of its next regularly-scheduled meeting or the passage of twenty days from the appeal

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<sup>29</sup> **Legal analysis: 9.4.3 Nonconforming Signs.** Revise to include date of the adoption of the amendment. (This language existed in the original version of the code we received from the city, as well as in the 2018 amendment. Please advise of the intent of the city.)

being filed, unless the applicant shall request or agree to a continuance of the matter. The status quo shall be maintained during any approval or appeal process.  
(Code 2008, ch. 16, § 9.4.5; Ord. No. 991, § 1(9.4.5), 6-14-2018)

## **ARTICLE TEN: COMMUNICATION FACILITIES FOR WIRELESS SERVICES**

### **10.1 Statement of Intent**

The Telecommunications Act of 1996 affirmed the City's authority concerning the placement, construction, and Modification of Communications Facilities. The intent of this Article is to ensure the provision of quality Wireless Services within the City limits; establish a fair and efficient process for the review and approval of Communications Facility Applications; assure an integrated, comprehensive review of environmental impacts of Communications Facilities, and promote the public health, safety, security, and general welfare of the City.

(Code 2008, ch. 16, § 10.1; Ord. No. 984, § 27(10.1), 9-21-2017; Ord. No. 1024, § 66, 2-10-2022)

### **10.2 Definitions**

For purpose of this Article, and where consistent with the context of a specific Section or Subsection thereof, the defined terms, phrases, words and abbreviations and their derivations shall have the meanings given in this Article.

Accessory Facility means an accessory facility, building, structure or equipment serving or being used in conjunction with Communications Facilities and generally located on the same Site as the Communications Facilities, including, but not limited to, utility or Transmission Equipment, power supplies, generators, batteries, cables, equipment buildings, storage sheds or cabinets, or similar structures.

Antenna means communications equipment that transmits or receives electromagnetic radio signals used in the provision of Wireless Services.

A. Distributed Antenna System (DAS) means a network that distributes radio frequency signals and consisting of:

1. Remote communications or Antenna nodes deployed throughout a desired coverage area, each including at least one Antenna for transmission and reception;
2. A high capacity signal transport medium that is connected to a central communications hub site; and
3. Radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the Antennas to provide Wireless or mobile Service within a geographic area or structure.

B. Small Cell Facility means a Communications Facility that meets both of the following qualifications:

1. Each Antenna is located inside an enclosure of no more than six (6) cubic feet in

volume, or in the case of an Antenna that has exposed elements, the Antenna and all of the Antenna's exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and,

2. Primary equipment enclosures that are no larger than seventeen (17) cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory Facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory Facilities includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

C. Small Cell Network means a collection of interrelated Small Cell Facilities designed to deliver Wireless Service.

Applicant means any person or entity that is engaged in the business of providing Wireless Services or the wireless infrastructure required for Wireless Services and that submits an Application pursuant to this Article.

Application means all necessary and appropriate documentation that an Applicant submits in order to receive approval for a Communications Facility.

Approval Authority means the Building Official for all Applications pursuant to Zoning Ordinance 10.4, subsection A, and means the Governing Body for all Applications pursuant to Zoning Ordinance 10.4, subsection B.

Base Station means a station that includes a structure that currently supports or houses an Antenna, transceiver, coaxial cables, power cables or other Accessory Facilities at a specific Site that enables FCC- licensed or authorized Wireless Service to mobile stations, generally consisting of radio transceivers, Antennas, coaxial cables, power supplies and other associated electronics. The term does not mean a Tower or equipment associated with a Tower; and it does not include any structure that, at the time the relevant Application is filed with the City, does not support or house equipment described in this paragraph or that was not previously approved under the applicable zoning or siting process. (A non-tower support structure – for example, a building, church steeple, water tower, sign, street light, utility pole or other non- tower structure that can be used as a support structure for Antennas or the functional equivalent of such.)

Collocation means the mounting or installation of Transmission Equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for Wireless Service.

Communications Facility means a structure, facility, or location designed, or intended to be used as, or used to support Antennas or other Transmission Equipment used in Wireless Services. This includes without limit, Towers of all types, and Base Stations, including but not limited to buildings, church steeples, water towers, signs, or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related Accessory Facilities associated with the Site. It is a structure and facility intended for transmitting and/or receiving, Wireless

Services, Specialized Mobile Radio (SMR), personal communications services (PCS), commercial satellite services, microwave services, radio, television, and any commercial Wireless Service not licensed by the FCC.

Eligible Facilities Request means any request for Modification of an Existing Tower or Base Station that does not Substantially Change (see definition) the physical dimensions of such Tower or Base Station, involving:

- A. Collocation of new Transmission Equipment;
- B. Removal of Transmission Equipment; or
- C. Replacement of Transmission Equipment.

Eligible Support Structure means any Tower or Base Station, provided that it is Existing at the time the relevant Application is filed.

Existing means the following: a constructed Tower or Base Station is Existing if it has been reviewed and approved under the applicable zoning or siting process, provided that a Tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is Existing for purposes of this definition.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Modification or Modify means the addition, removal or change of any of the physical and noticeably visible components or aspects of a Communications Facility such as Antenna, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any noticeably visible components, vehicular access, parking, upgrade or exchange of equipment for better or more modern equipment. Modification shall not include Replacement of such components in kind. A Collocation which changes the physical configuration of the Existing facility or structure shall be considered a Modification. The Building Official shall determine when changes such as enlarging the ground-mounted equipment area, increasing the screen wall height or installing additional equipment changes the physical and noticeably visible aspects of a Communications Facility.

Replacement means Replacement of an Existing Communications Facility that exists on a previously approved Site, utility easement, or an approved Special Use Permit area, with a new facility of comparable proportions and of comparable height or such other height that would not constitute a Substantial Change to an Existing structure to support Communications Facilities or accommodate Collocation. A Replacement includes any associated removal of the pre-Existing Communications Facilities. A Replacement Tower shall be within fifteen (15) feet, as measured horizontally along the ground, of an Existing Tower, and the Existing Tower shall be removed within thirty (30) days from the installation of the Replacement Tower. The Building Official may approve a separation greater than fifteen (15) feet.

Site means, for Towers other than Towers in the public rights-of-way, the current

boundaries of the leased or owned property surrounding the Tower and any access or utility easements currently related to the Site, and, for other Eligible Support Structures, further restricted to that area in proximity to the structure and to other Transmission Equipment already deployed on the ground.

Stealth or Stealth Technology means using the least visually and physically intrusive facility by minimizing adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding, and generally in the same area as the requested location of a Communications Facility. Specifically, this means ensuring that all Antenna arrays, cables, and other Accessory Facilities used for providing the Wireless Service are not obtrusive or noticeably visible from adjacent properties or adjacent rights-of-way. Any Accessory Facilities mounted onto a Tower or structure shall not project greater than one (1) foot, as measured horizontally, from the surface of the Tower or structure and shall be painted or screened with materials that are a complementary color as the Tower or structure. Cables shall not be allowed to travel along the exterior of a Tower or structure. Understanding that new technologies are anticipated to change the components of Communications Facilities, the Building Official may determine if a Communications Facility or component of a Communications Facility is designed to be Stealth or utilizes Stealth Technology.

Substantial Change means a Modification that substantially changes the physical dimensions of an Eligible Support Structure (Tower or Base Station) by any of the following criteria:

A. Height

1. For Towers not in the public rights-of-way, an increase in the height of the Tower by more than ten percent ( 10%) or by the height of one additional Antenna array with separation from the nearest Existing Antenna not to exceed twenty (20) feet, whichever is greater.
2. For other Eligible Support Structures (e.g., Towers in the public rights-of-way or Base Stations), an increase in the height of the structure by more than ten percent ( 10%) or more than ten (10) feet, whichever is greater.
3. Changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally (such as on buildings' rooftops); in other circumstances, changes in height are measured from the dimensions of the Tower or Base Station, inclusive of originally approved appurtenances and any Modifications that were approved prior to the passage of the Spectrum Act (Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112-96).

B. Width/Girth

1. For Towers not in the public rights-of-way, adding an appurtenance to the body of the Tower that protrudes from the edge of the Tower more than twenty (20) feet, or more than the width of the Tower structure at the level of the appurtenance, whichever is greater.
2. For other Eligible Support Structures (e.g., Towers in the public rights-of-way or



Base Stations), adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.

C. New equipment cabinets

1. For any Eligible Support Structure, the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets.
2. For Towers in the public rights-of-way and Base Stations, the installation of any new equipment cabinets on the ground if there are no pre-Existing ground cabinets associated with the structure, or else the installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure.

D. Any excavation or deployment outside the current Site.

E. Defeating the Stealth Technology or concealment elements of the Eligible Support Structure.

F. Not complying with conditions associated with the siting approval of the construction or Modification of the Eligible Support Structure or Base Station equipment, provided that this limitation does not apply to any Modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsections A through D herein.

Transmission Equipment means equipment that facilitates transmission for any FCC-licensed or authorized Wireless Service, including, but not limited to, radio transceivers, Antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed Wireless Services and fixed Wireless Services such as microwave backhaul.

Tower means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized Antennas and their Accessory Facilities, including structures that are constructed for Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed Wireless Services and fixed Wireless Services such as microwave backhaul, and the associated Site.

A. Monopole means a Tower consisting of a single pole, constructed without guy wires and ground anchors.

B. Lattice Tower means a guyed or self-supporting three or four sided, open, steel frame structure used to support Antennas and Transmission Equipment.

Wireless Services means "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through Communications Facilities or any fixed or mobile Wireless Services provided using Communications Facilities.

(Code 2008, ch. 16, § 10.2; Ord. No. 984, § 27(10.2), 9-21-2017; Ord. No. 1024, § 67, 2-10-2022)

### **10.3 Overall Policy**

In order to ensure that the placement, construction, and Modification of Communications Facilities protect the public health, safety, security, and general welfare of the City, the following policies are hereby adopted (subject to applicable state and federal law):

- A. Optimize the number of Communications Facilities in the City.
- B. Encourage opportunities for user Collocation on Existing Communications Facilities, buildings and other structures and maximize Replacement strategies.
- C. Comply fully with established planning guidelines regarding land use and building, design and performance standards.
- D. Emphasize the use of Stealth Technology to integrate the appearance of Communications Facilities with many architectural and nature themes throughout the City and to use Existing Communications Facilities instead of building new Communications Facilities.
- E. Protect the public interests, where practical and applicable, in a competitively neutral, nondiscriminatory manner.
- F. Protect the public health, safety and welfare.  
(Code 2008, ch. 16, § 10.3; Ord. No. 984, § 27(10.3), 9-21-2017)

### **10.4 Application Approval Authority**

- A. Administrative Approval - The Building Official may approve Applications for Communications Facilities for the following:
  - 1. The Modification of an Existing Tower or Base Station that does not incur a Substantial Change to the Tower or Base Station or that otherwise qualifies as an Eligible Facilities Request. (See C1 for timeframe.)
  - 2. New Small Cell/DAS Facilities on an Existing Tower, utility pole or street light in the public right-of-way. This provision is also applicable when the Existing Tower, utility pole or street light is replaced by a Tower, utility pole or street light that is not a Substantial Change from the original. (See C1 for timeframe.)
  - 3. New Antenna (including Small Cell/DAS Facilities) on an Existing Tower or Base Station that does not incur a Substantial Change to the Tower or Base Station and that: (1) is permitted by right in the underlying zoning district; and (2) meets applicable building, design, and performance standards. (See C1 for timeframe.)
  - 4. New Antenna (including Small Cell/DAS Facilities) on an Existing Tower or Base Station that incurs a Substantial Change to the Tower or Base Station and that: (1) is permitted by right in the underlying zoning district; and (2) meets applicable building,

design, and performance standards. (See C2 for timeframe.)

5. New Tower permitted by right in the underlying zoning district that meets applicable building, design, and performance standards. (See C3 for timeframe.)

6. New Tower or utility pole for Small Cell/DAS Facilities in the public right-of-way, subject to the issuance of a Right-of-Way Permit pursuant to Westwood City Code Chapter 13 – Public Rights-of-Way. (See C3 for timeframe.)

B. Special Use Permit Approval – A Special Use Permit (SUP) reviewed by the Planning Commission and approved by the Governing Body is required for Applications for Communications Facilities for the following:

1. A Substantial Change to an Existing Tower or Base Station that is not permitted by right in the underlying zoning district. (See C2 for timeframe.)

2. Any other Application for placement, installation or construction of Transmission Equipment that does not constitute an Eligible Facilities Request. (See C2 for timeframe.)

3. New Tower that is not permitted by right in the underlying zoning district. (See C3 for timeframe.)

C. Application Timeframe

1. A final decision shall be issued for Applications under subsections A1, A2, and A3 within sixty (60) calendar days.

2. A final decision shall be issued for Applications under subsections A4, B1 and B2 within ninety (90) calendar days.

3. A final decision shall be issued for Applications under subsections A5, A6 or B3 within one hundred fifty (150) calendar days.

4. The timeframes set forth in subsections C1-C3 begin to run when a completed Application is filed following the pre-application conference. The applicable timeframe may be tolled by mutual agreement or in cases where the City determines that the Application is incomplete. To toll the timeframe for incompleteness, the City may provide written notice to the Applicant within thirty (30) days of receipt of the Application, clearly and specifically delineating all missing documents and information. The timeframe begins running again when the Applicant makes a supplemental submission responding to the City's notice. The City then has ten (10) days to notify the Applicant that the supplemental submission did not provide the information identified in the original notice. The timeframe is tolled in the case of second or subsequent notices pursuant to this subsection. Second or subsequent notices may not specify missing documents or information that were not delineated in the original notice of incompleteness.

D. Small Cell and DAS Facilities – Consolidated Application and Exemption

1. Consolidated Application – Pursuant to Kansas Statute, an Applicant may file one consolidated Application for a Small Cell Network up to twenty five (25) individual Small

Cell Facilities of a substantially similar design. Notwithstanding, the City may require a separate Application for any Small Cell Facilities that are not of a substantially similar design.

2. Exemption – No zoning or siting approval is required for the construction, installation or operation of any Small Cell or DAS Facilities located in an interior structure or upon the Site of any campus, stadium or athletic facility; provided, however, this exemption does not exempt any such facility from any applicable building or electrical code provision.

(Code 2008, ch. 16, § 10.4; Ord. No. 984, § 27(10.4), 9-21-2017)

## **10.5 Application Process and Requirements**

A. Pre-Application Conference – A pre-application conference is required before filing an Application for the Replacement or Modification of an Existing Communications Facility or the construction of a new Communications Facility, unless waived by the Building Official. The purpose of the pre-application conference is to ensure the Applicant understands all requirements, to establish a tentative timeline, and to determine the Approval Authority for the Application. The pre-application conference should address issues that will expedite the review and approval process. Pre-application conferences for Small Cell/DAS Facilities in the public right-of-way will be conducted with the City’s Director of Public Works.

B. Application Fee – At the time an Application is filed for a Communications Facility, the Applicant will pay a non-refundable Application fee as determined in the current version of the Governing Body resolution establishing applicable fees; provided, the Application fee shall be subject to any applicable statutory maximum. An Application shall not be deemed submitted unless the applicable fee is paid.

C. Application Requirements – An Application for the Replacement or Modification of an Existing Communications Facility or the construction of a new Communications Facility shall include the following information and requirements, unless waived by the Building Official:

1. A site plan or preliminary development plan, and if applicable, any other Special Use Permit submission requirements set forth in Westwood City Code, Chapter 16 – Zoning Ordinance, as amended, and specifically as amended by Ordinance 960, Section 1.6 and the subsections thereto, Section 8.1 and the subsections thereto, or as otherwise required by or provided for within the City’s Zoning Ordinance.

2. A descriptive statement of the proposed Communications Facility. For Towers or Base Stations, the statement shall provide the capacity of the structure, including the number and type of Antennas it can accommodate.

3. An affidavit from the Applicant stating that it conducted a thorough analysis of available Collocation opportunities within the applicable search ring.

4. Elevation drawings of the proposed Communications Facilities showing all Towers, Base Stations, Antennas, Transmission Equipment, Accessory Equipment, cabinets, fencing, screening, landscaping, lighting, and other improvements related to the facility.

The Applicant shall note all specific colors and materials to be used.

5. Digital photo simulations of the site providing “before and after” views demonstrating the true visual impact of the proposed Communications Facilities on the surrounding environment. Staff or the Approval Authority may require photo simulations from any specific vantage point.
6. A report from a licensed professional engineer which describes the Communications Facility’s structural capacity, including a statement to the effect that the Communications Facility can safely accommodate all Antennas, Transmission Equipment and/or Accessory Equipment. This may include structural calculations, geotechnical foundation studies, and other data as determined by the Building Official, as applicable, and in compliance with all City codes. In the event an Existing Communications Facility is to be used, the report shall describe the condition of the Existing Communications Facility based on a physical inspection and its ability to accommodate any additional Accessory Equipment and/or Antennas.
7. A landscape plan that demonstrates the effective screening of the proposed Communications Facility and any Accessory Facilities as required by Westwood City Code, Chapter 16 – Zoning Ordinance and the City’s Manual of Infrastructure Standards. The landscape plan shall be sealed by a professional landscape architect, unless this requirement is waived by the Approval Authority.
8. If lighting is required by the FCC or the FAA, the Applicant shall submit the proposed lighting plan and identify an available lighting alternative. If security lighting is to be used, the Applicant may be required to submit a photometric plan to ensure that lighting is unobtrusive and inoffensive and that no light is directed towards adjacent properties or rights-of-way. All lighting will meet any requirement of the Westwood City Code, Chapter 16 – Zoning Ordinance.
9. If an emergency power system will be utilized, the Applicant will provide: sufficient details showing the location and proposed use of the same; a proposed plan for any intended non-emergency use (e.g., testing); and certification that the system will not violate local health and safety requirements and local noise control ordinances.
10. A statement that the proposed Communications Facility and any Accessory Facilities and/or landscaping shall be maintained within City ordinances, under what arrangement, and by whom. The statement shall provide contact information for the responsible party.
11. An engineer’s certification that the proposed Communications Facility and the cumulative effect of all Communications Facilities on the Site comply with all FCC standards, including but not limited to, certifying that all facilities meet all provisions and regulations for radio frequency (RF) emissions or exposure, and that anticipated levels of electromagnetic radiation to be generated by all facilities on the Site, including the effective radiated power (ERP) of the Transmission Equipment, shall be within the guidelines established by the FCC.
12. When applicable, a signed copy of the lease between the Applicant and the landowner or other acceptable documentation signed by the landowner evidencing the landowner’s approval for the proposed Communications Facility. The lease or other

documentation shall contain a provision stating that the landowner shall be responsible for the demolition and/or removal of the Communications Facility in the event the lessee fails to remove it upon abandonment of the facilities or the termination of the lease.

13. Applicants for Communications Facilities in the right-of-way shall provide notice by first class mail, postage prepaid, to the owners of record of all property within two hundred ( 200) feet of the proposed location. The notice shall provide: (1) a City-issued case number (if available); (2) a description of the proposed facility; (3) the location of the proposed facility; (4) a plan sheet showing the proposed location and the facility improvements; and (5) the Applicant's contact information and a statement that the owner shall have twenty (20) days from the date of the notice to provide the City with any input regarding the Application. Each Communications Facility location shall be provided with its own notice; notices for multiple locations, even if under the same City case number, may not be provided in a single letter. No Application will be approved until the Applicant submits an affidavit affirming that the required notice was sent.

14. Any other information to satisfy the performance standards set forth for the applicable zoning district as required by Westwood City Code, Chapter 16 – Zoning Ordinance and the City's Manual of Infrastructure Standards or that, as determined by the Building Official, will assist the review and approval process for Communications Facilities.

#### D. Independent Third Party Review

1. The Applicant may be required to provide an independent review of the Application as determined by the Building Official.

2. The Building Official will select and approve a list of acceptable consultants to be used for the third party independent review.

3. The scope of the third party review will be determined by the Building Official and may vary with the scope and complexity of the Application; the scope will be determined following the pre- application conference. The independent third party review will generally be focused on the technical review of Wireless Services and verification of the information submitted by the Applicant such as federal RF emissions standards, and other technical requirements to ensure that the modeling parameters and data used in developing these technical requirements are valid and representative of the proposed Communications Facility.

(Code 2008, ch. 16, § 10.5; Ord. No. 984, § 27(10.5), 9-21-2017)

### **10.6 Location of Communications Facilities**

When possible, the City encourages – but does not require – new Communications Facilities to be located on Existing Communications Facilities or on existing structures (for example, commercial buildings, water towers, utility poles and street lights) whereby the new Communications Facilities can be architecturally integrated or otherwise camouflaged in a Stealth manner in order to minimize the intrusion upon the public and adjacent properties. If and when a new Tower or new Base Station is installed for Communications Facilities, said new Tower or new Base Station should be located and designed in a manner to minimize the intrusion upon the public and adjacent properties, and when possible, to be architecturally integrated or camouflaged in a Stealth manner with

surrounding structures.

(Code 2008, ch. 16, § 10.6; Ord. No. 984, § 27(10.6), 9-21-2017)

## **10.7 Building and Design Standards for Communications Facilities**

### **A. Height**

1. Towers – The maximum height which may be approved for a Tower is one hundred fifty (150) feet, which includes any Transmission Equipment on top of the Tower. A lightning rod, ten (10) feet in height or less, shall not be included within the height limitations. While Tower height shall be controlled based on the specific context consistent with the provisions of this Article and the Zoning Ordinance, in no case shall Towers or Antennas exceed the following:

- a. One hundred fifty (150) feet in the commercial zoning districts;
- b. One hundred thirty (130) feet in the commercial overlay zoning districts;
- c. One hundred (100) feet in all residential districts;
- d. No more than 20 feet above the top of a building when mounted on the roof or include a stealth on-building design in the commercial or commercial overlay districts.

2. Towers in Right-of-Way – The maximum height which may be approved for a Tower and related Transmission Equipment in the public right-of-way is: fifty (50) feet along an arterial thoroughfare street; forty (40) feet along a collector street; and twenty (20) feet along a local street as defined within Westwood City Code Chapter 13 – Public Rights-of-Way.

3. Base Stations – Base Stations shall comply with any applicable height requirement for its particular type of structure as set forth in the applicable zoning district.

### **B. Design and Color**

#### **1. Towers**

a. Design – Towers shall be a Monopole or of some other Stealth or Stealth Technology design unless required by the Approval Authority to be architecturally compatible to the surrounding development. Guy and Lattice Towers are not allowed. Furthermore, Towers must be designed in compliance with all current applicable technical, safety, and safety-related codes adopted by the City or other applicable regulatory authority.

b. Color and Finish – Towers shall have a galvanized finish unless an alternative Stealth or camouflaged finish is approved by the Approval Authority.

2. Base Stations – Base Stations shall comply with any applicable color and design requirement for its particular type of structure as set forth in the applicable zoning district, and shall blend with the surrounding buildings and/or natural environment.

### 3. Antennas

a. Design on Towers – Antenna bridges and platforms on Towers are not allowed. Antennas on Towers may be:

i. Internal;

ii. A panel of slim-line design mounted parallel with the Tower;

iii. A design deemed by the Approval Authority to be less obtrusive or Stealth than the designs described above; or,

iv. An omni-directional Antenna placed at the top of the Tower when it gives the appearance of being a similarly sized or smaller extension of the Tower. (The latter will be included in the Tower height calculation.)

b. Design on Base Stations – Antennas and visible Accessory Facilities on a Base Station or other building/structure shall be comprised of materials that are consistent with the surrounding elements so as to blend architecturally with said building/structure and to camouflage their appearance in a Stealth manner. Such facilities on rooftops may require screening that is architecturally compatible with the building. As applicable, the following additional requirements apply:

i. Antennas may be installed on any existing building or structure (such as a water Tower but excluding single-family residences and accessory uses) three (3) stories in height or greater but no less than thirty five (35) feet provided that the additional Antennas shall add no more than twenty (20) feet to the height of said existing structure.

ii. Antennas which are architecturally compatible to the building architecture may locate on non-residential buildings less than three (3) stories or thirty five (35) feet in height.

iii. Antennas and/or Accessory Facilities installed or located in a Commercial Overlay District shall comply with the applicable architectural, building, design, screening and similar standards established for the particular Commercial Overlay District.

iv. Attached Antennas on a roof shall be located as close to the center of the roof as possible; and Antennas mounted on a building or structure wall shall be as flush to the wall as technically possible, and shall not project above the top of the wall.

v. Accessory Facilities for Antennas may be permitted on the roof so long as they are screened from view and so long as they are screened, constructed, and colored in conformity with and to otherwise match the structure to which they are attached; provided that, ground mounted Accessory Facilities shall otherwise fully comply with the provisions of this Section.

c. Color and Finish – Antennas and visible Accessory Facilities shall be colored and finished in a manner consistent with the Tower or Base Station and any surrounding elements so as to camouflage their appearance in a Stealth manner. Such facilities shall be of a neutral color that is identical to, or closely compatible with, the color of the Tower



or Base Station so as to make such facilities as visually unobtrusive as possible. Antennas mounted on the side of a building or structure shall be painted to match the color of the building or structure or the background against which they are most commonly seen.

### C. Setbacks

1. Communications Facilities in the commercial zoning districts, Commercial Overlay Districts, and Planned Business Districts (CP-1) set forth in the City Zoning Ordinance shall meet the setback requirements for other types of commercial structures of a similar size that are allowed by right in the zoning district(s) in which the facilities are located. In the event the proposed Communications Facilities will exceed the height allowed for other types of commercial structures in the district in which the facilities are located, the Communications Facilities shall meet the greater of the maximum setback requirements for the zoning district or a setback equal to the height of the facility, unless the Approval Authority reasonably finds that a greater setback is required in the interest of the public health, safety and welfare.
2. Communications Facilities in residential zoning districts, Planned Residential Cluster Development zoning districts, and Planned Multi-Family Residential zoning districts shall meet the greater of the maximum setback requirements for the applicable zoning district or a setback equal to the height of the facility, unless the Approval Authority reasonably finds that a greater setback is required in the interest of the public health, safety and welfare.
3. In addition to the above setback requirements set forth in subsection C. 1. of this section regarding commercial and commercial overlay districts, Towers shall have a minimum setback of 200 feet from any surrounding property which is shown as residential, unless such Tower: (1) does not exceed the height requirement for other types of commercial structures in the district in which the Tower is located; (2) is a utility pole or street light or a Monopole similar in size thereof; or (3) is designed as an architecturally compatible element in terms of material, design and height to the Existing or proposed use of the Site.
4. Small Cell/DAS Facilities on utility poles or street lights shall not be subject to the setback requirements in subsections C1-C3 above; provided that, such Small Cell/DAS Facilities on utility poles or street lights placed within the right-of-way shall comply with the City's requirements and permits for the use of the public right-of-way as set forth with Westwood City Code Chapter 13 – Public Rights- of-Way and in the City's Manual of Infrastructure Standards.
5. All Towers, Antennas, and Accessory Structures, shall meet the required setbacks of the applicable zoning district. In addition to complying with the district regulations, the Tower and Antenna shall be set back from the property lines a distance equal to the height of the Tower or Antenna; provided that, the City or Approval Authority shall not impose nor shall this provision be interpreted to require a greater setback or fall-zone requirement for a Tower, Antenna, or Communication Facility than for other types of commercial structures of a similar size. A lesser setback may be approved with the Special Use Permit, upon demonstration by a licensed structural engineer registered in the State of Kansas that the fall zone of the Tower, Antenna, or Communication Facility is within the radius of the setback.

D. Accessory Facilities – Accessory Facilities shall include only such structures and facilities necessary for transmission functions for Wireless Services, but shall not include broadcast studios, offices, vehicle storage areas, or other similar uses not necessary for the transmission function. Accessory Facilities shall be constructed of building materials consistent with the primary use of the Site and shall be subject to the applicable approval process. Where there is no primary use other than the Communications Facility, the Accessory Facility and the building materials for the Accessory Facility shall be subject to the review and approval of the applicable Approval Authority.

E. Equipment Storage – Mobile or immobile equipment not used in direct support of a Communications Facility shall not be stored or parked on the Site of the Communications Facility unless repairs to the Communications Facility are being made or pursuant to emergency approval as set forth in Westwood City Code, Chapter 16 – Zoning Ordinance, Article 10, Section 10.9.

F. Parking Areas and Drives – All parking areas and drives associated with a Communications Facility shall comply with Westwood City Code, Chapter 16 – Zoning Ordinance, Article 10, Section 10.9; provided that, the applicable Approval Authority may waive the requirements for curbing and drainage facilities when they are not needed for drainage purposes. All access roads and turn-arounds shall be provided to ensure adequate emergency and service access.

G. Screening – Accessory Facilities located at the base of a Tower or Base Station shall be screened from view with a solid screen wall a minimum of six (6) feet in height. The materials of the wall, including any proposed razor wire or other security wire, shall be of a material designed to match the architecture of the surrounding structures, and shall be subject to the review and approval of the applicable Approval Authority. The landowner or provider shall be responsible for maintenance of the screening. The applicable Approval Authority shall have the ability to waive or reasonably modify this requirement where the design of the Accessory Facility is architecturally compatible to the primary use of the Site or where the Accessory Facility will have no visible impact on the public right-of-way and any other nearby property.

H. Landscaping – A landscape plan shall be required in accordance with the provisions of the Westwood City Code, Chapter 16 – Zoning Ordinance for the applicable zoning district and use. The landscape plan shall be sealed by a professional landscape architect, unless waived by the applicable Approval Authority. A continuous landscaped area shall be provided around the perimeter of the accessory building or screening wall; and utility boxes will comply with any applicable utility box screening requirement. All plant materials are subject to the Westwood City Code, Chapter 16 – Zoning Ordinance for the applicable zoning district and use and shall include a mixture of deciduous and coniferous planting materials. Drought tolerant plant materials are encouraged. The owner or provider shall be responsible for maintenance of all approved landscaping. Where the visual impact of the equipment building would be minimal, the landscaping requirement may be reduced or waived by the applicable Approval Authority.

I. Lighting – Communications Facilities shall only be illuminated as required by the FCC and/or the FAA. If lighting is required, the Approval Authority may review the available lighting alternatives and approve the design that would cause the least

disturbance to the surrounding views. Security lighting around the base of a Tower may be provided if the lighting is shielded so that: no light is directed towards adjacent properties or rights-of-ways; the lighting avoids illuminating the Tower; and the lighting meets any other applicable City requirements.

J. Utilities – All utilities at a Communications Facility Site shall be installed underground and in compliance with applicable codes.

K. Security – All Communications Facilities shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access.

L. Signage – Signage at the Site is limited to non-illuminated warning and equipment identification signs required by the FCC or applicable regulatory body or otherwise approved by the Approval Authority.

M. Building Codes and Inspection

1. Construction and Maintenance Standards – To insure structural integrity, Communications Facilities shall be constructed and maintained in compliance with the standards contained in applicable local building codes and the applicable standards for Communications Facilities published by the Electronic Industries Association, (EIA) or any applicable regulatory authority (as amended from time to time). If upon inspection the City concludes that a Communications Facility fails to comply with such codes and standards and constitutes a danger to persons or property, then the facility owner or landowner shall have thirty (30) days following written notice to bring such facility into compliance. If the facility owner or landowner fails to bring such facility into compliance within this period, the City may order the removal or cause the removal of such facility at the facility owner or landowner's expense. Failure of the City to inspect the facility shall not relieve the facility owner or landowner of their responsibility to comply with this provision.

2. Inspection – Not less than every twenty-four (24) months, the Communications Facility shall be inspected by an expert who is regularly involved in the maintenance, inspection and/or erection of Communications Facilities. At a minimum, this inspection shall be conducted in accordance with the inspection check list provided in the Electronic Industries Association (EIA) Standard 222, Structural Standards for Steel Antenna Towers and Antenna Support Structures (as amended from time to time). A copy of the inspection record shall be provided to the City upon request. The inspection shall be conducted at the facility owner or landowner's expense.

N. Operational Standards

1. Communications Facilities shall meet or exceed all minimum structural, height, radio frequency radiation and other operational standards as established by the FCC, FAA, Environmental Protection Agency, and/or other applicable federal regulatory agencies. If such standards and regulations are changed, then the Communications Facilities shall be brought into compliance with the revised standards and regulations within six (6) months of the effective date of the ordinance or law from which these standards and regulations are derived, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring Communications Facilities into compliance with any

revised standards and regulations shall constitute grounds for the removal of the facility at the owner or provider's expense.

2. It is the responsibility of the Wireless Service provider to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.

O. Removal of Abandoned Communications Facilities – Any Communications Facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and a nuisance, and the owner of such facility or the landowner shall remove the same within ninety (90) days of a receipt of notice from the City. If such facility is not removed within said ninety (90) days, the City may remove such facility at the facility owner or landowner's expense. If there are two or more users of a single Tower, then this provision shall not become effective until all users cease using the Tower.

P. Unsafe Communications Facilities – Any Communications Facility which is not maintained to a suitable degree of safety and appearance (as determined by the City and any applicable code, statute, ordinance, law, regulations or standard) will be considered a nuisance and will be upgraded or removed at the owner or provider's expense. (Code 2008, ch. 16, § 10.7; Ord. No. 984, § 27(10.7), 9-21-2017)

### **10.8 Denial of Application**

A. The City may deny an Application for any of the following reasons:

1. Failure to submit any or all required Application documents and information.
2. Conflict with safety and safety-related codes and requirements.
3. Conflict with the historic nature or character of the surrounding area pursuant to federal or state law.
4. The use or construction of a Communications Facility is contrary to the previously stated purpose of a specific zoning or land use designation, fails to comply with the City's Land Development Code, and/or creates an unacceptable risk to the public health, safety, and welfare.
5. The placement and location of the Communications Facility would create an unacceptable risk, or the reasonable probability of such, to residents, the public, businesses, City employees, or employees of the Wireless Service provider.
6. Conflict with a public health, safety and welfare issue, including, but not limited to, violation of noise ordinance, flashing or other light nuisance, and conflict with required sidewalk widths (including ADA accessibility requirements).
7. Conflict with planned future public improvements.
8. Conflict with or violation of any provision contained within this Article or any other applicable City code or with any applicable federal or state law.

B. In the event of a denial, the Approval Authority or the City shall notify the Applicant in writing of the City’s final decision, supported by substantial evidence contained in a written record and issued contemporaneously. Such notice shall be made within the applicable timeframe set forth in the Westwood City Code, Chapter 16 – Zoning Ordinance, Article Ten, Section 10.4.

C. Any denial shall not discriminate against the Applicant with respect to the placement of Communications Facilities of other investor-owned utilities, Wireless Service providers, wireless infrastructure providers, or wireless carriers.  
(Code 2008, ch. 16, § 10.8; Ord. No. 984, § 27(10.8), 9-21-2017)

**10.9 Emergencies and Disasters**

In the event of a declared emergency or disaster, the City Administrator, or his or her designee, or the Building Official may authorize any temporary Towers, Base Stations, Transmission Equipment or Accessory Equipment necessary to temporarily restore Wireless Services.  
(Code 2008, ch. 16, § 10.9; Ord. No. 984, § 27(10.9), 9-21-2017)

**10.10 Interpretation and Severability** <sup>30</sup>

The provisions of this Article shall be construed in a manner consistent with all applicable federal, state and local laws and standards regulating Communications Facilities. In the event any federal or state law or standard is mandatory or is more stringent than provisions of this Article, then such provisions shall be revised accordingly. ~~If any section, subsection, clause, phrase or portion of this Article is for any reason held invalid or unenforceable by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.~~  
(Code 2008, ch. 16, § 10.10; Ord. No. 984, § 27(10.10), 9-21-2017)

[GRAPHIC - Zoning District Map]

[GRAPHIC - Overlay District Map]

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<sup>30</sup> **Legal analysis: 10.10 Interpretation and Severability.** Delete severability language as covered by general provisions in Chapter 1, or general provisions in this chapter should severability be added.

# CITY OF WESTWOOD, KANSAS

## PROCLAMATION

**WHEREAS**, Organ donation is a selfless gift that, in 2023, saved more than 43,600 lives across our country; and

**WHEREAS**, Midwest Transplant Network, our local organ procurement organization serving all of Kansas and the western two-thirds of Missouri, coordinated 988 organ transplants and more than 1,399 tissue and cornea donations to save and heal more than 112,700 people in 2023; and

**WHEREAS**, The mission of Midwest Transplant Network is to save lives by honoring the gift of organ and tissue donation with dignity and compassion; the organization is leading organ and tissue donation through excellence, quality and partnership; and

**WHEREAS**, The number of people on the organ transplant waiting list continues to far exceed the number of registered donors; and

**WHEREAS**, Ninety-five percent of our country's population supports organ donation but only 60 percent are registered as donors; and

**WHEREAS**, A single donor can save as many as eight lives and improve up to 100 more; and

**WHEREAS**, Registering as an organ donor takes only seconds online at [ShareLifeMidwest.com](https://www.sharelifemidwest.com) or at local licensing, treasury or Department of Revenue offices; and

**WHEREAS**, April is National Donate Life Month — a time when local, regional and national activities focus on encouraging organ donor registration; and

**WHEREAS**, Midwest Transplant Network is simultaneously running the Green Ribbon Campaign to further raise awareness of the critical need for registered organ and tissue donors and to encourage residents to give hope and share life.

**NOW, THEREFORE**, I, David E. Waters, Mayor of the City of Westwood, Kansas, do hereby proclaim the month of April 2024, as Donate Life Month in Westwood, Kansas to honor all those who have made the decision to donate life, to focus attention on the critical need for donation and to encourage all Kansas residents to register as organ, eye and tissue donors.

**PROCLAIMED BY THE MAYOR OF WESTWOOD, KANSAS  
THIS 11TH DAY OF APRIL, 2024.**

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David E. Waters  
Mayor

**ATTEST:**

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Abby Schneweis  
City Clerk

# CITY OF WESTWOOD PROCLAMATION

## ARBOR DAY

**WHEREAS**, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and,

**WHEREAS**, this holiday called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and,

**WHEREAS**, Arbor Day is now observed throughout the nation and the world; and,

**WHEREAS**, trees can reduce the erosion of precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and,

**WHEREAS**, trees are a renewable resource giving us paper, wood for our homes, fuels for our fires and countless other wood products; and,

**WHEREAS**, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and,

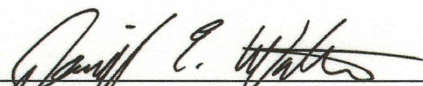
**WHEREAS**, trees are a source of joy and spiritual renewal; and,

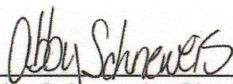
**WHEREAS**, Westwood, Kansas has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting ways,

**NOW, THEREFORE**, I, David E. Waters, Mayor of Westwood, do hereby proclaim Friday, April 26, 2024, as ARBOR DAY in the City of Westwood, Kansas and urge all citizens to support efforts to care for our trees and woodlands and to support our city's community forestry program, and

**FURTHER**, I urge all citizens to plant trees to gladden the hearts and promote the wellbeing of present and future generations.

**IN WITNESS WHEREOF**, I have hereunto set my hand and have affixed the Official Seal of Westwood.

  
\_\_\_\_\_  
David E. Waters, Mayor

  
\_\_\_\_\_  
Abby Schneeweis, City Clerk

**City of Westwood, Kansas  
City Council Work Session  
4700 Rainbow Boulevard  
March 14, 2024 – 6:00 PM**

Council Present: David E. Waters, Mayor  
Andrew Buckman, Councilmember  
Jeff Harris, Council President  
Jason Hannaman, Councilmember  
Laura Steele, Councilmember – via Zoom  
Holly Wimer, Councilmember

Council Absent: None

Staff Present: Leslie Herring, City Administrator  
Curtis Mansell, Police Chief  
John Sullivan, Public Works Director  
Abby Schneweis, City Clerk

**Call to Order**

Mayor Waters called the meeting to order at 6:00 p.m. on March 14, 2024. The meeting was held in a hybrid manner with attendees being able to join in person and virtually via Zoom.

**Community Survey Preparation**

**City Code Recodification Review: Chapter 1-7, 9**

In January 2023, the City engaged CivicPlus (which acquired Municode) to begin the 12 – 18-month process of recodifying the City Code, which has not been done since 2008. Recodification is the process by which all adopted ordinances (and modern, current State and Federal laws, where applicable) are integrated into a City’s Codebook so that the Codebook reflects the current and comprehensive laws of the City.

In addition to recodification services, this scope of service includes the digitization and integration of the City Code into the City’s website for transparency, convenience, and easy updating when new ordinances are approved.

City staff received the full Code with legal review notes and embarked on an internal review of the documents. Over the past month, the City Administrator, City Clerk, Building Official, Public Works Director, and Police Chief have met weekly to review and annotate the Code chapters in preparation for Governing Body review and final legal review with the City Attorney and CivicPlus legal counsel.

Ms. Herring provided a review of suggested changes by CivicPlus and staff.

**Adjournment to Regular Meeting**

The work session adjourned at 6:56 p.m. to prepare for the regular City Council meeting.



**City of Westwood, Kansas  
City Council Meeting  
March 14, 2024 – 7:00 p.m.**

Council Present: David E. Waters, Mayor  
Andrew Buckman, Councilmember  
Jeff Harris, Council President  
Jason Hannaman, Councilmember  
Laura Steele, Councilmember – via Zoom  
Holly Wimer, Councilmember

Council Absent: None

Staff Present: Leslie Herring, City Administrator  
Curtis Mansell, Police Chief  
John Sullivan, Public Works Director  
Gabe Greenbaum, City Attorney  
Abby Schneweis, City Clerk

**Call to Order**

Mayor Waters called the meeting to order at 7:00 p.m. on March 14, 2024. Ms. Schneweis called the roll. A quorum was present. The evening’s meeting was held in a hybrid manner, with attendees joining both in person and via Zoom.

**Approval of Agenda**

Mayor Waters suggested moving New Business Item E to be considered after the Governing Body’s executive session. Motion by Councilmember Harris to approve the March 14, 2024 City Council meeting agenda with suggested changes. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

**Public Comment**

James Walters, 2501 W 51<sup>st</sup> Terr, provided an overview of an event he would like to host at 5050 Rainbow Blvd.

Stephen Platt, 4910 Glendale, Westwood Hills, said he believes the citizens have a right to counter legislative changes made by the City by having an opportunity to vote on whether the City should sell Joe D. Dennis Park.

**Presentations and Proclamations**

**Proclamation recognizing Westwood resident Adam Minto for achieving the rank of Eagle Scout**

Mayor Waters read a proclamation recognizing resident Adam Minto for achieving the rank of Eagle Scout in the Boy Scouts program. Mr. Minto is a member of Troop 98.

**Johnson County Board of County Commissioners update**

Commissioner Fast provided an overview of Johnson County operations and an update on recent developments and future planning.

**Consent Agenda**

All items listed below are considered to be routine by the Governing Body and will be enacted in one motion. There will be no separate discussion of these items unless a member of the Governing Body so requests, in which event the item will be removed from the consent agenda and considered separately following approval of the consent agenda.

- A. Consider February 8, 2024 City Council Work Session & Meeting Minutes
- B. Consider Appropriations Ordinance 760

Motion by Councilmember Harris to approve the Consent Agenda as submitted. Second by Councilmember Hannaman. Ms. Schneweis conducted a roll call vote. Motion carried by a 5-0 vote.

**Mayor's Report**

Mayor Waters did not make a report.

**Councilmember Reports**

No reports by the City Council were made.

**Staff Reports****Administrative Report**

Ms. Herring provided an overview of the March 2024 Administrative Report included in the agenda packet and offered to answer questions.

**Public Works Report**

Mr. Sullivan provided an overview of the February and March 2024 Public Works Report included in the agenda packet and offered to answer questions.

**Public Safety Report**

Chief Mansell provided an overview of the February 2024 Public Safety Report included in the agenda packet and offered to answer questions.

**Treasurer's Report**

The February 2024 Treasurer's Report was included in the agenda packet; no questions or comments were made about the report.

**City Attorney's Report**

Mr. Greenbaum, who served as City Attorney in Mr. Denk's absence, did not have any items to report.

**Old Business****Review draft of community wide survey**

The Governing Body will create a strategic plan this year which will be used to provide direction to staff for work activities and for budgeting, and for the development of performance metrics to ensure a framework for accountability, responsiveness, and efficient use of tax-payer resources. Performance metrics, communications objectives, and strategic priority identification are all anticipated outcomes of this process. The process is expected to conclude late in the second quarter or early in the third quarter of 2024.

Upon staff recommendation, this strategic plan will be based upon the results of a city-wide survey, to be developed and deployed with the assistance of professional partners ETC Institute and PorchLight Insights. The survey will be sent by mail to all Westwood addresses – both residential and commercial – and responses will be accepted by pre-paid return mail or online. At its February 8th work session, the Governing Body was asked to share with PorchLight Insights what it would like to know and hear from Westwood residents and businesses. This input was used by City staff and the consultant team to create survey questions, which survey results will then be analyzed and discussed with the Governing Body moving into strategic priority and resource planning in the second quarter of 2024.

The timeline from here is anticipated as such:

- March 14 – 15 Survey questions finalized
- Early April ETC mails survey
- Early June ETC closes survey and delivers results to City
- Late June Governing Body retreat to review results and develop strategic plan
- August 8th Final report of survey findings and analysis; Governing Body Strategic Plan presented for adoption; operational performance metrics presented for consideration

Council suggested staff investigate allowing for more than one response per household, add another age group category to break up the 65 and older age group, to expand the housing option question, and to allow a reasonable amount of open-ended comment on the last question for general feedback.

No action was taken by the Governing Body but direction was provided to staff to complete the survey instrument using such direction.

### **New Business**

#### **Consider fence variance for 4815 Booth St**

On March 7, 2024, City staff received an application for a fence variance for 4815 Booth St. Homeowner Jeff Hirleman is proposing to replace a 4' chain link fence with a new 4' black chain link fence in his side yard and a 4' cedar fence across the back. This application requires a variance for Westwood Zoning Ordinance 4.3.9.C.3., which stipulates that on a corner lot, no fence or wall shall be closer than ten (10) feet to the street-side property line. The City Council may approve fence variances pursuant to Westwood Zoning Ord. Section 4.3.9.F.

The applicant desires to replace the existing fence, which encroaches 32" into the right-of-way on W. 48th Terrace. The new fence would be placed outside of the right-of-way and on the side yard property line. However, situating it on the property line would still result in a violation of Westwood Zoning Ordinance 4.3.9.C.3., which disallows fences from being closer than ten (10) feet to the street-side property line. The fence proposed to be situated on the property line would be seven (7) feet from the back of curb. A strict application of this Zoning Ordinance provision would require the fence be situated not closer than 17' from the back of curb, ten (10) feet into the resident's side yard.

Motion by Councilmember Hannaman to approve the requested fence variance at 4815 Booth St. to allow a 4' tall chain link fence in the side yard of the primary structure on a corner lot as described in the application. Second by Councilmember Wimer. Ms. Schneewis performed a roll call vote. Motion carried by a 5-0.

### **Consider Resolution No. 126-2024 authorizing binding property and liability insurance coverage with Midwest Public Risk**

The City's commercial insurance policy runs through March 31, 2024. Geoff Gobble of Boulevard Insurance LLC, the City's insurance broker, has received quotes from two options this year: EMC Insurance (the City's historical carrier) and Midwest Public Risk (MPR).

EMC is a traditional carrier. MPR is a risk pool, meaning member entities – Kansas and Missouri cities, counties, school districts, and housing authorities in the case of MPR – self-insure its pool of members. There are benefits and drawbacks to risk pools (e.g. if the pool members have a year without a lot of claims, premiums would reflect the good health of the pool, but the alternative is also true). A traditional option like EMC has a much larger total insured value (TIV) than MPR's risk pool and so the variations between claim years (and resulting premium impacts) are often felt less.

As the City moved to MPR for its employee benefits program in 2022, staff requested a quote from them to compare the coverage and premiums against EMC, which has been without a competitor in the City's consideration of commercial insurance policies for years.

Mr. Gobble created a coverage deductible comparison, which is included in the meeting packet. The coverage comparison provided by Boulevard Insurance also covers policies outside the scope of the EMC renewal but which Boulevard monitors on behalf of the City; these include:

- Independence Day fireworks event coverage
  - Secured by a separate policy (this amount is an estimate until coverage is sought closer to the event date)
- Worker's compensation insurance
  - Provided through KMIT
  - 2024 policy paid in January in the amount of \$27,605 (\$29,344 in 2022, \$34,090 in 2023)
- Fidelity bonds for City staff and officials
  - Renewed on a rolling basis dependent on coverage start date for each individual
  - Fidelity bonds issued only for employees and officers who are responsible for money
- Cyber Liability/Data Breach coverage
  - Renewed December 2023 for term of 1/1/2024 – 12/31/2024
  - 2024 policy paid in January in the amount of \$11,072 (\$6,158 in 2022, 10,865 in 2023)

City staff focused on the following factors in developing this recommendation:

- the City's claim history,
- premium comparison and market insights relating to future premium variation,
- difference in access to organizational leadership,
- breadth and depth of loss control services,
- insights and forethinking of City Public Works and Police staff, and
- direct experience and professional references.

Following analysis, staff recommends the City move to bind coverage with MPR for policy period July 1, 2024 – June 30, 2025, plus coverage from April 1 – June 30, 2024.

Motion by Councilmember Buckman to approve Resolution No. 126-2024 binding coverage for the City's commercial insurance program with Midwest Public Risk. Second by Councilmember Wimer. Motion

carried by a 5-0 voice vote.

**Consider authorization of purchase of 2023 Police Dodge Durango and related equipment**

Staff recommends the Governing Body approve an expenditure to purchase of a 2023 Dodge Durango Police Cruiser and related equipment in the listed in the 2024 Equipment Replacement Plan. Funds used are identified within the Equipment Reserve Fund. This vehicle would replace an existing 2017 Ford Police Interceptor.

The car will be delivered & upfitted by Superior Emergency Response Vehicles (SERV, LLC), a company located in Andover, KS. The list of equipment to be installed was included in the meeting agenda packet.

SERV, LLC has pre-negotiated contracts for upfitting and equipment for numerous public safety agencies in Kansas. They also act as a “pass-through” for delivering police vehicles based on contract pricing. Most notably for the Dodge Durango via the Kansas Highway Patrol contract.

Funds for the purchase have been allocated in the 2024 Equipment Reserve Fund in the amount of \$68,250, representing \$52,500 for the vehicle purchase and another \$15,750 for related equipment.

Motion by Councilmember Hannaman authorize the purchase of the Dodge Durango Police Cruiser and related equipment from Superior Emergency Response Vehicles in the amount of \$56,413.63, to be paid from the Equipment Reserve Fund in 2024. Second by Councilmember Wimer. Motion carried by a 5-0 voice vote.

**Consider agreement with Johnson County, KS for Stormwater Best Management Practices (BMP) Cost-Share Program for March 18, 2024 – January 31, 2025 period**

The Stormwater Management Advisory Council determined that it is in the best interests of the residents of Johnson County for the County’s Stormwater Management Program to participate in a costshare program with the City that promotes the use of rain barrels, rain gardens, native trees, and native plantings on residential property to reduce stormwater runoff as well as increase public awareness of stormwater-related issues, all as required by federal NPDES stormwater rules and regulations.

Motion by Councilmember Harris to authorize the Mayor to execute the 2024 Agreement for Stormwater BMP Cost-Share Program with Johnson County. Second by Councilmember Buckman. Motion carried by a 5-0 voice vote.

**Announcements/Governing Body Comments**

No announcements were made.

**Executive Session**

**Consultation with the City Attorney on matters relating to that property located at and around 5000 Ranbow Blvd. which would be deemed privileged in the attorney client relationship under K.S.A. 75-1319(b)2**

Motion by Councilmember Harris to recess into Executive Session for 33 minutes for consultation with the City Attorney on matters relating to real property located at and around 5000 Rainbow Blvd. which would be deemed privileged in the attorney-client relationship under K.S.A. 75-4319(b)2 present will be the members of the Governing Body, the City Administrator, and the City Attorney for, the regular

meeting will resume at 9:15 p.m. Second by Councilmember Buckman. Motion carried by a 5-0 voice vote.

At 9:15 p.m. the Governing Body returned to the dais. Mayor Waters announced no actions were taken during Executive Session.

### **New Business Continued**

#### **Provide direction to staff on Spring 2024 expenses at 5050 and 5000 Rainbow Blvd**

As 5050 and 5000 Rainbow Boulevard are currently under contract to be sold and redeveloped, staff is seeking direction from the Governing Body pertaining to various maintenance and repair expenses on both properties. The Development Agreement between the City and Karbank acknowledges that the School District's property will be in use by them through July 2024; however, Karbank could take possession of the City's parcels before that date depending on when the sale closes, which could occur at any time between April and July 2024.

As the City's original closing date was January 4, 2024, since approval of the Development Agreement and Development Plan for these sites in October 2023, staff anticipated the City would no longer own 5050 and 5000 Rainbow Blvd. As the sale has not yet closed but could close at any point within the next few months, staff is looking for direction from the Governing Body before entering contracts and beginning labor-intensive work by City Public Works crews to prepare the grounds for another full warm weather season.

The items Public Works would typically be preparing for and performing starting now include:

- A. Contract execution for turf fertilization and weed control at both 5000 and 5050 Rainbow;
- B. Contract execution for irrigation system start-up and backflow inspections;
- C. Decorative fountain start-up, performed by Public Works staff; and
- D. Routine inspection and maintenance of equipment such as play equipment, drinking fountain & tennis court, performed by Public Works staff.

Staff has weighed the following factors and is looking for basic direction in how much expense should be incurred and staff time spent on these properties to keep them useful in this interim and uncertain time.

- A. The turf fertilization and weed control contract for both properties must be executed by March 15, 2024, and is anticipated to be approximately \$3,500 for the contract term.
- B. The irrigation system start-up and backflow inspections contract must be executed by March 15, 2024, and is anticipated to be approximately \$600.
- C. The decorative fountain developed a leak at the end of the season last year. Staff is not sure exactly where the leak is occurring or exactly what will be needed to correct the issue and will need to start the fountain to investigate and diagnosis the issues to develop a solution. Because of the wet environment in which the motor and pump operate, staff have at times had to remove the equipment for rebuilding, which is an annually recurring unknown.

Public Works staff time is estimated to be between 10 and 20 hours to investigate, diagnose, resolve the issue. In the past if a rebuild is needed it has generally run \$3,000 to \$5,000.

- D. The play equipment is obsolete, and parts are unavailable. Should a repair be required staff may not be able to restore a given function for it to be used, which may result in having to remove it from service. The drinking fountain would be turned on with the irrigation system and decorative fountain, if they are turned on this year. It was functioning last year when it was winterized.

Currently the tennis court is in service with no repairs required at this time. You may remember that we spent several thousand dollars last year to get the court in a usable condition, however, these repairs were not permanent solutions.

Councilmember Wimer and Buckman said they would be in favor of foregoing maintenance items A and B on the property. Councilmember Wimer asked Mr. Sullivan if Public Works staff would still mow the property, Mr. Sullivan confirmed that they would.

Councilmember Harris said he supports moving forward with maintenance items A and D. Councilmember Wimer said she would be in favor of diagnosing and repairing the fountain within reason so it would be on for Westwood’s 75th anniversary celebration this summer. Councilmember Buckman said he would be in favor of diagnosing the fountain and getting a cost estimate before moving forward with a repair.

Councilmember Hannaman said the City has been planning for park improvements and has received a redevelopment proposal, conducted a public input process and a received a judge’s ruling to move forward with the proposed plan and is not really in favor of spending any money on routine park expenses. Councilmember Hannaman said he will acquiesce to repairing the playground equipment for safety. Councilmember Steele agreed with Councilmember Hannaman.

Councilmember Wimer said she felt compelled to voice some frustration that the Governing Body and staff are spending time and resources on these properties when the City could instead be moving forward with a new park that could be a great place for the community. Councilmember Harris concurred with Councilmember Wimer.

The Governing Body directed staff to (a) forego turf fertilization, weed control and irrigation start-up on the 5000 and 5050 Rainbow Blvd. properties, to (b) diagnose the leak in the fountain and if it appears to be a major repair the Governing Body will consider how or if to repair it, and (c) repair the playground equipment to ensure safety as needed.

**Adjournment**

Motion by Councilmember Hannaman to adjourn the meeting. Second by Councilmember Harris. Motion carried by a 5-0 voice vote. The meeting adjourned at 9:37 p.m.

APPROVED: \_\_\_\_\_  
David E. Waters, Mayor

ATTEST: \_\_\_\_\_  
Abby Schneweis, City Clerk

**City of Westwood, Kansas  
Appropriation Ordinance No. 761**

**AN ORDINANCE APPROPRIATING CITY EXPENDITURES FOR THE PERIOD OF MARCH 1, 2024 - MARCH 31, 2024 AND SUMMARIZING SAID EXPENDITURE HEREIN.**

	General Month Ending 3/31/2024	Capital Improvements Month Ending 3/31/2024	Equipment Reserve Month Ending 3/31/2024	Stormwater Month Ending 3/31/2024	Special Highway Month Ending 3/31/2024	Woodside TIF/CID Month Ending 3/31/2024	Debt Service Month Ending 3/31/2024	Total All Funds Month Ending 3/31/2024
<b>Expenditures</b>								
Salary & Benefits	131,707.11	0.00	0.00	0.00	0.00	0.00	0.00	131,707.11
Employee Expenses	2,924.66	0.00	0.00	0.00	0.00	0.00	0.00	2,924.66
Professional Fees	38,420.34	0.00	0.00	0.00	0.00	0.00	0.00	38,420.34
General Operating Expenses	11,879.04	0.00	0.00	0.00	0.00	0.00	0.00	11,879.04
Utilities	31,929.73	0.00	0.00	0.00	0.00	0.00	0.00	31,929.73
Equipment and Maintenance	6,589.14	1,620.00	0.00	167.16	0.00	0.00	0.00	8,376.30
Street and Stormwater	0.00	0.00	0.00	(370.76)	0.00	0.00	0.00	(370.76)
Park and Events	1,497.52	0.00	0.00	0.00	0.00	0.00	0.00	1,497.52
Miscellaneous	0.00	0.00	0.00	0.00	0.00	20,504.42	0.00	20,504.42
Intergovernmental	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Expenditures</b>	<b>224,947.54</b>	<b>1,620.00</b>	<b>0.00</b>	<b>(203.60)</b>	<b>0.00</b>	<b>20,504.42</b>	<b>0.00</b>	<b>246,868.36</b>

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:**

**SECTION 1. The Claims included herein are hereby approved and allowed.**

**SECTION 2. That the payment of all claims and charges against the respective accounts and funds provided in the budget for the year 2024 are consistent with that budget and are hereby authorized, ratified and approved.**

**SECTION 3. This Ordinance shall take effect from and after its passage.**

**ADOPTED this 11th day of April, 2024.**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**ATTEST: CITY CLERK**





## City Administrator's Report

April 2024

To: Mayor and City Council  
From: Leslie Herring, City Administrator  
Date: April 11, 2024  
RE: Update on some of the key areas of focus of the Administration Department

### Current Priorities

2<sup>nd</sup> Quarter (April) 2024 through 3<sup>rd</sup> Quarter (September) 2024

- *Issue Request for Proposals for 4700 Rainbow Blvd.*
  - Staff plans to conduct a work session with the Governing Body at the May regular City Council meeting to discuss parameters and guidance for building this process and RFP.
- *Communications Strategic Plan Deployment*
  - Staff plans to begin this process once the Governing Body's Strategic Plan has been developed and adopted.
- *Financial Review and Planning*
  - The 2023 fiscal year audit is underway and is expected to be completed and presented by the City's independent financial auditor at the May 2024 regular City Council meeting.
  - The 2025 budget process is beginning and staff is working on a number of preparations to ensure a comprehensive and smooth Summer 2024 budget process, including:
    - Evaluation of City fees, possible recommendations of modifications, and establishment of a Master Fee Schedule
    - Creation of a comprehensive Capital Improvement Plan (CIP) funding recommendation
    - Integration of the Spring 2024 community priorities survey
- *City Code Recodification*
  - This process is well underway and the Governing Body and staff review is concluding in April 2024. Following this step, CivicPlus (Municode) will complete their preparations of an ordinance for adoption by the City Council to complete the process and then will add the searchable digital code to the City's website.

### Priorities Closing-Out

3<sup>rd</sup> Quarter (October) 2023 through 1<sup>st</sup> Quarter (March) 2024

- *Rainbow Blvd. Complete Streets Traffic Management Plan*
  - ✓ The draft final report was shared by the consultant team with the Rainbow stakeholders group on April 10<sup>th</sup> and comments are due back April 25<sup>th</sup>.
  - ✓ The pre-application for MARC funding for construction was submitted on the April 5<sup>th</sup> deadline. This is only the pre-application, with the formal application due July 26<sup>th</sup>. Over the next several months, the stakeholders will work together with the various governing

bodies and boards to align expectations, desires, and concerns following the conclusion of the Complete Streets study, which is expected to be completed in May.

- Mission Rd. Improvements (2024 JoCo CARS-funded project in partnership with Roeland Park)
  - ✓ Public Works Director John Sullivan and Leslie continue to work with Roeland Park staff and elected officials of both cities to finalize the design of the street ahead of 2025 construction.
  
- *Community Survey and Strategic Priorities Setting*
  - ✓ The final survey tool for both residents and businesses are ready to be mailed. The final proofs have been shared with the Mayor and Council.
  - ✓ Staff is aiming for a June/July Governing Body retreat with PorchLight Insights
  
- *New Feature Park Plan Creation*
  - ✓ The Park Planning Steering Committee issued the RFQ for park design services on March 29<sup>th</sup> and held a pre-proposal site visit on April 8<sup>th</sup>. Proposals/Responses are due April 30<sup>th</sup>, with review and interviews to take place in May, and a recommendation made to Council in June.
  
- *City Website Relaunch*
  - This project is unfortunately dragging on, with the new site expected to launch into the test phase next week. This will allow staff and Council to view and edit the new website before it goes live to the public. With any hope, this project will be completed in May.
  
- *Westwood's 75th Anniversary – June 7, 2024 (Celebration planned for Saturday, June 8<sup>th</sup>)*
  - Councilmember Wimer convened a group of residents to put together a plan for celebrating the City of Westwood's 75<sup>th</sup> anniversary of incorporation. This group convened on February 27<sup>th</sup> and discussed the following:
    - A reprint and expansion of the City's 50<sup>th</sup> anniversary book publication;
    - An event in June 2024 to celebrate the anniversary; and
    - Official City of Westwood merch that residents can proudly wear to show their pride in Westwood.

Councilmember Wimer will share additional details and be available for questions and input at the Council meeting.

## Building Permits

The following is a snapshot of select building permits of note issued last month:

### *Residential*

New Construction: None

Additions: None

Alterations:

- 2325 W. 47<sup>th</sup> Ter. – Kitchen update and basement finish

Demolition: None

Misc: None of note

*Commercial*

New Construction: None

Additions: None

Alterations: None

Demolition: None

Misc: None of note

## **Westwood Public Works Monthly Report**

**TO: GOVERNING BODY**  
**FROM: JOHN SULLIVAN, DIRECTOR OF PUBLIC WORKS**  
**RE: MONTHLY REPORT, MARCH 2024**  
**DATE: APRIL 9, 2024**

Some of the activities for Public Works in March include:

1. Daily collection of trash from City Hall and City Parks.
2. Perform a weekly inspection of the playground equipment and park facilities.
3. Perform a weekly inspection of the traffic control signs throughout the city; replace poles and signs as required.
4. I prepared the Purchase Orders and documentation for those purchases.
5. Performed routine maintenance at the City Hall to include the servicing of the air handling equipment, re-lamping fixtures and repairing or installing appurtenances including plumbing fixtures.
6. I represented the city at various meetings to include:
  - ULCC Meeting – Virtual – 1 hr.
  - AIMS Small City Roundtable Discussion – In person - 1.5 hrs.
  - Public Works Directors Meeting – In person – 1.5 hrs.
  - Road Safety Audits for Pedestrians Training – In person – 8 hrs.
  - NPDES Phase II Subcommittee Meeting – In Person – 2 hr.
  - Johnson County IEMC Informational Meeting - Virtual – 1 hr.
7. Received, via email, Kansas One-Call Locate Requests, advised callers of their status with the City of Westwood regarding utilities and advised, when appropriate, the need to either get an excavation permit, building permit or fence permit. I provided the building official with a copy of the locate requests for follow-up for any building permits that may be required and answered any questions when asked.
8. We performed routine maintenance on the Public Works vehicles and equipment to include fluid services, cleaning, and general repairs.
9. Routine maintenance of the Public Works Facility to include the air handling equipment, plumbing, electrical, and cleaning.
10. Performed various clerical duties for the Public Works Department’s daily functions.
11. I attended Public Works, City Council and Staff and Committee meetings as required.
12. Observed activities associated with ROW Permits.
13. We marked streetlight utilities when requested by the One-Call System.
14. We performed monthly safety checks at all City properties as well as monthly fire extinguisher inspections.
15. Mitch attends monthly Safety Committee Meetings.
16. We patched potholes.
17. We swept streets.
18. We cleaned the catch basin fronts.
19. Performed routine maintenance on equipment.

20. Began routine mowing and trimming of public properties.
21. Changed the flash time on the RFD's displays on W. 47<sup>th</sup> Street to accommodate sight impaired individual's ability to cross.
22. Installed the console in the new truck.
23. Met with KDOL for public building inspections.
24. Stored winter equipment.

This concludes my activities report for some of the activities for Public Works in March.

**Westwood Public  
Works**

To: Governing Body  
From: John Sullivan, Director of Public Works Date:  
April 9, 2024  
Re: Monthly Status Report

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- W. 47<sup>th</sup> Street Project: We have received 22 of the 26 clamshells. I expect the remaining 4 to be delivered tomorrow. I will arrange the installation once we have them all in our possession. We have two streetlight fixtures that are not working. We have received the parts for this repair for one of the fixtures. We also have two pedestrian fixtures that have failed. The parts are ordered. We will make the repairs as soon as our bucket truck is repaired. The remaining parts of the project are complete. KDOT is working on the final accounting for the project.
- 2023 F-550 and Equipment: The truck is complete with exception of door decals. I will be ordering them.
- CCLIP funding: Our project has been funded. This includes work on the replacement of the concrete intersection at W. 47<sup>th</sup> Street and Rainbow. We will not have any City funds in this project. Project will be in 2026.
- Storm Debris Removal: This project is complete. We are waiting for the reimbursement.
- Stone wall damage: We had a vehicle accident at W. 51<sup>st</sup> Terrace and Belinder Avenue that resulted in damage to the stone wall on the corner. We have been reimbursed for the expense by the insurance company. This project has begun.
- Stone wall damage and light pole damage: I have the replacement Medalion, and we will be installing it when we get the bucket truck back.
- Bucket Truck Repairs: The main seal on the center boom has developed a hydraulic due to a faulty seal. We are having it repaired and should get it back soon.
- Brush Chipper: The rear engine seal has failed causing the unit to lose oil. We are having it repaired and expect it back soon.
- Water Tank Skid: We have received the tank and will be getting it inspected by WaterOne for a Hydrant Meeting on Thursday.

# Westwood Police Department Westwood City Council Report

Item C. Section VIII, Item

3/1/2024



3/31/2024





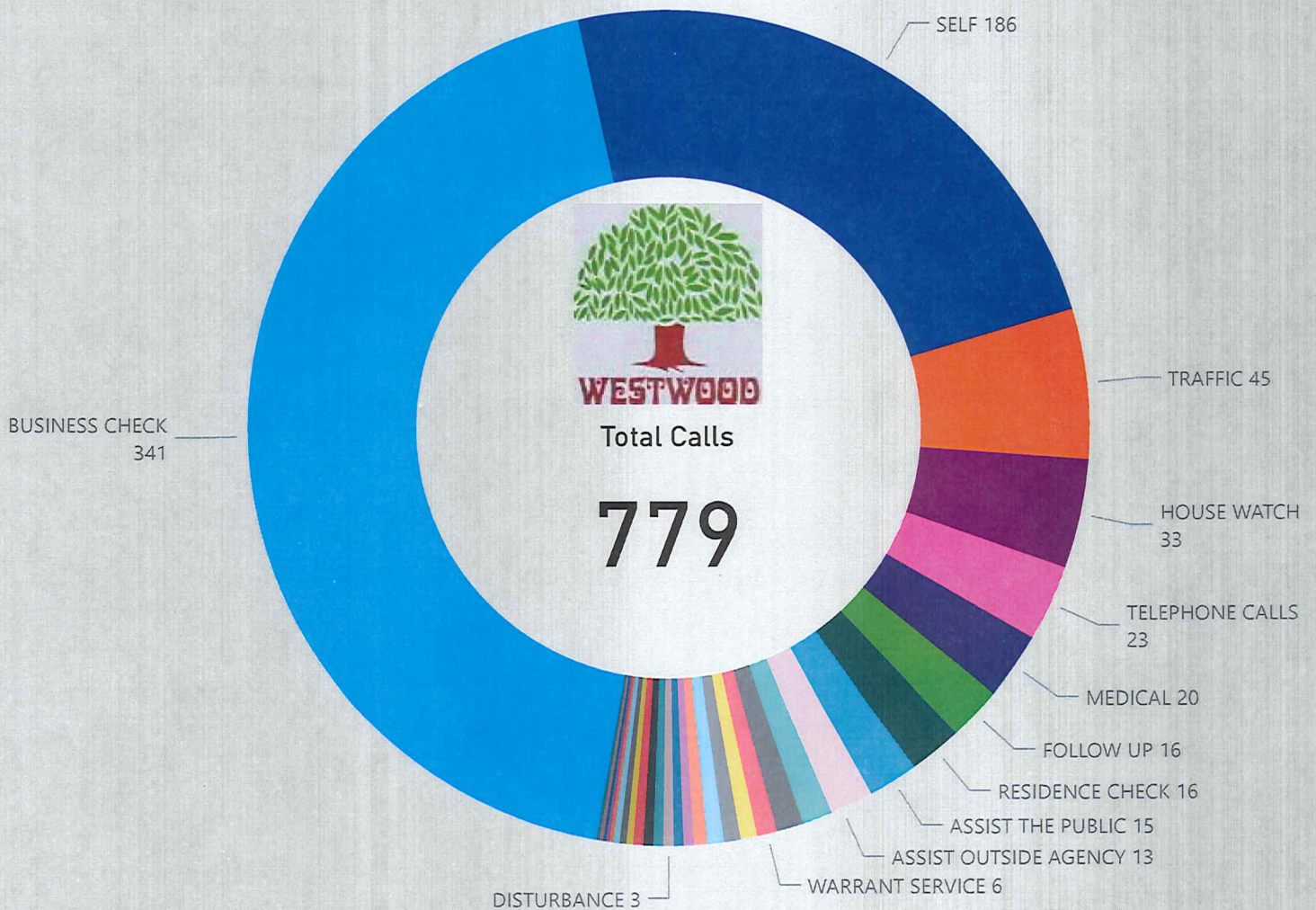
# Westwood Police Department City Council Report

Item C. Section VIII, Item

3/1/2024





3/31/2024

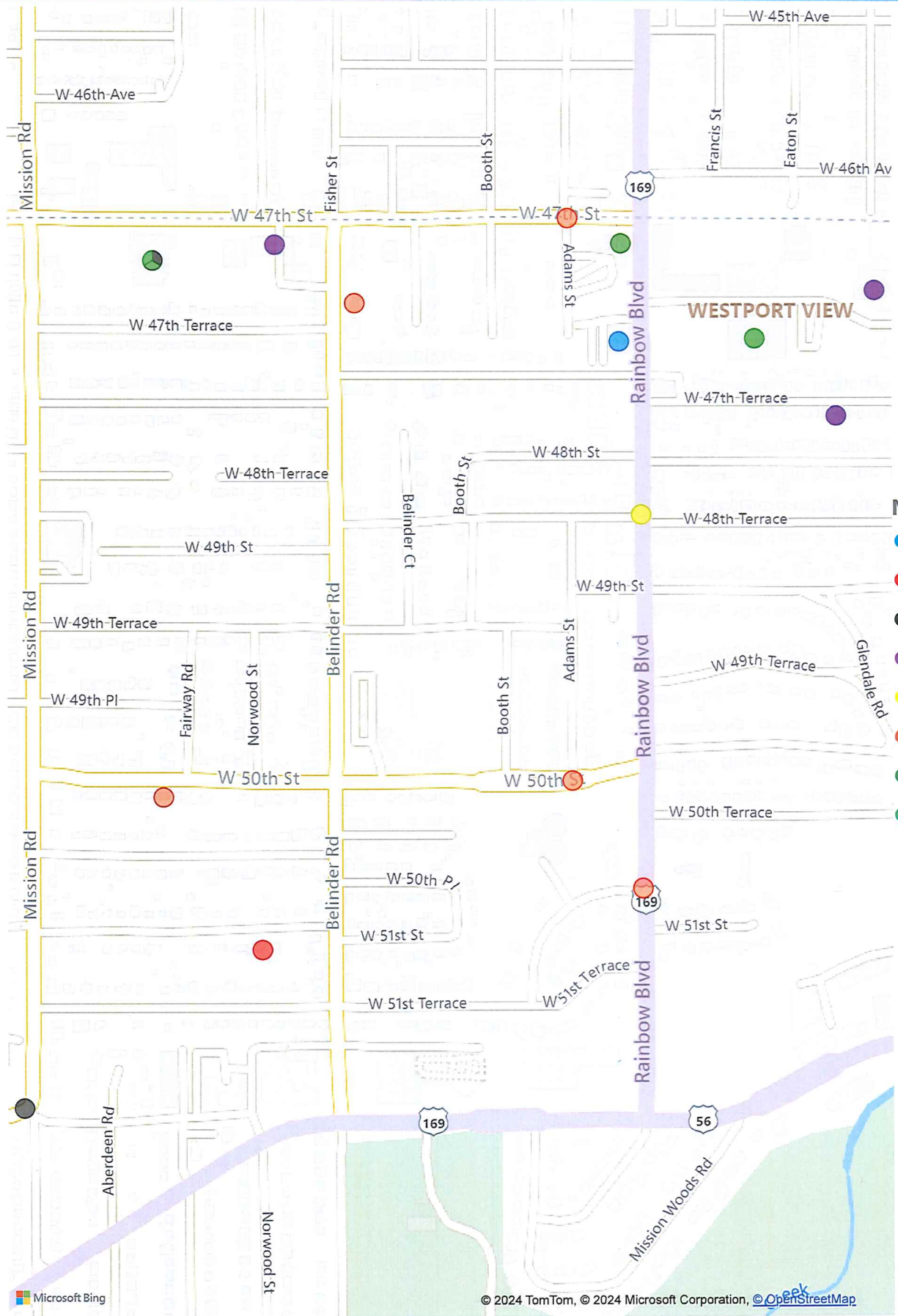




# Westwood Police Department Westwood City Council Report

Item C. Section VIII, Item

3/1/2024  3/31/2024 



- Nature of Call**
- 911 CALL
  - ACCIDENT
  - CHECK THE WELFARE
  - DISTURBANCE
  - NOISE COMPLAINT
  - SUSPICIOUS
  - THEFT REPORT
  - TRESPASSING

# Westwood Police Department Westwood City Council Report

Item C. Section VIII, Item

3/1/2024



3/31/2024



Case Number	Nature of Call	Summary
20240088	THEFT REPORT	Reporting officer responded to a theft. Three white males were seen walking past all points of sale wearing ski masks. They left the scene in a white sedan.
20240089	THEFT REPORT	Reporting officer responded to a previous theft. No leads on the suspect.
20240090	ACCIDENT	V1 was traveling east on 51st St when it struck X2 which was parked on the south side of the roadway.
20240093	PROPERTY	Reporting officer responded to Walmart for a disturbance. Upon further investigation, two unknown females threw objects and broke a vehicles windshield. The suspects left the scene prior to officer arrival.
20240094	THEFT REPORT	Reporting officer recieved a call for a theft in progress. Upon further investigation, the male subject was assessed by Johnson County Mental Health. He was trespassed from Walmart. No further charges at this time.
20240100	MEDICAL	Reporting officer was dispatched to a medical call and determined a fatality hit and run accident occurred. A request for assistance from the Johnson County Sheriff's Office was made and they took over the investigation.
20240102	FOLLOW UP	During the time of the report, Roeland Park Police responded to the Westwood Police station to assist outside agency. A walk-in theft report was taken and passed along to the reporting officer at a later time.



WESTWOOD  
COURT SUMMARY  
MARCH, 2024

COURT DATE	ARRAIGNMENTS	TRIALS	FINES	LETTERS	WARRANTS
March 08, 2024	34	03	\$ 5,610.00	07	13
March 23, 2024	47	12	\$ 6,492.00	20	03
<b>TOTALS</b>					
March 2024	81	15	\$12,102.00	27	16
March 2023	51	13	\$ 4,310.00	26	15
			<b>TOTAL (\$12,102.00) less</b>		
			* Kansas DL fees:		\$ 122.00
			* Judges Training Fund:		\$ 30.00
			* LET Training Fund:		\$ 740.00
			* Comm Corrections Fee:		\$ 0.00
			* Seat Belt Fund:		\$60.00
<b>March 2024 TOTAL:</b>					\$11,150.00

Y.T.D. TOTALS 2024		Y.T.D. TOTALS 2023	
ARRAIGNMENTS:	221	ARRAIGNMENTS:	151
TRIALS	35	TRIALS:	43
LETTERS:	81	LETTERS:	58
WARRANTS:	88	WARRANTS:	63
FINES:	\$24,440.00	FINES:	\$15,769.00
KS DL FEES:	\$325.00	KS DL FEES:	\$284.00
JUDGES FUND:	\$65.50	JUDGES FUND:	\$33.00
L.E.T.FUND:	\$1,502.50	L.E.T FUND:	\$760.00
COMM CORRECTIONS:	\$ 0.00	COMM CORRECTIONS:	\$0.00
SEAT BELT FUND:	\$140.00	SEAT BELT FUND:	\$20.00

**City of Westwood  
Treasurer's Report  
3/31/24**

1. Balance Sheet by Fund – shows overall ending cash balances for the City by Fund.
  - a. Ending unencumbered cash through 3/31/24 was \$3,749,300. The March 31, 2023 the balance was \$2,989,133. This is an increase in cash of \$760,167.
2. Cash Flow – shows beginning cash by fund and associated revenues and expenditures for each fund in a more summarized format.
3. Statement of Operations – General Fund
  - a. Revenue received for the month was \$331,542. Revenue compared to the prior year was \$255,380.
    - i. Taxes – Sales tax was received for February and March in the month of March for \$193,966. Overall tax revenues are up by \$20,153.
    - ii. Fees and Licenses – were are down by \$20,409.
    - iii. Building permits are up by \$7,674 for the year.
    - iv. The city received interest income of \$13,745 in 2024 compared to \$9,284 in 2023.
  - b. March expenditures totaled \$224,948. This is an increase of \$56,214 from the prior year.
    - i. General overhead expenditures were \$74,992 for the month. Overall expenditures increased by \$32,358 due to \$13,262 more in professional fees and \$13,262 in utilities.
    - ii. Administrative expenditures were down by \$6,449 due to Salary and benefits to date.
    - iii. Public Works total expenditures were \$34,102 for the month which is a decrease for the year of \$4,796.
    - iv. Police expenditures are \$74,398 for the month which is an increase over prior year by \$4,708.
  - c. Net Receipts Over Expenditures in the General Fund were \$106,594 for the month. Year to date the receipts over expenditures are \$400,137.
4. Other Funds – Current Month and Year to Date
  - a. CIP –Sales tax was collected for February and March of \$64,123.
  - b. Equipment reserve received the equipment that was encumbered in March and paid for it.
  - c. Stormwater collected fees of \$9,533.
  - d. Woodside TIF and CID fund made the UMB CID payment of 20,504 this month.

I am happy to answer any questions upon request.

Michelle Ryan  
City of Westwood Treasurer

**ACCOUNTANTS' COMPILATION REPORT**

To the City Council  
**City of Westwood, Kansas**  
Westwood, Kansas

Management is responsible for the accompanying financial statements of **City of Westwood, Kansas** (a municipal entity), which comprises the statement of assets, liabilities and fund balance by fund – regulatory basis and the statement of cash flow – regulatory basis as of and for the one month ended March 31, 2024, in accordance with the regulatory basis of accounting, and for determining that the regulatory basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. We do not express an opinion, a conclusion, nor provide any assurance on these financial statements.

The financial statements are prepared in accordance with the regulatory basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America.

Management has elected to omit substantially all the disclosures ordinarily included in financial statements prepared in accordance with the regulatory basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the City's assets, liabilities, fund balance, receipts, and expenditures. Accordingly, the financial statements are not designed for those who are not informed about such matters.

The supplementary information is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management. The supplementary information was subject to our compilation engagement. We have not audited or reviewed the supplementary information and do not express an opinion, a conclusion, nor provide any assurance on such information.

We are not independent with respect to **City of Westwood, Kansas**.



**ADAMSBROWN, LLC**  
Certified Public Accountants  
Overland Park, Kansas

April 8, 2024



**City of Westwood, Kansas**  
**Statement of Assets, Liabilities and Fund Balance by Fund - Regulatory Basis**  
 As of March 31, 2024

	<b>General Fund</b>	<b>Capital</b>	<b>Equipment</b>	<b>Stormwater</b>	<b>Special Highway</b>	<b>Woodside</b>	<b>Debt Service</b>	<b>All Funds</b>
	<b>03/31/2024</b>	<b>Improvements</b>	<b>Reserve Fund</b>	<b>Fund</b>	<b>Fund</b>	<b>TIF/CID Fund</b>	<b>Fund</b>	<b>03/31/2024</b>
		<b>Fund</b>	<b>03/31/2024</b>	<b>03/31/2024</b>	<b>03/31/2024</b>	<b>03/31/2024</b>	<b>03/31/2024</b>	<b>03/31/2024</b>
<b>Assets</b>								
Current Assets								
Cash In Bank	1,907,437.58	394,574.83	68,256.11	341,114.15	184,280.00	670,416.03	146,044.32	3,712,123.02
Cash In Bank - Bond Fund	36,828.34	0.00	0.00	0.00	0.00	0.00	0.00	36,828.34
Cash In Bank - Woodside Village Acct	9.53	0.00	0.00	0.00	0.00	0.00	0.00	9.53
Petty Cash	339.00	0.00	0.00	0.00	0.00	0.00	0.00	339.00
<b>Total Current Assets</b>	<b>1,944,614.45</b>	<b>394,574.83</b>	<b>68,256.11</b>	<b>341,114.15</b>	<b>184,280.00</b>	<b>670,416.03</b>	<b>146,044.32</b>	<b>3,749,299.89</b>
<b>Total Assets</b>	<b>\$ 1,944,614.45</b>	<b>\$ 394,574.83</b>	<b>\$ 68,256.11</b>	<b>\$ 341,114.15</b>	<b>\$ 184,280.00</b>	<b>\$ 670,416.03</b>	<b>\$ 146,044.32</b>	<b>\$ 3,749,299.89</b>
<b>Liabilities and Fund Balance</b>								
Current Liabilities								
Woodside Village Deposits	9.19	0.00	0.00	0.00	0.00	0.00	0.00	9.19
Refundable Bond Deposits	36,239.99	0.00	0.00	0.00	0.00	0.00	0.00	36,239.99
KPERS/KPF Payable	25.73	0.00	0.00	0.00	0.00	0.00	0.00	25.73
Great West 457 Payable	2,260.00	0.00	0.00	0.00	0.00	0.00	0.00	2,260.00
<b>Total Current Liabilities</b>	<b>38,534.91</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>38,534.91</b>
<b>Total Liabilities</b>	<b>38,534.91</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>38,534.91</b>
Fund Balance								
Fund Balance	1,506,662.62	306,229.94	356,488.84	189,217.42	169,092.79	602,665.66	144,556.17	3,274,913.44
Fund Balance - Current Year	399,416.92	88,344.89	(288,232.73)	151,896.73	15,187.21	67,750.37	1,488.15	435,851.54
<b>Total Fund Balance</b>	<b>1,906,079.54</b>	<b>394,574.83</b>	<b>68,256.11</b>	<b>341,114.15</b>	<b>184,280.00</b>	<b>670,416.03</b>	<b>146,044.32</b>	<b>3,710,764.98</b>
<b>Total Liabilities and Fund Balance</b>	<b>\$ 1,944,614.45</b>	<b>\$ 394,574.83</b>	<b>\$ 68,256.11</b>	<b>\$ 341,114.15</b>	<b>\$ 184,280.00</b>	<b>\$ 670,416.03</b>	<b>\$ 146,044.32</b>	<b>\$ 3,749,299.89</b>

See accountants' compilation report.



## City of Westwood, Kansas

### Statement of Cash Flow - Regulatory Basis

For the One Month Ended March 31, 2024

	General Fund Month Ending 03/31/2024	Capital Improvements Fund Month Ending 03/31/2024	Equipment Reserve Fund Month Ending 03/31/2024	Stormwater Fund Month Ending 03/31/2024	Special Highway Fund Month Ending 03/31/2024	Woodside TIF/CID Fund Month Ending 03/31/2024	Debt Service Fund Month Ending 03/31/2024	All Funds Month Ending 03/31/2024
<b>Unencumbered Cash, Beginning Period</b>	<b>1,841,639.93</b>	<b>333,945.76</b>	<b>115,695.11</b>	<b>331,377.24</b>	<b>184,280.00</b>	<b>629,600.55</b>	<b>145,445.57</b>	<b>3,581,984.16</b>
<b>Receipts</b>								
Taxes	243,123.88	64,122.86	0.00	0.00	0.00	0.00	598.75	307,845.49
Fees and Licenses	38,454.08	0.00	0.00	0.00	0.00	0.00	0.00	38,454.08
Building Permits	5,803.50	0.00	0.00	0.00	0.00	0.00	0.00	5,803.50
Intergovernmental	26,640.14	0.00	0.00	0.00	0.00	0.00	0.00	26,640.14
Restricted Use	0.00	0.00	0.00	9,533.31	0.00	61,319.90	0.00	70,853.21
Fines	9,702.00	0.00	0.00	0.00	0.00	0.00	0.00	9,702.00
Miscellaneous	7,098.71	0.00	0.00	0.00	0.00	0.00	0.00	7,098.71
<b>Total Receipts</b>	<b>330,822.31</b>	<b>64,122.86</b>	<b>0.00</b>	<b>9,533.31</b>	<b>0.00</b>	<b>61,319.90</b>	<b>598.75</b>	<b>466,397.13</b>
<b>Expenditures</b>								
Salary & Benefits	131,707.11	0.00	0.00	0.00	0.00	0.00	0.00	131,707.11
Employee Expenses	2,924.66	0.00	0.00	0.00	0.00	0.00	0.00	2,924.66
Professional Fees	38,420.34	0.00	0.00	0.00	0.00	0.00	0.00	38,420.34
General Operating Expenses	11,879.04	0.00	0.00	0.00	0.00	0.00	0.00	11,879.04
Utilities	31,929.73	0.00	0.00	0.00	0.00	0.00	0.00	31,929.73
Equipment and Maintenance	6,589.14	1,620.00	0.00	167.16	0.00	0.00	0.00	8,376.30
Street and Stormwater	0.00	0.00	0.00	(370.76)	0.00	0.00	0.00	(370.76)
Park and Events	1,497.52	0.00	0.00	0.00	0.00	0.00	0.00	1,497.52
Miscellaneous	0.00	0.00	0.00	0.00	0.00	20,504.42	0.00	20,504.42
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Expenditures</b>	<b>224,947.54</b>	<b>1,620.00</b>	<b>0.00</b>	<b>(203.60)</b>	<b>0.00</b>	<b>20,504.42</b>	<b>0.00</b>	<b>246,868.36</b>
<b>Adjustments</b>								
Increase / (Decrease) in Payables	(3,400.25)	(1,873.79)	(47,439.00)	0.00	0.00	0.00	0.00	(52,713.04)
Increase / (Decrease) in Refundable Bond Deposits	500.00	0.00	0.00	0.00	0.00	0.00	0.00	500.00
<b>Total Adjustments</b>	<b>(2,900.25)</b>	<b>(1,873.79)</b>	<b>(47,439.00)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>(52,213.04)</b>
<b>Ending Cash</b>	<b>\$ 1,944,614.45</b>	<b>\$ 394,574.83</b>	<b>\$ 68,256.11</b>	<b>\$ 341,114.15</b>	<b>\$ 184,280.00</b>	<b>\$ 670,416.03</b>	<b>\$ 146,044.32</b>	<b>\$ 3,749,299.89</b>

**CITY OF WESTWOOD, KANSAS**

Supplementary Information





**City of Westwood, Kansas**  
**Statement of Receipts and Expenditures - Regulatory Basis**  
 General Fund  
 For The Two Months Ended March 31, 2024 and 2023

	Month Ending	Year To Date	Year To Date	Year Ending	
	03/31/2024	03/31/2024	03/31/2023	12/31/2024	12/31/2024
	Actual	Actual	Prior Year	Current Budget	Over/(Under) Budget
<b>Receipts</b>					
Taxes	\$ 243,123.88	\$ 863,739.47	\$ 843,585.62	\$ 2,110,854.00	\$ (1,247,114.53)
Fees and Licenses	38,454.08	107,244.22	128,123.29	472,200.00	(364,955.78)
Building Permits	5,803.50	15,535.83	8,112.00	160,000.00	(144,464.17)
Intergovernmental	26,640.14	83,578.18	78,316.49	325,100.00	(241,521.82)
Fines	9,702.00	23,619.00	15,697.00	80,000.00	(56,381.00)
Reimbursements	0.00	11,286.03	0.00	0.00	11,286.03
Miscellaneous	7,098.71	17,116.24	45,277.27	55,250.00	(38,133.76)
<b>Total Receipts</b>	<b>330,822.31</b>	<b>1,122,118.97</b>	<b>1,119,111.67</b>	<b>3,203,404.00</b>	<b>(2,081,285.03)</b>
<b>Expenditures</b>					
<b>General Overhead</b>					
Salary & Benefits	4,114.20	10,375.45	9,440.70	45,940.68	(35,565.23)
Employee Expenses	336.61	2,834.66	2,042.67	9,000.00	(6,165.34)
Professional Fees	34,662.07	70,861.66	55,856.34	260,250.00	(189,388.34)
General Operating Expenses	5,745.12	9,931.28	7,698.29	30,000.00	(20,068.72)
Utilities	30,133.88	50,752.33	37,489.69	287,295.60	(236,543.27)
Park and Events	0.00	4,275.00	4,144.24	14,750.00	(10,475.00)
Miscellaneous	0.00	0.00	0.00	30,000.00	(30,000.00)
Intergovernmental	0.00	0.00	0.00	20,000.00	(20,000.00)
Interfund Transfers	0.00	0.00	0.00	268,830.00	(268,830.00)
<b>Total General Overhead</b>	<b>74,991.88</b>	<b>149,030.38</b>	<b>116,671.93</b>	<b>966,066.28</b>	<b>(817,035.90)</b>
<b>Administrative</b>					
Salary & Benefits	32,920.08	107,054.57	117,046.10	480,100.00	(373,045.43)
Employee Expenses	838.52	2,644.13	959.82	14,500.00	(11,855.87)
Professional Fees	2,625.00	9,000.10	11,187.54	48,000.00	(38,999.90)
General Operating Expenses	4,415.06	4,517.13	471.07	2,500.00	2,017.13
Interfund Transfers	0.00	0.00	0.00	5,000.00	(5,000.00)
<b>Total Administrative</b>	<b>40,798.66</b>	<b>123,215.93</b>	<b>129,664.53</b>	<b>550,100.00</b>	<b>(426,884.07)</b>
<b>Public Works</b>					
Salary & Benefits	23,988.09	100,391.29	109,743.90	432,000.00	(331,608.71)
Employee Expenses	1,680.15	2,529.07	2,316.61	7,900.00	(5,370.93)
Professional Fees	0.00	0.00	0.00	17,000.00	(17,000.00)
General Operating Expenses	500.71	1,784.21	5,370.91	27,550.00	(25,765.79)
Utilities	1,456.16	2,446.88	2,888.85	19,580.00	(17,133.12)
Equipment and Maintenance	6,477.35	15,891.69	7,519.09	60,500.00	(44,608.31)
Interfund Transfers	0.00	0.00	0.00	200,000.00	(200,000.00)
<b>Total Public Works</b>	<b>34,102.46</b>	<b>123,043.14</b>	<b>127,839.36</b>	<b>764,530.00</b>	<b>(641,486.86)</b>
<b>Police</b>					
Salary & Benefits	70,684.74	249,220.17	256,849.44	999,500.00	(750,279.83)
Employee Expenses	69.38	5,798.28	5,475.35	27,000.00	(21,201.72)
Professional Fees	1,133.27	2,405.72	634.92	34,000.00	(31,594.28)
General Operating Expenses	1,218.15	8,709.43	3,764.52	67,100.00	(58,390.57)
Utilities	0.00	0.00	464.44	4,500.00	(4,500.00)

See accountants' compilation report.



**City of Westwood, Kansas**  
**Statement of Receipts and Expenditures - Regulatory Basis**  
 General Fund  
 For The Two Months Ended March 31, 2024 and 2023

	<u>Month Ending</u> <u>03/31/2024</u>	<u>Year To Date</u> <u>03/31/2024</u>	<u>Year To Date</u> <u>03/31/2023</u>	<u>Year Ending</u> <u>12/31/2024</u>	
	Actual	Actual	Prior Year	Current Budget	Over/(Under) Budget
Equipment and Maintenance	74.80	6,921.29	1,275.66	10,500.00	(3,578.71)
Park and Events	1,217.52	1,217.52	1,100.00	1,200.00	17.52
Interfund Transfers	0.00	0.00	0.00	70,000.00	(70,000.00)
<b>Total Police</b>	<b>74,397.86</b>	<b>274,272.41</b>	<b>269,564.33</b>	<b>1,213,800.00</b>	<b>(939,527.59)</b>
<b>Parks &amp; Rec</b>					
General Operating Expenses	0.00	0.00	442.59	3,000.00	(3,000.00)
Utilities	339.69	605.57	941.27	30,000.00	(29,394.43)
Equipment and Maintenance	36.99	1,656.19	52.39	10,000.00	(8,343.81)
Park and Events	280.00	532.19	270.00	28,250.00	(27,717.81)
<b>Total Parks &amp; Rec</b>	<b>656.68</b>	<b>2,793.95</b>	<b>1,706.25</b>	<b>71,250.00</b>	<b>(68,456.05)</b>
<b>Non-Departmental</b>					
Salary & Benefits	0.00	0.00	(4,997.36)	0.00	0.00
Miscellaneous	0.00	50,346.24	26,038.73	0.00	50,346.24
<b>Total Non-Departmental</b>	<b>0.00</b>	<b>50,346.24</b>	<b>21,041.37</b>	<b>0.00</b>	<b>50,346.24</b>
<b>Total Expenditures</b>	<b>224,947.54</b>	<b>722,702.05</b>	<b>666,487.77</b>	<b>3,565,746.28</b>	<b>(2,843,044.23)</b>
<b>Receipts Over (Under) Expenditures</b>	<b>\$ 105,874.77</b>	<b>\$ 399,416.92</b>	<b>\$ 452,623.90</b>	<b>\$ (362,342.28)</b>	<b>\$ 761,759.20</b>

See accountants' compilation report.



**City of Westwood, Kansas**  
**Statement of Receipts and Expenditures - Regulatory Basis**  
 Other Funds  
 For The One Month Ended March 31, 2024

**Other Funds**

	<b>Capital Improvements Fund Month To Date 03/31/2024 Actual</b>	<b>Equipment Reserve Fund Month To Date 03/31/2024 Actual</b>	<b>Stormwater Fund Month To Date 03/31/2024 Actual</b>	<b>Special Highway Fund Month To Date 03/31/2024 Actual</b>	<b>Woodside TIF/CID Fund Month To Date 03/31/2024 Actual</b>	<b>Debt Service Fund Month To Date 03/31/2024 Actual</b>
<b>Receipts</b>						
Taxes						
Ad Valorem Tax	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 463.02
City Sales & Use Tax - Special	64,122.86	0.00	0.00	0.00	0.00	0.00
Motor Vehicle Tax	0.00	0.00	0.00	0.00	0.00	135.73
<b>Total Taxes</b>	<b>64,122.86</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>598.75</b>
Restricted Use						
Stormwater Utility Fee	0.00	0.00	9,533.31	0.00	0.00	0.00
WV CID-1	0.00	0.00	0.00	0.00	41,549.87	0.00
WV CID-2	0.00	0.00	0.00	0.00	19,770.03	0.00
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Receipts</b>	<b>64,122.86</b>	<b>0.00</b>	<b>9,533.31</b>	<b>0.00</b>	<b>61,319.90</b>	<b>598.75</b>
<b>Expenditures</b>						
Equipment and Maintenance						
Repairs & Maint Leaf Truck	0.00	0.00	167.16	0.00	0.00	0.00
Stone Wall Repairs	1,620.00	0.00	0.00	0.00	0.00	0.00
Street and Stormwater						
Stormwater Expense	0.00	0.00	(370.76)	0.00	0.00	0.00
Miscellaneous						
UMB CID Payment	0.00	0.00	0.00	0.00	20,504.42	0.00
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Expenditures</b>	<b>1,620.00</b>	<b>0.00</b>	<b>(203.60)</b>	<b>0.00</b>	<b>20,504.42</b>	<b>0.00</b>
<b>Receipts Over (Under) Expenditures</b>	<b>\$ 62,502.86</b>	<b>\$ 0.00</b>	<b>\$ 9,736.91</b>	<b>\$ 0.00</b>	<b>\$ 40,815.48</b>	<b>\$ 598.75</b>

See accountants' compilation report.



**City of Westwood, Kansas**  
**Statement of Receipts and Expenditures - Regulatory Basis**  
 Other Funds  
 For The Three Months Ended March 31, 2024

**Other Funds**

	<b>Capital Improvements Fund Year To Date 03/31/2024 Actual</b>	<b>Equipment Reserve Fund Year To Date 03/31/2024 Actual</b>	<b>Stormwater Fund Year To Date 03/31/2024 Actual</b>	<b>Special Highway Fund Year To Date 03/31/2024 Actual</b>	<b>Woodside TIF/CID Fund Year To Date 03/31/2024 Actual</b>	<b>Debt Service Fund Year To Date 03/31/2024 Actual</b>
<b>Receipts</b>						
Taxes						
Ad Valorem Tax	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 10,982.63
City Sales & Use Tax - Special	93,224.89	0.00	0.00	0.00	0.00	0.00
Motor Vehicle Tax	0.00	0.00	0.00	0.00	0.00	405.52
Restricted Use						
Stormwater Utility Fee	0.00	0.00	154,050.39	0.00	0.00	0.00
State Hwy Maintenance	0.00	0.00	0.00	3,735.45	0.00	0.00
Special Highway Fund Revenue	0.00	0.00	0.00	11,578.64	0.00	0.00
WV Ad Valorem Tax	0.00	0.00	0.00	0.00	488,381.00	0.00
WV CID-1	0.00	0.00	0.00	0.00	59,241.21	0.00
WV CID-2	0.00	0.00	0.00	0.00	29,596.50	0.00
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Receipts</b>	<b>93,224.89</b>	<b>0.00</b>	<b>154,050.39</b>	<b>15,314.09</b>	<b>577,218.71</b>	<b>11,388.15</b>
<b>Expenditures</b>						
Equipment and Maintenance						
Repairs & Maint Leaf Truck	0.00	0.00	167.16	0.00	0.00	0.00
Stone Wall Repairs	4,880.00	0.00	0.00	0.00	0.00	0.00
Machinery & Equipment Purchase	0.00	288,232.73	0.00	0.00	0.00	0.00
Special Highway Maintenance	0.00	0.00	0.00	126.88	0.00	0.00
Street and Stormwater						
Capital Improvement Expense	0.00	0.00	0.00	0.00	0.00	9,900.00
Stormwater Expense	0.00	0.00	1,986.50	0.00	0.00	0.00
Miscellaneous						
UMB TIF Payment	0.00	0.00	0.00	0.00	454,134.33	0.00
UMB CID Payment	0.00	0.00	0.00	0.00	55,334.01	0.00
Interfund Transfers	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Expenditures</b>	<b>4,880.00</b>	<b>288,232.73</b>	<b>2,153.66</b>	<b>126.88</b>	<b>509,468.34</b>	<b>9,900.00</b>
<b>Receipts Over (Under) Expenditures</b>	<b>\$ 88,344.89</b>	<b>\$ (288,232.73)</b>	<b>\$ 151,896.73</b>	<b>\$ 15,187.21</b>	<b>\$ 67,750.37</b>	<b>\$ 1,488.15</b>

See accountants' compilation report.



**City of Westwood, Kansas**  
Summary of Expenditures - Actual and Budget  
Regulatory Basis  
For The Year Ended March 31, 2024

	<u>Certified Budget</u>	<u>Expenditures Chargeable to Current Year</u>	<u>Difference Over/(Under)</u>
<b>Expenditures</b>			
General Fund	3,565,746.28	722,702.05	(2,843,044.23)
Capital Improvements Fund	361,976.00	4,880.00	(357,096.00)
Equipment Reserve Fund	741,414.00	288,232.73	(453,181.27)
Stormwater Fund	194,516.00	2,153.66	(192,362.34)
Special Highway Fund	10,000.00	126.88	(9,873.12)
Woodside TIF/CID Fund	623,562.00	509,468.34	(114,093.66)
Debt Service Fund	231,837.50	9,900.00	(221,937.50)
<b>Total Expenditures</b>	<u><b>5,729,051.78</b></u>	<u><b>1,537,463.66</b></u>	<u><b>(4,191,588.12)</b></u>

See accountants' compilation report.

**COUNCIL ACTION FORM**

Meeting Date: April 10, 2024

Staff Contact: Ryan Denk, City Attorney

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**Agenda Item:** Consider Ordinance 1041 approving a Franchise Agreement with Kansas Gas

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**Background/Description of Item**

The City's 2008 franchise agreement with Kansas Gas (Ord. No. 893) expired in December 2023. Since Spring 2023, the City Attorney's Office has been working with Kansas Gas to review and renew the franchise agreement; this occurred in concert with several other cities renewals with Kansas Gas resulting in a consistent approach to how Kansas Gas operates in area cities. Following those negotiations and legal review, the new franchise agreement is ready for City Council consideration.

**Staff Comments/Recommendation**

This franchise agreement renewal maintains the 5% franchise fee agreed upon in 2015 (Ord. No. 965), which was an increase from the previous 2.5% franchise fee. Other provisions of the franchise agreement maintain the current relationship between the City and Kansas Gas as well.

**Budget Impact**

None.

*Suggested Motion*

*I move the City Council adopt Ordinance 1041 granting to Kansas Gas Service a natural gas franchise to operate in the City of Westwood, Kansas.*

(Published in \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_)

**ORDINANCE NO. 1041**

AN ORDINANCE, granting to Kansas Gas Service, a Division of ONE Gas, Inc., and its successors and assigns, a natural gas franchise, prescribing the terms thereof and relating thereto, providing definitions of terms, prescribing a franchise fee, providing terms and conditions for the use of public rights-of-way, requiring advance notice of work and duty to repair, providing for indemnification and a hold harmless agreement, providing for rules and regulations, prescribing insurance requirements, reserving certain rights, providing for revocation and termination, providing for an acceptance of the terms of the franchise, providing for a reopener, providing for notice of annexations, prescribing relevant governing law, providing for transfer and assignment of the franchise, providing for points of contact and notifications, providing for an agreement to renegotiate, and repealing all ordinances or parts of ordinances inconsistent with or in conflict with the terms hereof.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:

**SECTION 1. DEFINITIONS.**

For purposes of this Franchise Ordinance the following words and phrases shall have the meanings given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word “shall” is always mandatory, and not merely directory.

“**City**” shall mean the City of Westwood, Kansas, and, where appropriate by the context, each of its departments, divisions and component units, including public trusts or authorities of which the City is a beneficiary.

“**Company**” shall mean Kansas Gas Service, a division of ONE Gas, Inc.

“**Consumer**” shall mean any Entity located within the municipal corporate limits of the City and serviced by the Company through any use of the Public Ways.

“**Distribution**” or “**Distributed**” shall mean all sales, distribution, or transportation of natural gas to any Sales Consumer or Transportation Consumer for use within the City by the Company or by others through the Distribution Facilities of Company in a Public Way.

“**Distribution System**” or “**Distribution Facilities**” shall mean a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and services extensions, together with all necessary appurtenances thereto, or any part thereof located within any Public Way, for the purpose of Distribution or supplying natural gas for light, heat, power and all other purposes.

**“Effective Date”** shall mean the date the Company files its written acceptance with the City following the final passage and approval of this Franchise Ordinance by the City, as set forth in Section 11 of this Franchise Ordinance.

**“Entity”** shall mean any individual person, governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture, trust, and any form of business enterprise not specifically listed herein.

**“Facility” or “Facilities”** refers to the Company’s Distribution System or Distribution Facilities.

**“Franchise”** shall mean the grant of authority, set forth in Section 2 of this Franchise Ordinance, by the City to the Company for the Distribution of natural gas to the inhabitants of the City and to operate a Distribution System or Distribution Facilities.

**“Franchise Fee”** shall refer to the charges as prescribed in Section 3 of this Franchise Ordinance.

**“Franchise Ordinance”** shall mean this Ordinance granting a natural gas Franchise to the Company.

**“Gross Receipts”** shall mean any and all compensation and other consideration derived directly by the Company from any Distribution of natural gas to Consumers within the City. Such term shall not include revenue from certain miscellaneous charges and accounts, including but not limited to: connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, bad debts, customer project contributions, meter test fees, revenues received by Company from Consumers as Franchise Fee reimbursement, and returned check charges. Additionally, Gross Receipts shall not include credit extended pursuant to the Cold Weather Rule (or substitute rule) of the Kansas Corporation Commission for natural gas sold within the corporate limits of the City, nor Volumetric Rate Fees collected by Company and remitted to City in accordance with Section 3 of this Franchise Ordinance.

**“MCF”** shall mean a measurement of natural gas equal to one thousand cubic feet. It is assumed for purposes of this Franchise Ordinance that one MCF equals one million British Thermal Units.

**“Public Improvements”** means any public facilities, buildings, or capital improvements, including, without limitation, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvements, and other Public Projects.

**“Public Project”** means any project planned or undertaken and financed by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature paid for with public funds.

**“Public Way” or “Public Ways”** shall mean the area on, below or above the present and future public streets, avenues, alleys, bridges, boulevards, roads, highways, parks, parking places,



and other public areas, and general utility easements, dedicated to or acquired by the City. The term does not include easements obtained by private entities providing utilities services or private easements in platted subdivisions or tracts.

**“Sales Consumer”** shall mean, without limitation, any Entity that purchases natural gas within the corporate City limits from Company for delivery to such Consumer within the City through the Company’s Distribution System or Distribution Facilities.

**“Settlement Prices”** shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the fifteenth day of each month as published in nationally recognized publications such as the CME Group (CME) or S&P Global Platts (Platts) on the following business day (or the next day in which a Settlement Price is published).

**“Transport Gas”** shall mean all natural gas transported by Company pursuant to a Kansas Corporation Commission approved transportation tariff, arrangement, or by other agreement, but not sold by the Company, through Company’s Distribution Facilities to any Transportation Consumer.

**“Transportation Consumer”** shall mean without limitation, any Entity that transports Transport Gas pursuant to a Kansas Corporation Commission approved transportation tariff, arrangement, or by other agreement, within the City’s municipal corporate limits through Company’s Distribution Facilities for consumption within the City’s corporate limits.

**“Volumetric Rate”** is the rate applicable to each MCF of Transport Gas distributed to Transportation Consumers. The Volumetric Rate shall be based on a twelve month average of Settlement Prices as calculated from July through June. Initially, the Settlement Price shall mean \$0.2345 per MCF for Transport Gas distributed to Transportation Consumers within the City as represented in “Attachment A,” which is incorporated herein and attached hereto. There shall be an annual recalculation of the Volumetric Rate which shall be effective each January 1. The recalculation shall be based on Settlement Prices for the previous twelve-month period. The average Settlement Prices for each of the twelve months shall be summed and divided by twelve and multiplied by five percent (5%) to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Company shall calculate the Volumetric Rates in accordance with the procedures set out herein and then filed with the City Clerk by July 31 of each year for those rates to be effective on January 1 of the following year.

## **SECTION 2. GRANT OF NON-EXCLUSIVE FRANCHISE.**

A. In consideration of the benefits to be derived by the City and its inhabitants, there is hereby granted to the Company (said Company operating a Distribution System in the State of Kansas), a non-exclusive Franchise for a period of fifteen (15) years from the Effective Date, to construct, maintain, extend and operate its Distribution Facilities along, across, upon or under any Public Way; for the purpose of selling and distributing natural gas for all purposes to the City, and its inhabitants, and through said City and beyond the thereof; to obtain said natural gas, and/or comparable blends of combustible gasses, from any source available; and to do all things necessary

or proper to carry on said business. Company may not allow an unaffiliated third-party to occupy the Right-of-Way under this Franchise Ordinance.

B. The grant of this Franchise by the City shall not convey title, equitable or legal, in a Public Way and shall give only the right to occupy the Public Way for the purposes and for the period stated in this Franchise Ordinance. This Franchise Ordinance does not:

- (1) Grant the right to use facilities or any other property, natural gas-related or otherwise, owned or controlled by the City or a third party without the consent of such party;
- (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of a Public Way;
- (3) Excuse the Company from obtaining appropriate access or attachment agreements before locating its Facilities on property owned or controlled by the City (other than a Public Way) or a third party; or
- (4) Unless explicitly set forth herein, excuse the Company from obtaining and being responsible for any necessary permit, license, certification, grant, registration, or any other authorization required by any appropriate governmental entity, including, but not limited to, the City or the Kansas Corporation Commission.

### **SECTION 3. FRANCHISE FEE.**

A. In consideration for the granting of this Franchise, Company agrees to pay to the City during the term of this Franchise, a Franchise Fee of:

(i) five percent (5%) of the actual Gross Cash Receipts collected by the Company from the Distribution of natural gas to all Sales Consumers within the corporate limits of the City; and

(ii) a sum equal to the Volumetric Rate multiplied by the number of MCF of Transport Gas for the distribution of Transport Gas for Transportation Consumers, all such payments to be made monthly for the preceding monthly period.

B. The Company's obligation for payments of the Franchise Fee shall commence with the first cycle of the monthly billing cycle following the Effective Date of this Franchise Ordinance. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No. 893, and amendments thereto.

C. In the event a Consumer of Company does not pay a monthly bill from Company in full, Company shall prorate its payments of remissions to the City for sums due on that particular bill so that the amount actually paid by the Consumer to Company on the bill is distributed to Company and to the City for sums due on the bill in proportion to the percentage of the total bill actually paid by the Consumer. In the event Company actually collects any outstanding amounts

due on a past due, unpaid, or partially paid monthly customer bill, the Company shall pay City its proportionate share of sums due to the City on such bill.

D. Upon written request by the City, the Company shall submit to the City a certified statement showing the manner in which the Franchise Fee was calculated. The City shall have the right to examine within the corporate limits of the City and during regular business hours, upon reasonable advance written notice to the Company, all books, papers and records kept by the Company in the ordinary course of business and pertaining to its business carried on by it in or through the City, necessary to verify the correctness of the Franchise Fee paid by Company.

E. No acceptance by the City of any Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Franchise Fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

F. The Franchise Fee required herein shall be in lieu of all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001, K.S.A. 17-1902, and amendments thereto.

#### **SECTION 4. USE OF PUBLIC RIGHT-OF-WAY.**

A. Except as provided herein or as regulated by state or federal law, the use of any Public Way under this Franchise by the Company shall be subject to all laws, statutes, regulations and/or city policies (including, but not limited to those relating to the construction and use of the Public Way or other public property) now or hereafter adopted or promulgated. Unless specifically provided herein, the Company shall be subject to all rules, regulations and policies now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, and other requirements on the use of a Public Way; provided however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, or policy proposed, adopted, or promulgated by the City.

B. All mains, services, and pipe which shall be laid or installed under this Franchise shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures already installed. The Company shall provide, prior to commencing work, information to the City concerning work to be performed in the streets, avenues, bridges, parking areas, and public places of the City, as the City may from time to time require for purposes of record keeping. The City may require that the information be provided on its standard permit form, but without requiring approval, consent, or fees. In the event of an emergency, the Company shall have the right to commence work without having first provided such information or form(s).

C. The Company's use of any Public Way shall always be subject and subordinate to the City's use of the Public Way for any public purpose. The City may exercise its home rule powers in its administration and regulation related to the management of the Public Way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory, nor in conflict with state or federal law.

D. The City reserves the right to lay or permit to be laid cables (including by way of example any internet or fiber), electric conduits, water, sewer, gas or other pipelines, and to do or permit to be done any underground work deemed necessary and proper by the City, along, across, over, or under any Public Way. In permitting such work to be done, the City shall not be liable to the Company for any damage to the Company's Facilities unless the City or its agents or contractors are negligent in causing said damage.

E. Whenever by reason of establishing a grade or changing in the grade of any street, or the location or manner of construction of any Public Way, the City deems it necessary to alter, change, adapt, or conform any portion of the Company's Facilities located in the Public Way, the City shall provide reasonable notice and such alterations or changes shall be made within a reasonable time by the Company, as requested in writing by the City, without claim for reimbursement or compensation for damages against the City; provided, however, that this provision is not intended to require the Company to alter, change, adapt, or conform any portion of its Facilities without reimbursement or compensation where the right to locate the same, whether by private right-of-way grant, utility easement, or otherwise, was acquired prior to the designation of the location as a Public Way.

F. If the City shall require the Company to adapt or conform its Facilities or in any way to alter, relocate, or change its property to enable any other person, firm, corporation, or Entity (whether public or private), other than the City, to use the Public Way, the Company shall be reimbursed by the person, firm, corporation, or Entity desiring or occasioning such change for any and all loss, cost, or expense occasioned thereby. "Person," "Firm," "Corporation," and "Entity" as used in this paragraph shall not include regular departments of the City, or any trust or authority formed by or for the benefit of the City for public utility purposes, but shall include any other agency or authority of the City, whether acting in a governmental or non-governmental capacity, including, but not limited to, any urban renewal authority, or any other agency or authority, which as a part of its program clears whole tracts of land within the municipal corporate limits and relocates citizens for the purpose of urban development or similar aims.

G. The Company and the City shall participate in the Kansas One-Call utility location program. The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its Facilities located within a Public Way when requested by the City. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents or authorized contractors. The Company shall designate and maintain an agent familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in a Public Way during, and for the design, of Public Improvements.

H. The Company shall be subject to the following fees and costs in connection with its use and occupancy of any Public Way: (i) in the event that the repairs or replacements set forth under Section 5 below, have not been timely completed by Company, the City may charge an excavation fee for each street or pavement cut to recover the costs associated with construction and repair activity; (ii) inspection fees to recover all reasonable costs associated with City inspection of the work of the Company in the Public Way when the Facilities are of such a scope and magnitude so as to require the City to incur such inspection costs by an outside party; (iii) the repair and restoration costs associated with repairing and restoring the Public Way because of

damage caused by the Company, its assigns, contractors, and/or subcontractors in the Public Way, and (iv) routine fees assessed by the City for performing work within the Public Way.

## **SECTION 5. NOTICE OF WORK AND DUTY TO REPAIR.**

A. Prior to commencing any activities related to the construction, maintenance, or extension of its Facilities along, across, upon or under the Public Way, the Company shall submit to the City written plans detailing all such activities in the manner required by the City by Ordinance. In the event of an emergency, Company shall have the right to commence work without providing such plans, provided such plans are submitted within five business days of commencement of the work. The Company's Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such Public Ways or unreasonably obstruct the legal use by other utilities.

B. Prior to beginning work, the Company will inspect existing pavement within and/or adjacent to the work area and will report any existing damage or concerns. All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within or adjacent to the Public Way that are damaged, displaced, or removed by the Company shall be fully repaired or replaced to their prior condition or to existing municipal standards as are then in existence, and in a manner satisfactory to the duly authorized representative of the City, after completing such activity as is permitted under this Franchise Ordinance and without cost to the City.

## **SECTION 6. INDEMNITY AND HOLD HARMLESS.**

- a. It shall be the responsibility of Company to take reasonable and proper precautions to protect and defend its Distribution Facilities in the Public Way from harm or damage. If Company fails to accurately or timely locate Distribution Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City, its officers, employees and its authorized contractors, or subcontractors shall be responsible to take reasonable precautionary measures, including but not limited to, calling for utility locations and observing marker posts when working near Company's Distribution Facilities.
- b. Company shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Company, any agent, officer, director, representative, employee, affiliate or subcontractor of Company, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the public Right of Way.

- c. The indemnity provided by this section does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Company and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Company and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- d. Company or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the public Right-of-Way.

## **SECTION 7. RULES AND REGULATIONS.**

The Company shall have the right to make and enforce such reasonable rules and regulations as it may deem necessary for the extension of its Facilities, the sale of its gas, and the prudent conduct of its business, provided that such rules and regulations shall neither be in conflict with the laws of the State of Kansas, with the orders, rules, or regulations of the Kansas Corporation Commission or other regulatory authority having jurisdiction, nor with the ordinances and regulations of the City insofar as they are consistent with the jurisdiction of the Kansas Corporation Commission or such other regulatory authority.

## **SECTION 8. INSURANCE REQUIREMENTS.**

A. During the term of this Ordinance, the Company shall maintain insurance coverage at its sole expense with financially reputable insurers. The Company shall provide not less than the following insurance:

- (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
- (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from the Company's operations under this Franchise Ordinance, provided that such additional insured coverage shall be on a primary and non-contributory basis with respect to the City's own coverage and, notwithstanding the general limits described above and elsewhere, provide limits to the City of no more (and no less) than Five Hundred Thousand Dollars (\$500,000) per occurrence.

- B. As an alternative to the above insurance requirements, if self-insurance is allowed by state law for one or more of the required coverages, Company may present certificate or permit of self-insurance issue by state to satisfy requirement(s).

C. The Company shall, as a material condition of this Contract Franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice.

D. The Company shall, as a material condition of this Contract Franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$10,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of the Distribution Facilities located in the Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. Alternatively, if the Grantee anticipates that it will be engaged in the construction and/or maintenance of its Facilities multiple times during the course of a year, the Grantee may choose to meet the bond requirements by providing a bond of \$100,000 annually.

## **SECTION 9. REVOCATION AND TERMINATION.**

In case of failure on the part of the Company to comply with any of the provisions of this Franchise Ordinance, or if the Company should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, the Company may be subject to forfeiture of all rights, privileges, and Franchise granted herein, and all such rights, privileges, and franchise hereunder be deemed ceased, terminated, null, and void, and this Franchise Ordinance shall be deemed revoked or terminated, provided that said revocation or termination shall not take effect until the City has completed the following procedures:

1) Before the City proceeds to revoke and terminate this Ordinance, it shall first serve a written notice upon Company, setting forth in detail the neglect or failure complained of, and the Company shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Franchise Ordinance.

2) If at the end of such sixty (60) day period the City determines that the neglect or failure complained of has not been cured, the City shall take action to revoke and terminate this Franchise Ordinance by an affirmative vote of the governing body present at a public meeting and voting, setting out the grounds upon which this Franchise Ordinance is to be revoked and terminated; provided, to afford the Company due process, the Company shall first be provided reasonable notice of the date, time, and location of the governing body's consideration and shall have the right to address the governing body regarding such matter; and further provided, if the nature of the default is such that it cannot be reasonably cured within the above said sixty (60) day period, and the governing body believes the Company has in good faith timely commenced its cure and is diligently pursuing the completion of the same, the Company may, in the City's sole discretion, be given a reasonable additional period of time to complete its cure.

Nothing herein shall prevent either party from invoking any other remedy that may otherwise exist at law. Upon any determination by the governing body to revoke and terminate this Franchise Ordinance, the Company shall have thirty (30) days to appeal such decision to the District Court where the City is located or in the District Court of Johnson County, Kansas. This Franchise Ordinance shall be deemed revoked and terminated at the end of this thirty (30) day period, unless the Company has instituted such an appeal. If the Company does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of the Company to comply with any of the provisions of this Franchise Ordinance or the doing or causing to be done by the Company of anything prohibited by or in violation of the terms of this Franchise Ordinance shall not be a ground for the revocation or termination thereof when such act or omission on the part of the Company is due to any cause or delay beyond the control of the Company or to bona fide legal proceedings.

## **SECTION 10. RESERVATION OF RIGHTS.**

A. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, applicable Federal laws or regulations as the same may be amended, its home rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

B. In adopting and passing this Ordinance, neither the City's nor the Company's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By the City's adopting and passing this Franchise Ordinance and the Company's acceptance hereof as provided in Section 11, neither the City nor the Company waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or the Company may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

## **SECTION 11. FAILURE TO ENFORCE**

The failure of the City to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City unless said waiver or relinquishment is in writing and signed by both the City and the Grantee subject to the provisions and laws of the state of Kansas.

## **SECTION 12. ACCEPTANCE OF TERMS.**

A. This Franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Company, and publication in the official City newspaper. The Company shall have sixty (60) days after the final passage and approval of this Franchise Ordinance to file with the City Clerk its written acceptance of the provisions, terms, and conditions of this Franchise Ordinance and when so accepted, this Franchise Ordinance and



acceptance shall constitute a contract between the City and the Company and such contract shall be deemed effective on the date Company files its acceptance with the City.

B. This Franchise Ordinance, when accepted as provided above, (i) shall constitute the entire agreement between the City and the Company relating to this Franchise, and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written, (ii) shall be binding upon the parties, including their successors and assigns, and (iii) shall not be amended or further obligations imposed without mutual consent of the parties hereto.

### **SECTION 13. REOPENER PROVISION.**

A. Upon written request of either the City or the Company, this Franchise may be reviewed once after five (5) years from the effective date of this Franchise Ordinance, and once every (5) five years thereafter, to review the Franchise Fee set forth in Section 3 above. Said request must be served upon the other party at least 120 days prior to the end of each period set forth above, and shall state specifically the amendment(s) to the Franchise Fee desired. The City and the Company shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment of the Franchise.

B. Upon written request of the Company, the Franchise shall be reopened and renegotiated at any time upon a change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of the Company, including, but not limited to, the scope of the grant to the Company or the compensation to be paid to the City.

C. The Franchise Fee percentage rate set forth in Section 3 shall in no event exceed the percentage rate hereafter approved to calculate any fee paid to the City by any Entity for use of the Public Ways, if such fee is based in any way on the amount of revenues or gross receipts from the sale, transportation and/or distribution of natural gas or electric energy (excluding any municipally-owned electric utility) by such other Entity to customers within the City. If at any time after the Effective Date of this Franchise Ordinance, the fee or rate required to be paid by another Entity selling, transporting, and/or distributing natural gas or electric energy (excluding any municipally-owned electric utility) is less than the Franchise Fee percentage rate set forth in Section 3, then this Franchise shall become automatically subject to reopen upon notice by the Company for purposes of negotiation of a new lower Franchise Fee percentage rate.

### **SECTION 14. NOTICE OF ANNEXATION.**

The City shall promptly notify the Company in writing (to include a map) of areas newly annexed into or deannexed from the corporate limits of the City, and the Company shall update its records for the purpose of payment of Franchise Fees as soon as reasonably practicable after receiving such notice. Notwithstanding anything to the contrary in this Franchise Ordinance, the Franchise Fees provided for in Section 3 shall not become effective within any area annexed by the City until the beginning of the monthly billing cycle which begins no more than sixty (60) days after the date that the City provides the Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.

## SECTION 15. RELEVANT LAW.

This Franchise Ordinance is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto. Any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed or considered as having no effect as of the first cycle of the monthly billing cycle as referenced in Section 3 of this Franchise Ordinance.

## SECTION 16. TRANSFER AND ASSIGNMENT.

Company shall not have the right to assign, sell, lease, or otherwise transfer in any manner whatsoever to any third party not affiliated with Company the rights and privileges granted under this Franchise Ordinance except as hereinafter provided. Any assignment, sale, lease, or other transfer by the Company of the Franchise granted herein to any third party not affiliated with Company shall be ineffective and void unless:

- (1) The proposed assignment, sale, lease, or transfer shall be in writing:
- (2) The prospective assignee, buyer, lessee, or other transferee shall agree in writing to accept and become responsible for full performance of all conditions, covenants, obligations, and liabilities contained in this Franchise Ordinance; and
- (3) Such writing shall be submitted to the City Clerk of the City.

## SECTION 17. POINT OF CONTACT AND NOTICES.

The Company shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Company in the event of an emergency. Company shall provide the City with said local contact's name, address, telephone number, fax number, and e-mail address. Emergency notice by either party to the other may be made by telephone to the City's designee as listed below. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail (return receipt requested), or via the email addresses provided below. Any notice served by U.S. Mail or Certified Mail (return receipt requested) shall be deemed delivered upon actual receipt unless otherwise provided. Other than emergencies, notices to the parties shall be to the following:

### **The City:**

The City of Westwood  
 Attn: City Clerk  
 4700 Rainbow Blvd.  
 Westwood, Kansas 66205  
 Phone: 913-362-1550  
 Fax: N/A  
 Email: info@westwoodks.org

### **Company:**

Kansas Gas Service, a Div. of ONE Gas, Inc.  
 Attn: Legal Department  
 7421 W. 129<sup>th</sup> Street  
 Overland Park, KS 66213-2713  
 Phone: (913) 319-8619  
 Fax: N/A  
 Email: kgsfranchises@onegas.com

**Emergency Contact Information:**

Emergency Designee: John Sullivan, Public Works Director      Natural Gas Emergency No: 888-492-4950

Emergency Contact No.: 913-942-2132      Emergency Email: kgsdispatch-overlandpark@onegas.com

(or to replacement addresses that may be later designated in writing).

**SECTION 18. AGREEMENT TO RENEGOTIATE.**

Should the Kansas Corporation Commission take any action with respect to this Franchise Ordinance and any amendment thereto which precludes Company from recovering from its customers any costs or fees provided for hereunder, the parties hereto shall renegotiate this Franchise Ordinance in accordance with or to conform to the Commission’s ruling.

**SECTION 19. PAYMENT OF PUBLICATION COSTS.**

In accordance with statute, the Company shall be responsible for payment of all costs and expense of publishing this Contract Franchise, and any amendments thereof.

**SECTION 20. RIGHTS AND DUTIES UPON EXPIRATION.**

Upon expiration of this Contract Franchise, whether by lapse of time, by agreement between the the Company and the City, or by forfeiture thereof, the Company shall have the right to remove any and all of its mains and pipes, laterals, appurtenances, and equipment used in its business within a reasonable time and after such expiration, but in such event, it shall be the duty of the Company, immediately upon and during such removal to restore the streets, avenues, alleys, parks, and other public ways and grounds from which said pipes, laterals, and other equipment have been removed, to the equivalent condition as the same were before said removal was effected.

PASSED, ADOPTED AND APPROVED this 11<sup>th</sup> day of April, 2024.

CITY OF WESTWOOD, KANSAS

[seal]

\_\_\_\_\_  
David E. Waters, Mayor

ATTEST:

Abby Schneweis, City Clerk

Volumetric Rate Calculation Form													
For the Transportation of Natural Gas in Pipelines Located in the City													
Based on the NYMEX settlement prices for the dates shown, published the following business day													
Source: Wall Street Journal, or DTN, or Gas Daily													
Year	1	2	3	4	5	6	7	8	9	10	11	12	
Month-Day	2022 Jul-15	2022 Aug-15	2022 Sep-15	2022 Oct-17	2022 Nov-15	2022 Dec-15	2023 Jan-17	2023 Feb-15	2023 Mar-15	2023 Apr-17	2023 May-15	2023 Jun-15	
Aug - 2022	7.016												
Sep - 2022	6.926	8.728											
Oct - 2022	6.917	8.712	8.324										
Nov - 2022	6.997	8.788	8.372	5.999									
Dec - 2022	7.096	8.903	8.522	6.479	6.034								
Jan - 2023	7.184	8.963	8.620	6.714	6.395	6.970							
Feb - 2023	6.881	8.497	8.319	6.508	6.143	6.589	3.586						
Mar - 2023	5.961	7.108	7.280	5.913	5.457	5.820	3.253	2.471					
Apr - 2023	4.825	5.394	5.791	5.014	4.765	5.279	3.218	2.555	2.439				
May - 2023	4.697	5.220	5.648	4.948	4.750	5.244	3.283	2.709	2.546	2.275			
Jun - 2023	4.748	5.268	5.698	5.023	4.833	5.339	3.421	2.896	2.759	2.444	2.375		
Jul - 2023	4.800	5.318	5.751	5.103	4.924	5.428	3.551	3.067	2.958	2.652	2.542	2.533	
Aug - 2023		5.329	5.762	5.115	4.933	5.414	3.584	3.114	2.997	2.717	2.624	2.609	
Sep - 2023			5.743	5.084	4.870	5.337	3.528	3.080	2.964	2.688	2.620	2.606	
Oct - 2023				5.158	4.918	5.389	3.597	3.152	3.043	2.778	2.721	2.719	
Nov - 2023					5.229	5.590	3.995	3.568	3.370	3.167	3.157	3.131	
Dec - 2023						5.921	4.423	3.933	3.764	3.619	3.654	3.569	
Jan - 2024							4.670	4.162	3.957	3.862	3.922	3.822	
Feb - 2024								4.033	3.841	3.765	3.843	3.746	
Mar - 2024									3.514	3.447	3.511	3.477	
Apr - 2024										3.155	3.148	3.157	
May - 2024											3.129	3.139	
Jun - 2024												3.238	
Avg Settlement Price	6.171	7.186	6.986	5.588	5.271	5.693	3.676	3.228	3.179	3.047	3.104	3.146	
July 2022 through June 2023 settlement price average							4.690						
X Bundled Franchise Fee Rate							5.0%						
=Volumetric Rate/MCF for 2023							0.2345						
Note: If the 15th of the month falls on a weekend or holiday, then use the settlement price on next business day.													

## COUNCIL ACTION FORM

Meeting Date: April 9, 2024

Staff Contact: John Sullivan, Public Works Director

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Agenda Item: Consider a Resolution to adopt the 2025 to 2029 City of Westwood CARS Program

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### **Background / Description of Item:**

The City of Westwood on an annual basis adopts by resolution a proposed five-year County Assistance Road System (CARS) Program Project Plan. The CARS Program is administered by Johnson County to allocate the distribution of motor fuel taxes within the County to be used on specific designated roads.

The recommended roadways for the City of Westwood for calendar years 2025 to 2029 is as follows:

<u>Year</u>	<u>Project</u>
2025	Mission Road, W. 53 <sup>rd</sup> Street to W. 47 <sup>th</sup> Street

### **Staff Recommendation:**

Adopt Resolution No. 127-2024 approving the 2025 to 2029 County Assistance Road System Program for road improvements with the City of Westwood

**CITY OF WESTWOOD, KANSAS  
RESOLUTION NO 127-2024**

**A RESOLUTION APPROVING A FIVE-YEAR PROGRAM FOR ROAD  
IMPROVEMENTS FOR 2025-2029 WITHIN THE CITY OF WESTWOOD**

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**WHEREAS**, the Board of County Commissioners of Johnson County Kansas has established by resolution a County Assistance Road System (CARS) program, and

**WHEREAS**, the Board of County Commissioners requires each participating City to establish a five-year program for proposed improvements to roads eligible under the CARS program, and

**WHEREAS**, certain roads eligible for funding under the program fall within the City Limits of Westwood, Kansas;

**NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS, AS FOLLOWS:**

**Section 1.** The Governing Body of the City of Westwood, Kansas, has hereby reviewed and approved the following roads for inclusion in the CARS program:

2025 Mission Road, West 53rd Street to West 47th Street

**Section 2.** This Resolution shall take effect and be in force from and after its adoption by the Governing Body.

**ADOPTED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD,  
KANSAS, ON APRIL 11, 2024.**

(Seal)

ATTEST:

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David E. Waters, Mayor

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Abby Schneweis, City Clerk

APPROVED AS TO FORM:

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Ryan Denk, City Attorney